



Building an enabling legal environment: Legal Analysis of Association's Laws in Selected Arab Countries

(Iraq, Jordan, Lebanon, Tunisia, Morocco,
and Libya)

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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

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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Executive Summary

The freedom of association and the right to peaceful assembly are fundamental to democratic systems and are protected by international and regional human rights treaties. The problem of “Shrinking Civic Space,” also known as “Closing Space” for civil society, has reached a worldwide scale, with legislation limiting the freedoms of association, assembly, and expression. In the MENA region, shrinking civic space is occurring to varied degrees, which has diverse consequences on civil society. Interrelated tendencies that restrict the space in which CSOs may operate include national laws limiting the activities of non-profits and policies and practices impeding the basic freedoms of assembly and association. This report examines the national legal framework that governs the work of associations that have no religious, political, or labor interests in six Arab countries.

It aims to identify legal barriers, administrative restrictions, and practices that impede the formation and work of CSOs based on international standards as stipulated in human rights conventions and relevant documents. It also aims to highlight differences and breaches in national law so that well-grounded recommendations may be drafted for future advocacy efforts. This report uses a mixed methods approach to achieve its goals and objectives. It uses primary and secondary legal sources to create an in-depth knowledge of the legislative framework in each country, uncover breaches of international norms, and assess how these violations affect associations. The report will be divided into five sections: Introduction, International Human Rights Standards, Descriptive Legal Analysis of the selected countries, Findings and Recommendations.

The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (CCPR) recognize the right to freedom of peaceful assembly and association, with no restrictions on the exercise of this right other than those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Trade unions have the right to establish national federations or confederations and the right to form or join international trade-union organizations. The African Charter on Human and Peoples’ Rights (ACHPR) and the Convention on the Rights of Child (CRC) recognize the rights of the child to freedom of association and peaceful assembly. All conventions use comparable wording to define both rights, except for the Arab Charter on Human Rights (ACHR), which restricts this right to citizens of the country. National constitutions must protect the right to freedom of association, and national law on freedom of association must be created with the purpose of enabling and encouraging the formation of groups and boosting their capacity to achieve their goals.

Six components are chosen to assess the enabling legal environment for the formation and operation of associations in selected countries. A concise explanation of states’ obligations under international human rights law and elaboration on these components in accordance with international standards and best practices. It also helps to better comprehend the responsibilities of states in connection to the right to association and the thin line between regulating this right and interfering with or violating it. International and regional law requires states to ensure that individuals are free to form and join any type of group and independently engage in any lawful or legitimate activity. This includes the freedom to seek and receive resources, organize, and advocate for and maintain human rights peacefully.



These obligations originate from ratified human rights conventions and international customary law. States are prohibited from violating human rights and any restrictions on these rights must be permitted under the relevant provisions of these conventions. States must foster an atmosphere conducive to the successful enjoyment of human rights and establish a legal and institutional framework within which rights can be properly exercised. The obligation to respect and enjoy rights, such as freedom of association and peaceful assembly, should be based on a legal and decision-making system that is both functional and transparent. According to international human rights law, a small number of human rights are recognized as absolute rights that cannot be limited for any reason.

However, the majority of rights are subject to clear or inferred limitations, such as public order and the protection of others' freedoms and rights. The Siracusa Principles are a foundation on which to build state restrictions on rights, stipulating that the limitation must have a solid legal foundation and be publicly accessible, sufficiently detailed, and not grant the state unrestricted discretion. The Siracusa Principles provide clear and short definitions for all terms used in limitation clauses, including democratic society, national security, public safety, public order (ordre public), the protection of public health or morality, and the protection of others' rights and freedoms. The proportionality principle demands that the means used by the state to limit a right must be proportional to the aim sought. All natural and legal persons, nationals and non-nationals, and groups of such persons are allowed to form associations, with or without legal personality, subject to the non-discrimination principle.

The subsidiary test examines if there are other, less restrictive ways to achieve the legitimate objective. The most important details in this text are that informal associations should be formed using a method that is easy, readily accessible, non-discriminatory, and non-onerous or free, and that registration agencies should offer a comprehensive and timely written reason. Additionally, legislation and procedures pertaining to associations must be implemented by an impartial regulating authority, and regulatory bodies must adhere to the law and be held accountable for any procedural or substantive breaches. Finally, associations and their members must be consulted prior to the introduction and implementation of any rules, policies or procedures pertaining to their activities, and the creation of organizations must be facilitated by all administrative requirements. Associations should have access to all the goals and activities available to people acting alone, with the exception of creating a profit.

Regulations regulating organizations should not restrict the kind of activity they may do or the aims they can pursue. Exceptions to this general rule may be acceptable as long as they are consistent with international human rights norms. Authorities should always operate under the presumption that an organization's proposed objectives and activities are legal, and provide organizations the discretion to choose whether or not their activities are in keeping with the aims indicated in their governing agreements. Access to funding is an integral part of the ability to form and join any kind of association. The Special Rapporteur has emphasized that all associations, whether registered or unregistered, should have the right to seek and secure funding and resources.

To fulfill international standards, national law must provide them the freedom to seek, receive, and utilize funds in accordance with their non-profit purposes. Any restrictions on access to these resources must be proportional to the state's intention of defending

these interests and must use the least intrusive ways possible to achieve this objective. Public funding must be transparent, and associations that benefit from public funding should be registered and required to submit activity and financial reports on regular basis. Oversight of CSOs should be conducted in accordance with international human rights standards. The governing body of an association should be an elected or appointed body that has final authority over administration, determines policies, and exerts regular control and supervision of its finances, operations, and activities.

External oversight should be conducted by an impartial and independent body and be limited to the bare minimum of needed institutions and rules for internal governance. Legislation must define the body's authority in accordance with human rights standards, and cases that require association inspections should be clearly defined in the legislation and supported by credible allegations of a serious legal violation and well-grounded evidence. The legislation should give protection if inspections are conducted for unjustified reasons or if this authority is utilized as a means of harassment, and relevant personnel should get proper training on the protection of the rights to peaceful assembly and association. The Special Rapporteur emphasizes the need for states to refrain from using tax pressure to dissuade organizations from receiving funds, particularly from abroad. The African Commission on Human and Peoples' Rights (African Commission) underlines that states should provide tax benefits, and other forms of public support where possible, to not for-profit associations.

Tax rules use an organization's actions, purposes, or both to determine whether tax benefits should be extended to the organization or its donors. Dissolution should be permitted voluntarily in accordance with acceptable processes, and notification should be submitted to the applicable state agency or the state attorney to ensure that the association's assets are distributed in line with its governing documents or the requirements of the law. The law should include intermediate punishments, such as fines, for various sorts of infractions, and a civic organization's dissolution should be a last resort only for the most egregious and obvious violations. Dissolution should only be permitted where there is a clear and imminent threat of a gross breach of national law, and should be strictly proportional to the objective pursued and employed only if milder measures are lacking. Involuntary dissolution should be done by unbiased, independent courts, and the assets of a disbanded civic organization should be donated to another civic organization with a comparable mission. Suspension of associations should also be sanctioned by an impartial and independent court in cases of manifest and imminent risk resulting in egregious violation of domestic laws.



Key findings

In the selected countries, the legal framework of associations is complex, does not conform to international standards, and is surrounded by a number of legal obstacles that hinder the exercise of this right. Frequently, the concerns originate from the fundamental legislation governing associations, but in other instances, they stem from administrative procedures and additional legislation pertaining to the operations of these NGOs, most notably any legislation pertaining to freedom of assembly and expression.

1. Formation of CSOs

In Libya, Jordan, and Iraq, associations must be registered through official channels, whereas in the other countries, associations are formed through a notification system. In both instances, the founders' right to free association was violated in several ways. The registration process in Iraq can take up to two years and is difficult. In Lebanon, Tunisia, and Morocco, the authorities use a variety of methods to prevent or unreasonably delay the formation of certain associations, including administrative requirements that are not included in the main legislation governing associations, refusal to accept the application, and refusal to issue a document acknowledging receipt of the application.

If the creation process is not completed, the organization will become an informal entity without legal capacity. They will also be susceptible to sanctions in Lebanon, as they are classified as secret organizations. In Iraq, Libya and Jordan, it is illegal for them to operate in any capacity.

2. Defining Goals and Objectives

Regarding the definition of associational goals and purposes, Jordan appears to be the most restrictive country. The Associations Registrar issued a classification guide for Jordanian organizations in 2018. The publication contains fourteen sections in which associations can outline their goals using predetermined text. Legislation in Libya rigorously applies “a priori scrutiny” by barring civic association registration applications with a list of objectives.

In other countries, the law forbids associations from adopting goals or carrying out actions that violate the Constitution, other national laws, or public order and decency by employing wide language. In fact, these provisions provide authorities with substantial latitude in enforcing the legislation to restrict the right to assemble.

It is perplexing that each country regards associations with different goals as a threat. In Lebanon, integrating Syrian refugees into an organization's objectives and goals may result in registration delays or denial. Women's rights, human rights, and free speech organizations are most likely face administrative obstacles in Jordan. Associations in Morocco dealing with sensitive topics like Western Sahara, the monarchy, and religion are more likely to be harassed. Most likely to be targeted by militias and the government in Iraq are organizations that expose corruption. Authorities and the general population target LGBTQ organizations and any organizations that support them in each of the listed countries.

3. Access to Funding

It was obvious that funding of associations is a common concern in the selected countries, particularly with regard to public funding, as it appeared inadequate and lacked transparent criteria for allocating funding among organizations, and there were no effective mechanisms to contest such decisions.

Jordan looks to have the strictest legislation governing foreign funding, as the government can prohibit foreign funding without offering any justification. In addition, representatives of non-governmental organizations reported that government officials intervene in the proposal of an activity involving foreign finance by adding or deleting partners or delivering specific sums to government authorities. In Libya, funding is governed, pre-approval is required, and there is minimal judicial control.

In most countries, recognized associations are just obligated to report foreign funding to the authorities. However, in Lebanon, the financial crisis and lack of access to foreign currency have created additional difficulties. Others have resorted to international online banking services to circumvent government limitations.

Concerns have been raised in both Iraq and Lebanon regarding the fact that some associations get funds from political groups to advance the agendas of political parties, so losing their independence and deviating from their goals and objectives.

In countries that follow the notification system, associations are refused all forms of funding and even the opportunity to open bank accounts if they do not receive the necessary paperwork from the government.

4. Oversight of CSOs work

In Iraq, Lebanon, Tunisia, and Morocco, government institutions such as the interior ministry and the prime minister's office perform monitoring. The law of Jordan established a registry board with the authority to approve the registration of organizations and designate the ministry responsible for the association's oversight. None of these countries meet the qualifications for an external oversight authority that is impartial and independent. In Libya, monitoring jurisdiction extends over the entirety of an organization's life cycle, from establishment to dissolution, in an intrusive way with minimal court scrutiny.

In addition, it was found that the authorities in the selected countries use a variety of regulations to restrict the activities of associations, particularly those pertaining to freedom of assembly and public gatherings. These laws fall far short of international standards since authorities can impose numerous restrictions and ban activities with limited access to the courts for review. In Jordan and Morocco, the authorities do not adhere to the law, which expressly stipulates that prior approval is not required for public meetings and gatherings. The government of Lebanon restricts public gatherings for reasons of public safety, public order, or public morality. In the selected countries, freedom of speech is also a struggle, and criminal law is used to prosecute activists who endanger it. Therefore, freedom of association cannot be realized if other laws regarding civic liberties are incompatible with international standards. In both Iraq and Lebanon, political parties and armed organizations may respond violently to nonviolent protests, putting the lives of activists in danger.



Monitoring the Internet activities of associations and their members is yet another common practice. It has been established that specific activists' social media accounts have been banned. The online activism of activists may result in criminal charges.

5. Taxations

In general, associations receive limited tax benefits in the selected countries. Typically, if an association obtains public utility status, it is eligible for special tax breaks; however, acquiring this status is difficult, the method is confusing, and there is a lack of transparency. Some Jordanian associations applied for this status based on the legislative requirements, however they never received a reply.

This status is awarded at the discretion of the authorities of the remaining countries. In all selected countries, only a small number of organizations have acquired this status. Regarding preferential treatment (exemption) in taxation for associations in Libya, the Regulation makes no mention of local groups and specifies only the taxes that must be paid to the state for international associations.

In addition, domestic contributions are not tax deductible, which explains why associations in the selected nations rely more on international support.

6. Dissolution

The Jordanian legislation allows the registry board the authority to dissolve an organization based on a minister's recommendation under limited circumstances. Before the appeal is resolved or the deadline for filing an appeal has passed, the ruling is implemented immediately. The Council of Ministers can issue an immediate decision dissolving an organization in Lebanon, however, there have been no reports of this authority being abused. Worrisome, however, is that the Lebanese government has exploited the concept of secret societies to justify dissolution, with the potential to extend this concept to non-government-approved organizations (Ilm wa Khabar). In Iraq, the government has the ability to suspend associations in certain circumstances, but there have been no claims of abuse of this authority. In Libya, the CCS has the right to stop the operation of an association for specific reasons by de-registration/dissolution or suspension. Requests to dissolve associations fall under the purview of the Court of First Instance in both Morocco and Tunisia. This is the case if the association was found to be operating in a manner that was in violation of the law.

1. Introduction

The freedom of association and the right to peaceful assembly are fundamental to the operation of democratic systems and are intimately tied to other pillars of human rights, democracy, and pluralism. Several international and regional human rights treaties embody these rights and protect them.

These rights are also the foundation of “Civil Society” effort, a word whose definition highlighted issues of complexity and conservatism¹. The Special Rapporteur on the rights to freedom of peaceful assembly and of association defines an association as “any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests”. Therefore, the word association refers, inter alia, to civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations or even online associations as the Internet has been instrumental, for instance, in “facilitating active citizen participation in building democratic societies². Hence, the ability to organize and join an association is intrinsic to the right to freedom of association.

The problem of “Shrinking Civic Space,” also known as “Closing Space” for civil society, has reached a worldwide scale. In recent years, legislation limiting the freedoms of association, assembly, and expression has grown, while financial options for civil society organizations (CSOs) have declined. In the context of the MENA region, shrinking civic space is occurring to varied degrees, which has diverse consequences on civil society. Some countries in the area with well-established, long-standing civil society groups are seeing harsh security force reactions to recent anti-government protests organized by civic actors and activists demanding accountability and justice. As limits on free speech tighten, more journalists and campaigners for human rights are jailed in other countries. In addition to the destabilizing consequences of prolonged war in other countries that rank among the most restricted civic space settings in the area, civil society must manage complex civic space dynamics.

Within the context of “Shrinking Civic Space,” there are interrelated tendencies that restrict the space in which CSOs may operate. These include national laws limiting the activities of non-profits and policies and practices impeding the basic freedoms of assembly and association. With the understanding that Jordan, Lebanon, Iraq, Libya, Tunisia, and Morocco are all signatories to international and regional conventions and thus obligated to uphold their provisions, this report seeks to examine the national legal framework that governs the work of associations that have no religious, political, or labor interests in these six Arab countries.

1. The “civil society” sector has been labeled variously as the “third” sector, “voluntary” sector, “nonprofit” sector, “charitable” or “independent” sector, and the “social economy”. The organizations making up civil society come in a diverse range of forms, which may include associations, foundations, non-profit corporations, public benefit companies, development organizations, community based organizations, religious congregations and faith-based organizations, hospitals, universities, mutual benefit groups, sports clubs, advocacy groups, arts and culture organizations, charities, unions and professional associations, humanitarian assistance organizations, non-profit service providers and charitable trusts. Taken together, they are often referred to as non-governmental organizations (NGOs), not-for-profit organizations (NPOs), or civil society organizations (CSOs). ICNL & UNDP, the role of Legal Reform in Supporting Civil Society: An Introduction Primer, August 2009, p 7

2. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, Twentieth session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/20/27, 21 May 2012, paragraphs 51 & 52.



1.1 Aims and Research Questions

The success of democratic government is contingent on the presence of both a strong state and a vibrant, engaged civil society. Strong levels of civic engagement are a crucial component of participatory government, which focuses more and more on developing inclusive and responsive democratic institutions and expanding public voice possibilities. For civil society groups to operate in a country, the legal and regulatory framework controlling their creation, space, and capacity to participate in public life is crucial. The rule of law and the fulfilment of civil and political rights, such as freedom of speech, right to association, and participation in public affairs, are beneficial to a healthy civil society. Adequate regulatory frameworks are intrinsically tied to the right of a society to grow and to identifying development pathways via democratic and inclusive procedures.

The legislative structure of a state is one of many elements that influence the entire environment's receptivity to civil society and its organizations. The legal framework plays a crucial role, and a generally favorable legislative framework may be seen as a necessary for the creation of a robust and durable civil society sector.

The purpose of this report is to provide an analysis of the legal framework for civil society in six Arab countries: Jordan, Lebanon, Iraq, Libya, Tunisia, and Morocco, in order to identify legal barriers, administrative restrictions, and practices that impede the formation and work of CSOs based on international standards as stipulated in human rights conventions and relevant documents. This comparison will allow for an unbiased examination, highlighting differences and breaches in national law so that well-grounded recommendations may be drafted for future advocacy efforts in the selected countries.

The following key questions will be addressed in the report:

- To what extent the national legislation in each country is compatible with international standards as stipulated in human rights conventions and relevant documents?
- To what extent the practices of authorities are respecting national legislation related to the work of CSOs?

1.2 Methodology and Structure

To achieve the specified goals and objectives, a mixed-methods approach was employed to produce this report. It will integrate doctrinal legal study for the goal of examining legal statutes, concepts, and principles to provide a reasonable evaluation and correlating conclusion. This approach enables a researcher to give a systematic presentation, analysis, and assessment of legal rules, doctrines, or ideas pertaining to a particular law or legal topic in the study. In addition, a qualitative approach will be used by interviewing Key Informants in each country to get a deeper understanding of the law's applicability, practices, and implementation.

This combined method approach will create an in-depth knowledge of the legislative framework in each country, uncover breaches of international norms, and assess how these violations affect associations.

The report depends on primary and secondary legal sources. International and regional human rights law and national legislation in the chosen countries, including constitution provisions, national laws, and administrative rules and regulations pertaining to associations, are the primary legal sources. The secondary legal source will mainly consist of information and published materials from credible organizations, such as treaty bodies, the United Nations Human Rights Council, Amnesty International, Human Rights Watch, the United States Department of State, the International Center for Not-for-Profit Law (ICNL), and Freedom House. This information will be integrated with information obtained from national and regional interviews with key informants. Based on the above mentioned, the report will be divided into five sections.

- **Section 1: Introduction**

This section details the study's rationale, its goals and objectives, its research questions, and its methodology.

- **Section 2: International Human Rights Standards**

The second section examines international and regional standards pertaining to the formation and work of associations, as outlined in international and regional human rights conventions, comments of the Human Rights Committee, and recommendations of the Special Rapporteur on the rights to peaceful assembly and association. Other guidelines and handbooks published by international and regional organizations are also consulted.

- **Section 3: Descriptive legal analysis of the selected countries**

Each country's relevant legislation will be examined and evaluated to identify inconsistencies and discrepancies with the international standards outlined in section 2. Documenting human rights abuses in these countries, trustworthy sources will be used to highlight practices and methods of implementation.

- **Section 4: Findings and Recommendations**

All findings about the discrepancies and gaps between national law and international standards in the target countries will be presented in this section.

- **Section 5: Recommendations**

This part outlines recommendations regarding national legislation and practices that impede civic space in the selected countries.

2. International and Regional Standards

International and regional human rights conventions has acknowledged the right to freedom of peaceful assembly and association. Below are some examples:

The Universal Declaration of Human Rights (UDHR)

Article 20.1

Everyone has the right to freedom of peaceful assembly and association.”

The International Covenant on Civil and Political Rights (CCPR)

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The International Covenant on Economic, Social and Cultural Rights (CESCR)

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law, and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

The Convention on the Rights of Child (CRC)

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the 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.

The Arab Charter of Human Rights (ACHR)

Article 24 Every citizen has the right.

5. to freely form and join associations with others
6. to freedom of association and peaceful assembly
7. No restrictions may be placed on the exercise of these rights 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 health or morals or the protection of the rights and freedoms of others.

The African Charter on Human and Peoples' Rights (ACHPR)

Article 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

All conventions use comparable wording to define both rights, with the exception of the ACHR, which restricts this right to citizens of the country. In any case, the acknowledgment of these rights implies a duty on State parties to respect and guarantee the exercise of these rights. This requires states to permit the formation of such organizations without interference and, where necessary, to support the exercise of the right and safeguard its members. These rights are not absolute, but any limitations must be defined carefully. Effectively, there are restrictions on the restrictions that may be applied.

National constitutions must protect the right to freedom of association, which must be interpreted broadly in accordance with international and regional human rights law. Whenever required, national law on freedom of association must be created with the purpose of enabling and encouraging the formation of groups and boosting their



capacity to achieve their goals. Such law must be prepared and revised based on wide and inclusive procedures, including conversation and substantive participation with civil society³.

Legislation impacting the exercise of the right to freedom of association should support the creation of organizations and let them to pursue their objectives. In addition, it should be written with sufficient clarity and precision to enable the necessary authorities or entities to execute the legislation accurately. Association-related legal provisions must be carefully written for this reason. They must be clear and precise, as well as adopted in a way that ensures all parties are committed to their essence. In addition, legal regulations pertaining to associations should be interpreted and managed in a manner consistent with the successful exercise of the right to freedom of association in order to ensure that the enjoyment of this right is effective and practical⁴.

Six components are chosen to assess the enabling legal environment for the formation and operation of associations in order to offer an evaluation of relevant laws in the selected countries (Formation of Associations, Defining Goals and Objectives, Access to Funding, Oversight of Associations' work, Taxation, and Dissolution). This section will provide a concise explanation of states' obligations under international human rights law and elaborate on these components in accordance with international standards and best practices, so that they may serve as a benchmark for the national laws of the countries chosen for this research.

2.1 State Obligations under International Human Rights Law

The obligations of governments under international and regional human rights law have been comprehensively debated by numerous treaty bodies through general comments, reports by special rapporteurs, and considerable study. The same holds true for lawful restrictions on human rights.

This section was added to fulfill the goals of the report and assist to better comprehend the responsibilities of states in connection to the right to association and the thin line between regulating this right and interfering with or violating it.

Under international and regional law, states must ensure that individuals are free to form and join any type of group and independently engage in any lawful or legitimate activity. This includes the freedom to seek and receive resources, to organize, and to advocate for and maintain human rights peacefully, as it is crucial for the work of human rights defenders, allowing them to monitor the state of human rights in their respective countries.

3. Human Rights Committee, General comment No. 37, Article 21: right of peaceful assembly, paragraph 55. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 20.

4. 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, p 16. General Comment No. 37, paragraph 32. Guidelines on Freedom of Association and Assembly in Africa, the African Commission on Human and Peoples' Rights, 2017, p 7.

These obligations originate from ratified human rights conventions⁵ and pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States Parties are required to give effect to the obligations under ratified human rights conventions in good faith. International Customary Law also serves as a source of obligation as it is one of the principal sources of public international law⁶.

International human rights law establishes duties that states are obligated to uphold. States assume obligations and duties under international law to respect, protect, and fulfill human rights through signing and ratifying international and regional treaties. The obligation to respect requires states to refrain from interfering with or restricting the exercise of human rights. The obligation to protect necessitates that states safeguard persons and organizations from violations of human rights. States are required to promote the enjoyment of fundamental human rights in accordance with the obligation to fulfil⁷.

The need to respect imposes both negative and positive obligations on states. States Parties are prohibited from violating human rights, and any restrictions on these rights must be permitted under the relevant provisions of these conventions. To ensure the continuing and effective protection of human rights, states imposing such limits must establish their necessity and employ only measures commensurate to the pursuit of legitimate goals. In no circumstance may the limits be implemented or invoked in such a way as to compromise the substance of a protected right⁸.

State parties are required to adopt legislative, judicial, administrative, educational, and other relevant steps to fulfill their legal responsibilities. States must therefore foster an atmosphere conducive to the successful enjoyment of human rights and establish a legal and institutional framework within which rights can be properly exercised. Also included in the positive obligation is the protection of persons and groups exercising their rights, such as members of associations and participants in peaceful meetings⁹. The obligation to respect and enjoy rights, such as freedom of association and peaceful assembly, should be founded on a legal and decision-making system that is both functional and transparent. National law must clearly define the roles and responsibilities of all participating functionaries and be linked with international standards¹⁰.

These obligations must constantly be kept in mind, particularly when rights limitations are debated and applied. According to international human rights law, a small number of human rights are recognized as absolute rights that cannot be limited for any reason. These rights include freedom from torture and other cruel, inhuman, or degrading treatment or punishment, freedom from slavery and servitude, freedom from imprisonment for inability to fulfill a contractual obligation, prohibition against the retroactive application of criminal laws, and the right to recognition as a person.

5. See for example Article 2 of CCPR defines the scope of the legal obligations undertaken by States Parties to the Covenant. A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction.

6. William A. Schabas, *The Customary International Law of Human Rights*, Oxford Academic, 2021.

7. Human Rights Committee (CCPR), General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 1326 May 2004.

8. Human Rights Committee (CCPR), General comment No. 37, on the right of peaceful assembly (article 21), CCPR/C/GC/37, 17 September 2020, paragraph 26.

9. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 33.

10. Human Rights Committee (CCPR), General comment No. 34, CCPR /C/GC/34, 12 September 2011, paragraphs 7-8.



The majority of rights, however, are subject to clear or inferred limitations. Some rights are specifically limited for reasons such as public order and the protection of others' freedoms and rights. Some rights contain implicit limitations through the use of phrases like "fair," "reasonable," and "arbitrary." Any permitted restrictions on rights must be outlined by law, on permissible grounds relating to the right in question, reasonable, necessary, and proportional means for a legitimate objective¹¹.

The legitimate limitations are described in several articles of the CCPR as "restrictions may be placed on the exercise of this right other than those 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." The language of the Arab Charter on Human Rights¹² and the African Charter on Human Rights¹³ is comparable.

The Siracusa Principles are a foundation on which to build state restrictions on rights¹⁴. As a rule, the limitation must be stipulated by law. This requirement stipulates that the limitation must have a solid legal foundation. The law authorizing the limitation of a right must be a) publicly accessible; b) sufficiently detailed to enable people to manage their behavior; and c) it must not grant the state unrestricted discretion to prevent the risk of misuse and arbitrary exercise of discretion¹⁵. The limitation must be "necessary," this term implies that the limitation: (a) is based on one of the grounds justifying limitations recognized by the relevant article of the human rights convention concerned, (b) responds to a pressing public or social need, (c) pursues a legitimate aim, and (d) is proportionate to that aim¹⁶.

The Siracusa Principles provide clear and short definitions for all terms used in limitation clauses, including democratic society, national security, public safety, public order (*ordre public*), the protection of public health or morality, and the protection of others' rights and freedoms¹⁷. These definitions are necessary to prevent the state from misusing or misinterpreting the term. States always bear the burden of justifying a limitation on a right¹⁸.

The restriction of rights and liberties must not risk the substance of the rights involved, nor shall it be implemented arbitrarily. Every limitation shall be subject to the possibility of challenge and remedy against its abusive use and shall not be more restrictive than

11. The text of the right determines if it is absolute or note. For example, article 7 of the CCPR states "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

12. Article 28 of the Arab Charter for Human Rights "Citizens have the freedom of assembly and association in peaceful manner. No restrictions shall be imposed on either of these two freedoms except when it is necessary for national security, or public safety, or the protection of the rights and freedoms of others". It should be noted that the Charter does not use the term "law".

13. The paragraph used is "The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others"

14. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, art. 2, Sep. 28 1984, E/CN.4/1985/4. The Siracusa Principles were adopted in 1984 by the Economic and Social Council of the United Nations and were drafted by professors, practitioners, and other human rights experts from all regions. Regional human rights courts and different UN documents, notably the Human Rights Committee's (CCPR) general comments, continue to recognize the principles.

15. General comment 34, paragraph 25

16. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, art. 2, Sep. 28, 1984, E/CN.4/1985/4, paragraph 10

17. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, art. 2, Sep. 28, 1984, E/CN.4/1985/4, section B

18. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, para 40

necessary to achieve its intended purpose¹⁹. This is also known as the proportionality principle which demands that the means used by the state to limit a right must be proportional to the aim sought²⁰.

There are a variety of factors that must be taken into account to demonstrate that the means used by a state to limit a right are proportional to the objective pursued. In brief, proportionality encompasses features of appropriateness, subsidiarity, and proportionality in the restricted sense. Suitability necessitates that the limitation should, in theory, achieve the sought-after justifiable objective. Proportionality in the narrow meaning necessitates a reasonable relationship between the infraction and the valid objective. It follows that a greater violation should serve a higher valid purpose. The subsidiary test examines if there are other, less restrictive ways to achieve the legitimate objective²¹.

2.2 Formation of CSOs

All natural and legal persons, nationals and non-nationals, and groups of such persons are allowed to form associations, with or without legal personality. Associations must be entitled to define their own membership requirements, subject solely to the non-discrimination principle²². This also includes children based on article 15 of CRC and past criminal conviction alone shall not prevent an individual from founding an association²³.

Either the law must expressly acknowledge informal associations, or it must let them to operate without legal ramifications. It assures that people and groups who are unable to establish official organizations owing to social, religious, or cultural restraints may nevertheless participate in meaningful activities via the development and involvement of informal associations. Associations should have the option to seek formal legal personality, but this should not be required by law²⁴.

Generally, a notification system should be in place for the formation of associations. Associations should be formed using a method that is easy, readily accessible, non-discriminatory, and non-onerous or free. When refusing an association's registration, registration agencies should offer a comprehensive and timely written reason. Associations should be entitled to appeal any denial before a neutral and unbiased court²⁵.

Legal personality entails the acquisition of legal rights and responsibilities, including the power to enter into contracts and to sue and be sued. Informal organizations rely on the legal personality of its members to take the activities necessary to achieve their goals²⁶.

19. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, art. 2, Sep. 28, 1984, E/CN.4/1985/4, paragraphs 7, 8 and 11

20. Matthias Klatt and Moritz Meister, Proportionality—a benefit to human rights? Remarks on the I-CON controversy, I-CON (2012), Vol 10, No. 3, pp 687-708.

21. Samantha Besson, Subsidiarity in International Human Rights Law—What is Subsidiary about Human Rights?, The American Journal of Jurisprudence, (2016), Vol. 61, No. 1, p. 69–107

22. European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly (3rd Edition), 2020, p 17

23. A past criminal conviction may affect an individual's capacity to form an organization if it immediately raises concerns about the group's purpose. For instance, if a person attempting to form an organization has been convicted of fraud, there is grounds to suspect the group is not being formed in good faith. For more details see The African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, p11

24. European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly (3rd Edition), 2020, p 22.

25. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 95

26. European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly (3rd Edition), 2020, p 50



Under both notice and prior permission systems, registration bodies must be obligated to act swiftly, and regulations should stipulate fast response times for submissions and applications. It is well-established that excessive delays in the registration process, whether attributed to the authorities or involved public institutions, constitute an infringement of the founders' right to freedom of association.²⁷

To avoid government interference, legislation and procedures pertaining to associations must be implemented by an impartial regulating authority. The roles and responsibilities of these organizations must be specified by law and adhere to a clear work procedure. Also, regulatory bodies must adhere to the law and should be held accountable for any procedural or substantive breaches. Liability is assessed in line with administrative law and judicial review norms relevant to the misuse of public power²⁸. Associations and its members must be consulted prior to the introduction and implementation of any laws, policies or procedures pertaining to their activities. They should have access to information and be notified adequately and in a timely manner about consultation procedures²⁹.

The creation of organizations must be facilitated by all administrative requirements. To this aim, the state may compel associations to provide some basic information, but it cannot restrict association names unless they are deceptive. Associations must also get official documentation verifying their notice submission upon filing. In the absence of such documentation, copies of the notification form will serve as proof of notification submission³⁰.

2.3 Defining Goals and Objectives

The objectives and activities of associations are to be determined by the founding members and participants, without government involvement. They may do this by creating their own internal bylaws, developing their own internal management systems, and selecting their own boards of directors and representatives. Associations should have access to all the goals and activities available to people acting alone, with the exception of creating a profit. In addition, regulations regulating organizations should not restrict the kind of activity they may do or the aims they can pursue. This involves the creation of extensive lists of permissible and unlawful activities that organizations may participate in.

In light of the fact that the right to freedom of association is not absolute, some exceptions to this general rule may be acceptable as long as they are consistent with international human rights norms. Therefore, such restrictions must always be mandated by law, serve a valid purpose, and be required in a democratic society. What constitutes an 'illegal' objective or action must be evaluated in light of international human rights norms. For instance, groups that promote war propaganda or stir national, racial, or religious hate may be banned if their actions constitute incitement to discrimination,

27. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, para 60. See also European Court of Human Rights, *Ismayilov v. Azerbaijan*, application No. 4439/04, 17 January 2008, para. 48.

28. OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on Freedom of Peaceful Assembly*, second edition, page 17

29. UN Human Rights Committee, General Comment No. 34 on the Freedom of Expression and Opinion, 12 September 2011, CCPR/C/GC/34; para. 18

30. The African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, 2017, paragraph 62.

hostility, or violence³¹. Other than these exceptions, associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection³².

Authorities should always operate under the presumption that an organization's proposed objectives and activities are legal, and they should avoid making hasty assumptions or speculative interpretations when determining the meaning of an organization's name or the terms used in its charter or statute. It is acceptable to provide organizations the discretion to choose whether or not their activities are in keeping with the aims indicated in their governing agreements³³.

Associations should also be able to choose for themselves whether it wants to operate on a local, national, regional, or worldwide scale. This also implies that associations as legal entities should be allowed to join other associations, federations, and confederations on both the national and international levels³⁴.

2.4 Access to Funding

Having access to funds and other resources is an integral part of the ability to form and join any kind of association one chooses. In addition to emphasizing that all associations, whether registered or unregistered, should have the right to seek and secure funding and resources, the Special Rapporteur cites International Labor Organization (ILO) standards which state "provisions which allow the government the ability to limit the freedom of a trade union to manage and spend its money as it desires ... are incompatible with the principles of freedom of association."³⁵ The notion that nonprofits should have unfettered access to funding assistance has been underlined by a wide range of UN treaty bodies³⁶.

To fulfill international standards, national law pertaining to associations must expressly provide them the freedom to seek, receive, and utilize funds in accordance with their non-profit purposes. This includes the freedom to undertake fundraising and economic activities in service of the association's goals and objectives. In addition, states should not demand authorization prior to receiving funds³⁷.

Associations shall be subject to the same requirements in laws that are generally applicable to customs, foreign exchange, prevention of money laundering and terrorism, as well as those pertaining to transparency and the funding of elections and political parties, to the extent that these requirements are compatible with international human rights standards because they are generally regarded as legitimate goals and

31. See for example article 4 of International Convention on the Elimination of All Forms of Racial Discrimination that oblige state parties to condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form.

32. The African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, paragraph 64

33. European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights OSCE/ODIHR), Guidelines on Freedom of Peaceful Assembly (3rd Edition), 2020, p 30.

34. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Exercise of the rights to freedom of peaceful assembly and of association in the context of multilateral institutions), UN Doc. A/69/365, 1 September 2014, paragraph 96.

35. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 67 and 68.

36. See Committee on the Elimination of Discrimination against Women, concluding observations on Lithuania, A/55/38, para. 155; Committee on the Rights of the Child, concluding observations on the Central African Republic, CRC/C/15/Add.138, paras. 22 and 23; Committee on the Elimination of Racial Discrimination on Ireland, CERD/C/IRL/CO/2, para.12 as quoted by Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 67.

37. See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc. A/HRC/23/39 (Apr. 24, 2013), Section 20



may qualify as being in the interest of national security, public safety or public order. However, any restrictions on access to these resources must be proportional to the state's intention of defending these interests and must use the least intrusive ways possible to achieve this objective.³⁸.

It is always possible for associations to get public funding; when this occurs, the process of public assistance must be transparent, including selection criteria, decision-making process, amounts of cash provided, their recipients, and the rationale for funding decisions³⁹. Associations that benefit from public funding are most likely be registered and are required to submit activity and financial reports on regular basis. These reporting requirements can be justified as necessary in a democratic society to meet a legitimate government interest⁴⁰. If the organization receives no state benefits, including tax exemption, and does not engage in economic activities or public fundraising, reporting to state authorities should be limited to periodic updates of information required to be included in the public registry, such as the identity and contact information of the general representative authorized to receive official notices on behalf of the organization⁴¹.

2.5 Oversight of CSOs work

A body of elected or appointed individuals that has final authority over administration, determines policies for a civic organization, and exerts regular control and supervision of its finances, operations, and activities should constitute an association's governing body⁴². NGOs and UN bodies are always advocating for an increase in the capacity of NGOs to self-regulate, rather than expanding the government's oversight role, which would require it to expend significant resources and manpower to monitor NGOs' projects and financial activities⁴³.

External oversight, when necessary, should be conducted by an impartial and independent body and be limited to the bare minimum of needed institutions and rules for internal governance. It is recommended that representatives of civil society be involved in association oversight management⁴⁴. Legislation must define this body's authority in accordance with human rights standards.

Any sort of inspection by these entities should only be permitted in response to a court order based on legal grounds and international norms. Associations should not be forced to provide specific information such as meeting minutes, membership rosters, or members' personal information⁴⁵.

38. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN Human Rights Council (Funding of associations and holding of peaceful assemblies), UN Doc. A/HRC/23/39, 24 April 2013, para. 35.

39. The African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, p 18

40. ICNL and UNDP, The Role of Legal Reform in Supporting Civil Society: An Introductory Primer, 2009, p 22.

41. Open Society Institute in cooperation with the International Center for Not-for-Profit Law, Guidelines for Laws Affecting Civic Organizations, 2004, p 69.

42. European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights OSCE/ODIHR, Guidelines on Freedom of Peaceful Assembly (3rd Edition), 2020, p 101

43. ICNL and UNDP, The Role of Legal Reform in Supporting Civil Society: An Introductory Primer, 2009, p 29.

44. OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, second edition, 2010, pp 91-92

45. Human Rights Committee, General comment No. 37, Article 21: right of peaceful assembly, paragraph 72. The Global Principles on National Security and the Rights to Information (Tshwane Principles), Article 10(E)

Cases that require association inspections should be clearly defined in the legislation and supported by credible allegations of a serious legal violation and well-grounded evidence. Associations should be given appropriate time to compile the documentation needed for inspection, which should be clearly specified and reasonable. The legislation should give protection if inspections are conducted for unjustified reasons, or if this authority is utilized as a means of harassment, by having access the legal system⁴⁶.

To ensure that oversight authorities are not abused, relevant personnel should get proper training on the protection of the rights to peaceful assembly and association⁴⁷.

2.6 Taxation

The majority of regulatory regimes permit certain associations, based on their aims and activities, to be designated as “public utility organizations⁴⁸” for the purpose of receiving special state benefits, such as special tax benefits. CSOs pursuing such aims and activities may be referred to as “tax-exempt organizations” or “charities” depending on the regulatory framework. The tax authorities, a recognized ministry or ministerial department, the courts, or a special commission established for this purpose may grant recognition. The qualifying activities and criteria vary considerably from country to country, as do the procedures for recognition, the associated benefits, and the related accountability norms⁴⁹

The Special Rapporteur emphasizes the need for states to refrain from using tax pressure to dissuade organizations from receiving funds, particularly from abroad⁵⁰. The African Commission on Human and Peoples’ Rights (African Commission) underlines that states should provide tax benefits, and other forms of public support where possible, to not for-profit associations. These benefits should be granted in an impartial, non-partisan and transparent manner, on the basis of clear and objective criteria, and that the granting of benefits is not used as a means to undermine the independence of civil society sphere⁵¹.

Most tax rules use an organization’s actions, purposes, or both to determine whether tax benefits should be extended to the organization or its donors. Historically, the tax laws of a specific nation may have granted preferential treatment to only a select number of organizations, such as those whose principal mission is to help the promotion of education, health, science, culture, or the alleviation of poverty. This list is rather restricted, however, and most countries have added additional preferred reasons and activities, such as the promotion of human rights, the interests of minority groups, and the environment, over time. It is also usual to find a catchall category such as “or any other organization founded primarily for the public good” at the end of such a list⁵².

46. The African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, p15-17.

47. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 84.i

48. There are a variety of benefits that may be provided to public utility associations, but the tax treatment that an organization obtains after gaining public benefit status is frequently the most significant advantage. For more details see ICNL, The Legal Framework for Public Benefit Organizations, Budapest, 1996.

49. ICNL and UNDP, The Role of Legal Reform in Supporting Civil Society: An Introductory Primer, 2009, p 21-22

50. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 72

51. The African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, p 18

52. European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights OSCE/ODIHR), Guidelines on Freedom of Peaceful Assembly (3rd Edition), 2020, p 77



The value of stable and predictable tax legislation is substantial. Although it is typical for governments to alter their taxation laws in conjunction with their annual budgets, it would be beneficial for both civic organizations and their donors to have long-standing tax preferences.

2.7 Dissolution

By dissolution, the official status of a civic organization as a legal entity is terminated, either voluntarily by the organization's highest body or involuntarily by an action of the state.

A civic organization should be permitted to dissolve⁵³ voluntarily in accordance with acceptable processes designed to protect creditors and other stakeholders. In certain instances, when a CSO plans to dissolve, the law may require that notification be submitted to the applicable state agency or the state attorney in order to ensure that the association's assets are distributed in line with its governing documents or the requirements of the law.

Regarding involuntary dissolution, if one or more ministries or state authorities have discretion to dissolve a civic organization, seize its assets, or take over its operations, this can limit the autonomy and activities of civic organizations. To ensure a robust and independent civic sector, the law should include intermediate punishments, such as fines, for various sorts of infractions. A civic organization's dissolution should be a last resort. The state should be able to take such action only for the most egregious and obvious violations, and then, unless there is an immediate threat of irreparable harm, only after giving the civic organization an opportunity to change its behavior. In accordance with international human rights law, dissolution should only be permitted where there is a clear and imminent threat of a gross breach of national law, according to the Special Rapporteur. It should be strictly proportional to the genuine objective pursued and employed only if milder measures are lacking⁵⁴.

Involuntary dissolution is a grave step that must be done by unbiased, independent courts. If a state entity is granted the authority to dissolve an association administratively, there should be a right of judicial appeal, and the establishment should not be dissolved until the appeal is resolved or the deadline for filing an appeal has passed. A better alternative for dissolution would necessitate in every instance that the state entity or state attorney petition the court for the organization's dissolution⁵⁵.

In accordance with the rules of the dissolution in the association's internal bylaw or a resolution of the association's highest governing body, the association's assets shall be donated to another civic organization with a comparable mission. A court of competent jurisdiction shall issue an order about the appropriate distribution of the assets in the absence of such instructions. The law should also ensure that the assets of a disbanded civic organization cannot revert to the organization's founders,

53. Depending on the country legal system in effect, other names such as dissolution or liquidation may be used.

54. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 75.

55. The African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 2017, p 21

members, executives, members of the governing board, or workers, save in cases where the group has never received significant public funds or benefits. If there is no suitable organization to take the assets of a disbanded civic organization, the law may mandate that the assets revert to the state, which must use them for identical objectives as the dissolved civic organization⁵⁶.

In accordance with international human rights law, suspension of associations should also be sanctioned by an impartial and independent court in cases of manifest and imminent risk resulting in egregious violation of domestic laws⁵⁷.

3. Regional Legal Analysis

Each of the selected countries has constitutional provisions guaranteeing the right to freely form and join associations, and each also has laws that specifically related to associations. The selected countries are signatories to the major regional and international political and civil rights treaties protecting human rights. The applicable laws of each country will be reviewed in light of the international requirements described in Section 2. Human rights violations in these countries will be documented using credible sources to draw attention to prevalent practices and methods of execution.

3.1 Iraq

3.1.1 The National Legal Framework

Article 39 of the Iraqi constitution of 2005 states that the freedom to form and join associations and political parties shall be guaranteed, and this shall be regulated by law. It adds that it is not permissible to force any person to join any party, society, or political entity, or force him/her to continue his/her membership in it. It is intriguing that this article includes the phrase “regulated by law.” Other constitutions employed phrases such as “within the limits of the law.” Properly regulating a right emphasizes the state’s negative and positive duties. The negative duty of no unjustified interference with participation in peaceful assemblies, and the positive duty of facilitating peaceful assemblies and enabling participants to realize their legitimate objectives.

Article 2/1/b of the Constitution is an additional guarantee for all human rights. This article states No law may be enacted that contradicts the principles of democracy. Although there is no universal definition of principles of democracy, but it creates a test that legislators must consider in enacting laws and that the courts must consider in determining the constitutionality of laws.

Without reservations, Iraq accepted the CCPR and CESCR in 1971 and the Arab charter in 2009. Article 8 of the constitution requires Iraq to observe the principles of good neighborliness, adhere to the principle of noninterference in the internal affairs of other states, seek to resolve disputes through peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations.

56. OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines on Freedom of Peaceful Assembly, second edition, 2010, p 37

57. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, A/HRC/20/27, 21 May 2012, paragraph 100.



In accordance with Article 61 of the Constitution, the Council of Representatives is responsible for the ratification of international treaties and conventions by a law that must be passed by a two-thirds majority of its members. Several sources indicate, based on the term “law,” that treaties and national laws have the same legal weight; consequently, if there is a conflict between the two, the more recent prevails, whether it is the law or the treaty⁵⁸ according to the principle *lex posterior derogat legi priori* (later norms suppress earlier norms), although it will be established that international treaties ratified by the legislature with a majority higher than what is for the adoption of ordinary laws may have an authority superior to laws⁵⁹.

The 2005 constitution encouraged Iraqi courts to deal with international treaties as a part of national legislation, and there are few precedents that cite international treaties in their verdicts, including the Federal Supreme Court⁶⁰ which used articles 3 and 7 from CEDAW to fill in gaps in national legislation⁶¹.

The Basic law that governs NGOs in Iraq is the Law of Non-Governmental Organizations No. 12/2010 and several regulations issued by the Secretary General of Council of Ministers in accordance with article 35 of the Law. In the Iraqi Kurdistan Region (IKR), the Law of Non-Governmental Organizations No. 1/2011 govern these organizations in the Kurdistan Regional Government (KRG)⁶². This means that, depending on their geographic location, Iraqi NGOs are governed by two distinct sets of legislation.

3.1.2 Formation of CSOs

This section will be divided into two subsections to describe the formation process in accordance with Law No. 12/2010 in the Federal Government and Law No. 1.2011 in the KRG.

A. Formation under Law No. 12/2010

According to unofficial estimates, 7,000 NGOs were created in Iraq following the 2003 invasion by the United States. About 4,000 are registered with the Non-Governmental Organizations Department of the Iraqi government in Baghdad; the remaining organizations operate without registration and their funding sources are unknown⁶³.

58. See for example Tariq Saed, *Mechanisms for Embedding International Treaties in National Legislation: Comparative Study between Iraq and Jordan*, 2020, p 37.

59. Gözler, Kemal., “The Question of the Rank of International Treaties in National Hierarchy of Norms: A Theoretical and Comparative Study”, *Bursa, Dora*, 2016, p 26.

60. The Federal Supreme Court of Iraq interprets the constitution and judges the validity of laws and regulations. It serves as the final court of appeals, resolves disputes between or among the federal government and the regions and governorates, municipalities, and local administrations, and adjudicates claims against the president, the prime minister, and the ministers. It also ratifies the final results of the House of Representatives general election.

61. Federal Supreme Court, Decision No. 13/2007

62. The Kurdistan Regional Government is the official executive body of the autonomous Kurdistan Region of northern Iraq.

63. Statement made by the former Head of the Civil Society Institutions and Parliamentary Development Committee in the outgoing House of Representatives, Yonadam Kanna in October 2021 to the New Arab Website. Available online [shorturl.at/myJV2] last visited 24 Nov 2022.

The law defines a non-governmental organization as a group of natural or legal persons that have registered and obtained legal personality according to the terms of the Law to pursue not-for-profit purposes⁶⁴. The law also gives definitions to “foreign NGO⁶⁵” and “NGO Network⁶⁶”. The founding members must be Iraqi nationals, legally competent and at least eighteen years old if they are natural persons and must not have been convicted of any non-political or honor crimes⁶⁷. Although all Iraqis have the right to join and establish NGOs, the Ministry of Defense decided that the military and members of the Internal Security Forces are banned from joining NGOs due to the nature of their work⁶⁸.

At least three founding members are required to file an application for registration to the NGOs Department of the Secretariat of the Council of Ministers (The Department) (الدائرة). This application must include the organization’s official name in Arabic or Kurdish as well as English, The organization’s official address and the names, phone numbers, and e-mail addresses (if available) of its founding members. The application must include the Articles of Incorporation, the NGO’s Bylaws, proof of the founders’ identities, and the contact information of the official point of contact⁶⁹.

The Law also stipulates obligatory elements that need to be included in the Bylaw, including a detailed statement of the organization’s objectives, rules of membership, the organizational structure of the organization, election mechanisms and powers of any other internal committees of the organization, and the financial resources of the organization and the sum of annual membership dues, if any⁷⁰. The establishment and registration applications should be exempted from duties⁷¹.

Within seven days of the registration date, the Department must make a decision on the establishment application. Otherwise, the application is considered approved. Upon receiving initial approval, the NGO has 30 days to submit the Department’s registration form and minutes confirming that the board of directors were elected, or a decision was made regarding an appointment; otherwise, the registration would be denied. After completing this procedure, the Department must issue a certificate of registration within 30 days; this is how the NGO acquires legal personality⁷². The Department may reject an application for registration, but the denial must be based on a violation of the law, and the applicants must be notified in writing of the reasons for the rejection. The decision to deny applications for registration or establishment may be appealed to the Court of Appeals within 30 days of the date of the decision⁷³. The Department publishes all rejected applications on its website, the number of rejected applications reached 947 till Nov. 2022⁷⁴.

According to sources, the registration process is cumbersome and time-consuming, taking an average of three to four months despite the legislative time constraints⁷⁵. Typically, organizations that required authorization from outside the NGO Department required the most time to register. A demining organization that operates throughout

64. Article 1, Law No. 12/2010.

65. A branch of an organization that has been established according to the laws of another country

66. An NGO registered under the provisions of this Law that consists of other NGOs with their own legal personalities.

67. Article 4, Law No. 12/2010.

68. The Iraqi Ministry of Defence / the General Secretariat numbered letter (Legal / M. T. / 27/4/49541) dated 22 November 2017.

69. Article 5, Law No. 12/2010

70. Article 6, Law No. 12/2010

71. Article 7, Law No. 12/2010

72. Article 8

73. Article 8

74. [<http://www.ngoao.gov.iq/Default.aspx>] last visited 21 November 2022

75. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 18.



Iraq, for instance, required approvals from the Ministry of Defense, Ministry of Interior, Ministry of Environment, and Ministry of National Security, needing two years to register⁷⁶. However, the existing law limits the state's capacity to refuse registration applications, and registration denials must be based on a specific provision of law.

Notably, NGOs registered under this law are regarded to be registered in the Iraqi Kurdistan Region. However, these NGOs must initiate an administrative process with the KRG Department⁷⁷.

B. Formation under Law No. 1/2011

As of July 2022, the NGO Department of Kurdistan reported over 5,000 registered NGO⁷⁸s. The Law on Non-Governmental Organizations No. 1/2011 was approved by the Parliament of Kurdistan on April 6, 2011, and applies only in the Iraqi Kurdistan Region.

There are a lot of similarities with the Law No. 12/2010 in relation to definition of the NGOs and the registration process and the Department of Non-Governmental Organizations in the Region's Council of Ministers (the Department) plays a key role in this process. However, the law removes all restrictions on foreigners establishing and joining Kurdish NGOs and serving on their boards⁷⁹, in contrast to Law 12/2010, which restricts the associational rights of foreigners.

In contrast to Law No. 12/2010, Law No. 1/2011 states unequivocally that establishing organizations is a Constitutional right and that there should be no hurdles to their formation beyond the legal requirements provided in the Law⁸⁰. It also requires that the sex and academic accomplishments of the founders be stated in the registration application⁸¹.

The Department shall respond to the application for registration within 30 days of its receipt. Upon submission of the application, the Department will provide the NGO with a dated receipt, which will serve as proof of the application's submission date for the purpose of calculating the 30-day timeframe⁸². The element of a dated receipt is missing from the Law No. 12/2010.

If the Department does not respond to the Organization's application after 30 days, the Organization will be presumed registered, and the Department will deliver the registration document upon request⁸³. This is another excellent aspect not mentioned in Law No. 12/2010.

76. Marsin Alshamary and Sura Maqsoud, *The Landscape of Civil Society in Iraq, The Relationship of CSOs with Government, Religious, and Tribal Institutions at the Substate Level*, Konrad Adenauer Stiftung, June 2022, page 25.

77. According to article 10/2 of the Law No. 1/2011 the Iraqi Organizations registered by the federal authorities shall automatically be considered registered in the Region and shall provide the Department with the following information in both the Kurdish and Arabic language: 1 – Name of the Organization and its representative in the region. 2 – Address and telephone number of the Organization's headquarters in Iraq. 3 – Action plan of the activities the Organization intends to implement in the Region. 4 – A certified copy of the Organization's federal registration documents.

78. ICNL, *Civic Freedom Monitor, Iraq*. Available online [<https://www.icnl.org/resources/civic-freedom-monitor/iraq>] last visited 22 November 2022

79. Article 10, Law No. 1/2011

80. Article 2, Law No.1/2011.

81. Article 10, Law No. 1/2011

82. Article 11, Law No. 1/2011

83. Article 11, Law No. 1/2011

In the event that the Department rejects the application for registration, it shall send the Organization an official letter justifying its rejection and specifying the reasons for its rejection, which may only be the Organization's failure to meet the conditions specified in Articles 8⁸⁴, 10⁸⁵, and 14/1⁸⁶. An additional guarantee for the right to free assembly that is absent from Law No. 12/2010 is the identification of the articles that can justify rejection.

The Organization may appeal a rejection decision to the Administrative Tribunal of the Kurdistan Region within 30 days of obtaining the rejection decision, and the court shall render a judgement within 15 days⁸⁷. According to Freedom House, NGOs in IKR NGOs must renew their registration annually⁸⁸.

Both laws permit the establishment of an NGO Network, however the Network must be comprised of NGOs and registered with the Department. The Network acquires legal personality distinct from its member entities upon registration. All articles of these two laws that apply to NGOs also apply to NGOs networks, including articles regarding legal personality, acquisition, merger, dissolution, duties, rights, and penalties. Consequently, all regulations regarding forbidden conduct also apply.

3.1.3 Defining Goals and Objectives:

The Law No. 12/2010 requests that all NGOs seeking registration need to include a detailed statement of the organization objectives in their Bylaws⁸⁹. Also, NGOs are prohibited from adopting any goals or conducting any activities that violate the Constitution or other Iraqi laws⁹⁰.

According to Law No. 1/2011 in Iraqi Kurdistan Region, NGOs must act in an open and transparent manner and pursue their goals in accordance with democratic principles and international human rights treaties and conventions⁹¹. The purposes and objectives of the association should be specified in the application for registration⁹², and material gains may be pursued if they are used solely for furthering the NGO's objectives⁹³.

There were no reports of interference by authorities in the drafting of NGOs' goals and objectives in Iraq, and there is no official classification of NGOs by the Department. However, according to some sources, the goals and objectives of NGOs fall under the following categories in descending order: sustainable development, humanitarian aid, women's affairs, human rights, culture, youth, children and orphans, agriculture, services, democracy, art, education, special needs, environment, health, media, economic development and relief⁹⁴.

84. Article 8 of the Law No. 1/2011 states that The Organization shall seek to achieve its objectives consistent with the principles of democracy and international human rights treaties and conventions and should act in a transparent and public manner.

85. Article 10, Law No. 1/2011 stipulates the registration conditions.

86. Article 14/1 of the Law No. 1/2011 states that All Organizations and Networks must open bank accounts.

87. Article 11, Law No. 1/2011.

88. Freedom House, World Report 2022, Iraq, E2. Available online [<https://freedomhouse.org/country/iraq/freedom-world/2022>] last visited 23 November 2022.

89. Article 6, Law No. 1/2011.

90. Article 10, Law No. 1/2011.

91. Article 8, Law No. 1/2011

92. Article 10, Law No 1/2011

93. Article 21, Law No/2011

94. Marsin Alshamary and Sura Maqsoud, The Landscape of Civil Society in Iraq, The Relationship of CSOs with Government, Religious, and Tribal Institutions at the Substate Level, Konrad Adenauer Stiftung, June 2022, page 4

3.1.4 Funding

In both Law No. 12/2010 and Law No. 1/2011, there are no restrictions on foreign financing. Although NGOs are permitted to earn revenue through activities and projects⁹⁵, the vast majority are unable to do so.

There is no clear funding structure from the Federal government to NGOs; previously, NGOs received donations from major businesses, but in 2020, a number of governorates seized control of these funds and allocated the money to public entities CSOs⁹⁶.

According to KRG Law No. 1/2011, the Regional Government must allocate funds from the annual budget to aid and support organizations based on their effectiveness, projects, and activities⁹⁷. Such a provision is regrettably absent from Federal Law No. 12/2010. Despite this provision, no funding has been granted to NGOs since 2013⁹⁸.

Many associations are financed by political parties to promote the party's program or candidates during elections, according to some media reports⁹⁹, these assertions were also confirmed in some reports¹⁰⁰. Concerns were also expressed regarding Kurdish NGOs, as many have close ties to and receive funding from political parties¹⁰¹.

3.1.5 Oversight of CSOs work.

In accordance with Law No. 12/2010, the Department oversees associations. For instance, the department receives one financial report that includes a full account of the source of the association's funds and financial transactions, as well as a report of the association's operations that includes a summary of the organization's annual initiatives¹⁰². Additionally, associations are required to maintain a number of records, including a members' registry, a record of general assembly and board of directors' decisions, a record of revenues and expenses, and a comprehensive record of activities and projects¹⁰³.

Associations are required to keep all financial documents, reports, and activity records for five years in accordance with legally approved accounting principles, and if their budget exceeds 75 million Iraqi dinars, they must conduct an annual internal audit of their accounts using a certified public accountant¹⁰⁴.

If the Department suspects that the association's accounts have been manipulated or are inaccurate, it will work with the Board of Supreme Audit to conduct an audit of the association's books. The concerned NGO is under an obligation to cooperate¹⁰⁵.

95. Article 13, Law No. 12/2010, and article 13 Law No. 1/2011.

96. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 22

97. Article 19, Law No. 1/2011

98. 2021 Country Reports on Human Rights Practices, Iraq, Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights.

99. The New Arab, Thousands of NGOs in Iraq: Party Facades and Profit Projects, 30 October 2021. Available online [shorturl.at/twEV9] last visited 22 October 2022.

100. See for example Marsin Alshamar, Postwar Development of Civil Society in Iraq's Mid-Euphrates Region, Foreign Policy at Brookings, January 2022.

101. 2021 Country Reports on Human Rights Practices, Iraq, Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights.

102. Article 15, Law No. 12/2010.

103. Article 18, Law No. 12/2010

104. Article 19, Law No. 12/2010

105. Article 20, Law Np. 12/2010

Failing to meet these requirements, the association might risk suspension by the Department. If these violations are repeated and not corrected, it might be dissolved by a court decision¹⁰⁶.

The KRG Law No. 1/2011 includes fewer stipulations. The non-profit organization must maintain a membership register, a log of decisions that includes the Board of Directors' decisions, and a budget. A financial record that tracks revenues and expenditures, including a registry of the organization's movable and immovable assets¹⁰⁷. NGOs are required to manage their funds using an annual budget in compliance with the regionally approved accounting system¹⁰⁸. A detailed report on project implementation is only required if the government is funding the association¹⁰⁹. If the NGO fails to abide by these requirements, it is held accountable by the department and may receive a written warning to end the violation within 15 days. If the violation is not resolved, the department can suspend the organization¹¹⁰.

Practice demonstrates that government may impose restrictions on NGOs even if they are not specified by the Law. Before contracting with an association, UN missions and other international organizations were required to get an evaluation of its financial and legal standing from the NGO Directorate. Based on this request, an organization's registration certificate is no longer sufficient evidence of its legal status. Additionally, provincial governments formed offices to oversee the activities of NGOs. This complicated the legal and administrative requirements for NGOs, as their roles frequently conflicted with those of the federal government's NGO Department. Many organizations were required to undergo often identical assessments with the central NGO Department and the Offices of local governments, and it was unclear which of these assessments took precedence¹¹¹.

Furthermore, The Department declared in 2021 that any association conducting surveys or questionnaires within the country would require prior approval. The new directive was denounced by a coalition of NGOs as an "obvious infringement" of constitutional provisions that protect the function of civil society and freedom of expression¹¹².

According to Provisional Order 19 of 2003¹¹³, notification of a public assembly is necessary at least 24 hours in advance, and authorities have extensive discretion with regard to regulating the size and location of a gathering. The Order prohibits public gatherings from exceeding four hours in duration and from occurring during peak traffic hours without prior consent from the authorities. Any march, assembly, meeting, or gathering on roadways, public thoroughfares, or public places is prohibited unless an Approving Authority is notified in writing at least 24 hours in advance of the location, the maximum number of participants, the names and addresses of the organizers, the route, and the time and duration of the march, assembly, meeting, or gathering. The order was amended in 2004, granting organizers the ability to appeal to a federal court if they are denied the right to assemble and the rejection is "arbitrary, capricious, or otherwise contrary to law."

106. Article 23, Law No. 12/2010

107. Article 12, Law No. 1/2011

108. Article 14/1, Law No. 1/2011

109. Article 14/4, Law No. 1/2011

110. Article 15, Law No. 1/2011

111. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 19.

112. 2021 Country Reports on Human Rights Practices, Iraq, Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights

113. Adopted by the Coalition Provisional Authority issued during the Coalition occupation of Iraq.



Multiple reports detail the arbitrary incarceration, violence, and excessive use of force against NGO leaders, activists, and demonstrators. These actions are carried out not just by the government, but also by militias and political parties. In 2021, for instance, Iraqi security forces in Nasriya, Babylon, and Najaf used excessive force, including tear gas and live bullets, to disperse protestors who demanded the release of activists and justice for others who were killed and injured during the rallies. In the Badinan region of northwestern Duhok governorate, KRG security forces detained over a hundred protesters denouncing government corruption and nonpayment of civil officials' salaries, including those of teachers and health personnel. Many were released immediately after their arrest, but others remained in custody. Additionally, KRG authorities issued arrest orders for the relatives of activists and opponents, prompting many to escape their cities with their family¹¹⁴.

Militias have intimidated, beaten, abducted, tortured, raped in captivity, assassinated, and planted explosive devices at the houses of many Tishreen protest movement opponents and activists (and their family members). Jaseb Hattab al-Heliji, a popular poet and the father of human rights attorney Ali al-Heliji, was murdered in March 2021. Ali was abducted in October of 2019 and has not been seen or heard from since. Ali Karim, the son of notable human rights activist Fatima al-Bahadli, was murdered in July. Fatima al-Bahadli is the founder of the Al-Firdaws Association, which campaigns for the protection of women and girls in Basra¹¹⁵. In several locations, like Ninewa and Diyala Provinces, militias and local authorities attempted to exert control over NGO activities and personnel recruitment. As a condition for continuing humanitarian activities, two humanitarian groups reported in August to the United Nations Office for the Coordination of Humanitarian Affairs that security actors demanded the names and personal information of their staff¹¹⁶.

Iraq Body Count, an independent NGO that tracks civilian deaths in Iraq, reported 669 people dead during 2021, a decrease from the 908 civilian deaths recorded in 2020. The decrease in deaths is due diminished protest activity¹¹⁷.

Independently, NGOs worked to uncover corruption, but their capacity was limited. In their attempts to combat corrupt practices, civil society members suffered threats, intimidation, and abuse. IKR NGO Rasan faced three lawsuits, including one brought by Sulaymaniyah officials of the KRG Directorate of NGOs, which alleged Rasan violated the terms of the NGO bylaws and its registration (to work on gender-based violence and women's matters) by providing services to and advocacy for LGBTQI+ individuals¹¹⁸.

Despite these obstacles and constraints, NGOs in Iraq were able to run effective lobbying campaigns, such as preventing the adoption of a draft Information Technology Crime that would restrict free speech and change electoral law.¹¹⁹

114. Amnesty International, Country Report 2021, Iraq, Freedom of Assembly. Available online [<https://www.amnesty.org/en/location/middle-east-and-north-africa/iraq/report-iraq/>] last visited 23 November 2022.

115. Freedom House, World Report 2022, Iraq, E2. Available online [<https://freedomhouse.org/country/iraq/freedom-world/2022>] last visited 23 November 2022.

116. US Department of State, 2021 Country Reports on Human Rights Practices: Iraq, G. Conflict related abuses. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/iraq>] last visited 24 November 2022.

117. [<https://www.iraqbodycount.org/database/>] last visited 23 November 2022

118. US Department of State, 2021 Country Reports on Human Rights Practices: Iraq. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/iraq>] last visited 24 November 2022.

119. All previous electoral systems utilized proportional representation, while Law No. 9 of 2020 is based on the majority system. The new law authorized individual candidacy entirely, whereas the nomination of party electoral lists had previously been the standard, while lowering the maximum age of candidates from 30 to 28, in order to provide young people a wider opportunity to run for office.

The use of social media platforms and online meetings was also an effective advocacy strategy for non-governmental organizations. During the COVID 19 lockdown, the majority of organizations began using virtual platforms to hold meetings, trainings, workshops, and seminars, and they continued to do so when these restrictions were lifted. Many NGOs used Facebook and WhatsApp to communicate with their beneficiaries and as advocacy tools for spreading information and organizing signature-gathering campaigns, for example ¹²⁰, For instance, activists established the hashtag “justice for Diyala” in response to a study by a local association that detailed human rights violations committed by militias against Sunnis and other members of minority groups in disputed areas¹²¹.

Associations alleged that government and militia forces monitored the social media pages of their activists and that the activists faced harassment or criminal charges based on what they wrote on Facebook and other social media platforms. The government blocked or disrupted internet access and controlled online information, and there were genuine claims that the government illegally monitored private online interactions. The government openly restricted access to the internet but denied that it monitored private online chats without the proper legal authority. Despite restrictions, political personalities and activists utilized social media channels to criticize politicians, organize demonstrations, and campaign for candidates. Militias attacked and defamed activists, independent election candidates, and the electoral commission using bots and disinformation campaigns¹²².

KRG security forces unjustly detained tens of individuals for social media posts, news articles, or coverage of demonstrations¹²³. Female political candidates experienced online and social media abuse, including the uploading of fraudulent, nude, or pornographic images and videos intended to hurt their campaigns and reputations - commonly branded as “sullyng their family’s reputation.” The Iraqi Women’s Network NGO documented multiple instances of women candidates being attacked during election campaigns due to their gender. Human rights NGOs reported that independent women candidates or those from new political parties without recourse or political ties to government security agencies were disproportionately targeted¹²⁴. Social media users and bloggers have been sued for defamation after denouncing corruption and mismanagement. Authorities have broadcast video footage of inmates without their consent in order to humiliate and intimidate them¹²⁵. Furthermore, progovernment groups, particularly militias, have employed social media to distribute incitement, false news, and outright threats against activists¹²⁶.

120. See for example ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 21.

121. US Department of State, 2021 Country Reports on Human Rights Practices: Iraq, Section 6. Discrimination and Societal Abuses. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/Iraq>] last visited 24 November 2022.

122. US Department of State, 2021 Country Reports on Human Rights Practices: Iraq, Internet Freedom. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/Iraq>] last visited 24 November 2022.

123. Amnesty International Report 2021/22: The state of the world’s human rights, Iraq, Freedom of Assembly. Available online [<https://www.amnesty.org/en/location/middle-east-and-north-africa/iraq/report-iraq/>] last visited 24 November 2022.

124. US Department of State, 2021 Country Reports on Human Rights Practices: Iraq, Section 6. Discrimination and Societal Abuses. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/Iraq>] last visited 24 November 2022.

125. Freedom House, Freedom in the World — Iraq Country Report, 2022, D4. Available online [<https://freedomhouse.org/country/iraq/freedom-world/2022>] last visited 24 November 2022.

126. Freedom House, Freedom in the World — Iraq Country Report, 2022, D1. Available online [<https://freedomhouse.org/country/iraq/freedom-world/2022>] last visited 24 November 2022.



The Human Rights Committee established by the CCPR also voiced its concerns regarding the closure of media outlets and the slowing down of Internet speeds, as well as the use of excessive force against protestors by security forces, resulting in injuries and deaths, and alleged enforced disappearances as a means of suppressing the right to freedom of assembly¹²⁷. It also should be noted that blocking of social media as tool to limit freedom of assembly was also raised in the UPR process 3rd cycle¹²⁸.

3.1.6 Taxation

Based on KRG Law No. 1/2011, the revenues, properties, and money of NGOs are exempt from taxes and customs duties; nevertheless, NGOs are still required to pay income tax on their employees' wages¹²⁹. In contrast, only public utility NGOs are exempt from income tax, VAT, customs taxes, and sales tax under Federal Law No. 12/2010. The public utility capacity is given by a decision of the Council of Ministers based on the recommendation of the Secretary General of the Council of Ministers¹³⁰.

According to Income Tax Law No. 113/1982, donations and finances donated by Iraqis are not exempt from income tax, which can be a significant deterrent to national funding of NGOs.

3.1.7 Dissolution

The Department does not have the ability to dissolve NGOs under Federal Law No. 12/2010 or Kurdish Law No. 11/2011, although it does have the authority to suspend NGOs in both circumstances. The statute stipulates the grounds for suspension.

In the context of Law No. 12/2010, suspension happens if there have been violations of the law that have not been rectified within ten days of being formally notified of these violations or if the violations have been repeated. Suspension decisions may be appealed within ten days of the suspension notification date to the Secretary General of the Council of Ministers¹³¹. In any of the following cases, the Department may file a dissolution petition against the NGO with the court: (a) conduct activities contrary to the purposes outlined in its bylaws or fail to carry out the responsibilities outlined in the law; (b) be found to have violated any applicable Iraqi laws; and (c) if the NGO fails to correct the violation despite being notified and suspended and the appeal period has expired¹³².

Similarly, under Kurdish Law No. 1/2011, the Department has the authority to suspend an NGO whose breach of this law is not remedied after 15 days of receiving a warning. In contrast to the 12/2010 Law, the suspension decision may be challenged within 10 days to the Administrative Court and not to the Secretary General of the Council of Ministers¹³³. Only in the following instances would a court of first instance have

127. Human Rights Committee, Concluding observations on the sixth periodic report of Iraq, CCPR/C/IRQ/CO/6, 16 August 2022, paragraph 32.

128. Human Rights Council, Forty-third session, Universal periodic review, Report of the Working Group on the Universal Periodic Review, Iraq, A/HRC/43/14, 20 December 2019.

129. Article 14, Law No. 1/2011

130. Article 17, Law No. 12/2010.

131. Article 23/1, Law No. 12/2010.

132. Article 23/2, Law No. 12/2010

133. Article 15, Law No. 1/2011.

the authority to order the dissolution of an NGO: (a) A breach of the Constitution or regional laws by the NGO (b) Based on a lawsuit brought by the Department in the event that the NGO did not rectify the violation despite prior warnings. The NGO has 30 days from the date of receipt of the court's decision to appeal to the Court of Cassation against a decision of dissolution¹³⁴.

3.1.8 Conclusions

Although the Iraqi constitution of 2005 provides a solid foundation for establishing and joining NGOs, the integrational of treaties and conventions is still unclear; although it is assumed that they have the same value as laws, it can be argued that these treaties and conventions can transcend national legislation due to the required majority of the parliament to ratify these conventions. As previously determined by the Federal Supreme Court, international human rights conventions ratified by Iraq can always be used to fill gaps in national legislation.

Both laws governing NGOs in Iraq require official registration prior to engaging in any activity, and it is only via registration that NGOs obtain legal personality. Due to bureaucracy, the registration process can be lengthy and complicated. In addition, extra restrictions are imposed via executive directives. The KGR Law No. 1/2011 contains a number of beneficial features absent from the Law No. 12/2010, which can be summed up as follows:

Declaring that forming organizations is a constitutional right, and that there should be no additional hurdles to their formation beyond those prescribed by Law.

The goals of NGOs must be consistent with democratic values and international human rights treaties and conventions, and they must work in a transparent and public manner.

The right of an NGO to receive a dated receipt when submitting a registration application.

If the Department fails to respond to the registration application within 30 days, it must issue a registration certificate.

The registration requirements established by both statutes are reasonable, but administrative decisions and executive orders impose further restrictions that can impede the activity of NGOs. The restrictions on freedom of expression and assembly play a vital role in limiting the activities of NGOs and their ability to publicly express their thoughts and opinions and advocate for positive change. Moreover, due to the existing circumstances in Iraq, the mere exercise of these rights in Iraq poses a threat to life and liberty.

Non-state actors also conduct grave abuses against NGOs when the government is unable or unwilling to offer adequate protection. Non-State actors engage in intimidation, human rights violations, and other forms of abuse against non-governmental organizations. Some of these non-state entities also sponsor some NGOs in order to advance their own goals.

134. Article 16, Law No. 1/2011



The laws allowed for restricted tax exemptions. The Law No. 12/2010 exempts only those NGOs that are granted public utility status by the Council of Ministers, but the KGR Law No.1/2022 exempts all NGOs. Iraqis receive no tax incentives for charitable contributions or donations to NGOs.

Priority should be given to ensuring that NGOs can conduct their operations without fear of violence or retaliation. Allegations of threats or acts of violence against NGO personnel should be promptly and impartially investigated, and perpetrators should be held accountable. Also, make sure that all laws related to freedom of speech, assembly, and public meetings are in line with the Iraqi Constitution and the international standards set out in the human rights conventions that Iraq has signed.

In the third cycle of the UPR, Iraq accepted ten recommendations to amend pertinent legislation, uphold and respect the freedom of expression and peaceful assembly, hold accountable the perpetrators of all violations relating to the excessive use of violence and the use of lethal weapons against demonstrators, and provide security forces with adequate training on the management of assemblies¹³⁵.

3.2 Jordan

3.2.1 The National Legal Framework

Article 16 of the Jordanian Constitution of 1952 stipulates the right to establish civil associations and the limitations on this right, consequently playing a significant role in the development of civil associations. Article 16/b says that only Jordanians are authorized to organize associations, provided that their aims are legal, their methods are peaceful, and their internal bylaws do not contradict the Constitution. Article 16/c provides that the formation of associations and their resource management must be governed by law.

Jordan has joined the Covenant on Civil and Political Rights (CCPR), the Covenant on Economic, Social and Cultural Rights (CESCR)¹³⁶, and the Arab Charter on Human Rights¹³⁷. These three conventions were accepted by the Council of Ministers and not ratified by the Parliament¹³⁸.

Despite the absence of a provision defining the legal value of international treaties in the constitution, the Jordanian judiciary has established that treaties transcend national laws whether they were approved by Parliament or those deemed not needing this approval¹³⁹. The Constitutional Court also affirmed that it is not permissible to issue a law that contradicts the obligations established by a treaty ratified by law¹⁴⁰.

135. Human Rights Council, Forty-third session, Universal periodic review, Report of the Working Group on the Universal Periodic Review, Iraq, A/HRC/43/14, 20 December 2019, paragraphs 147:161, 147:187, 147:189, 147:190, 147:194, 147:197, 147:200, 47:201, 147:202 and 147:205.

136. Published on 15 June 2006, Issue No. 4764 of the Official Gazette.

137. Published on 16 September 2004, Issue No. 4575 of the Official Gazette.

138. Article 33/2 of the Jordanian Constitution of 1952 states "Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms".

139. See, for example, Court of Cassation Decision No. 599/1999 "International conventions take precedence over the provisions of domestic laws" as well as Court of Cassation decision No. 3965/ 2003 "The jurisprudence and the judiciary of all countries of the world, including Jordan, agree on the transcendence of international conventions and treaties over internal laws, and that the provisions of any internal law that conflict with these international conventions and treaties may not be applied.

140. The Constitutional Court, Explanatory Decision No. 1/2020.

In conformity with the CCPR, the right to peaceful assembly is not absolute, but the government must justify any restrictions, and if this obligation is not met, the restrictions must be lifted. Restrictions are not admissible unless they can be proved to have been provided for by law and to be essential in a democratic association for national security or public safety, public order (ordre public), the protection of public health or morality, or the preservation of others' rights and freedoms. Restrictions should not have the possible negative effect of discouraging membership in assemblies or organizations. Contrary to international standards, the constitution permits limits to be set only by law voted by the Parliament, and the authorities are not compelled to justify these restrictions, i.e., to establish a link between the restriction and the basis for the restriction.

The term “Civil Society” does not appear in national legislation, despite its widespread use in the media and international reports. The term includes numerous civil actors, including associations, labor unions, and non-profit organizations. However, the primary focus of this study will be on associations whose primary function is to provide services or engage in volunteer activities.

The Associations Law No. 51/2008 oversee the registration and functioning of associations Jordan. It is clear that the law does not meet international standards when it comes to restrictions and oversight by the government.

There are additional entities that may fit the criteria of civil society. For instance, a Non-Profit Company (NPC)¹⁴¹ can be registered like any profitable company. The company's provisions, conditions, objectives, permitted work, supervision, method and manner of receiving assistance and grants, financial resources, spending method, liquidation and accrual of its funds upon liquidation and death, and documents must be submitted to the Company Controller. The remaining issues are covered by Bylaw No. 73/2010 for Non-Profit Organizations. NPCs' goals are confined to health, education, sponsoring minor initiatives, investment promotion, and training. According to KIIIs, the government has ceased registering these companies, and its position is that NGOs should only be registered under Law No. 51/2008 on Associations.

The Law of Public Gatherings No. 7/2004 is also an essential legislation when it comes to the work of associations as it regulates peaceful assembly but imposes several restrictions and is selectively applied.

Other laws may be applied on CSOs depending on the nature of activity in place, these laws include Penal Law No. 16/1960 and Cyber Crimes Law No. 27/2015.

3.2.2 Formation of CSOs

The Associations Law No. 51/2008 sets out the registration process of Associations in Jordan. As a general principle the Law prohibits registration of any Masonic association or any association that has illegal purposes or contradicts the public order in Jordan¹⁴².

141. Article 7/d, Companies Law No. 22/1997

142. Article 3, Associations Law No. 51/2008



An association is defined by law as a collection of at least seven people whose goal is to provide services or engage in voluntary activities. Within the framework of the operations and activities of associations, there should be no ways to generate or distribute profit, to realize any benefit for its members or for a specific individual, or to achieve any political goals that fall within the scope of the operations and activities of political parties¹⁴³.

Private associations are possible. This indicates that membership is limited to a minimum of three and a maximum of twenty individuals. Closed associations are ones whose membership is restricted to one or more individuals and whose financial resources are limited to what one or more of its founding members may contribute to achieving the association's objectives¹⁴⁴.

The Law established a Registry Board [سجل الجمعيات] (The Board) with the Minister of Social Development (MoSD) as its head. The vice president is the Associations Registrar [أمين عام السجل], while the board is comprised of officials from the ministries of interior, culture, tourism, environment, and political development. On the proposal of the minister of social development, the council of ministers appoints four more individuals with experience in the philanthropic or volunteer sector. Consequently, the government clearly dominates the board's composition¹⁴⁵.

The Board has the authority to approve the registration of associations and identification of the concerned ministry that will have a supervisory role over the association.

The Registrar receives the application for registration, which must include the names of the Association's founders and its internal Bylaws. The Law specifies ten aspects that must be included in the internal bylaw, including aims and objectives, the manner in which the general assembly convenes, the number of management board members and how they are elected, as well as norms for good governance and transparency. If any of the founding members are non-Jordanians or legal entities, council of ministers' consent is required.

Even if all statutory conditions are completed, the Board or Council of Ministers may nonetheless deny registration. According to the Higher Administrative Court, the Public Administration has the ability to deny registration without providing explanations or justifications, and it is always presumed that the decision is made in the public interest¹⁴⁶. The Administrative court took a different stance, determining that justifications for rejection should be provided by the authority issuing the decision to enable the court to extend its control over the legality of the decision, thereby rendering this decision tainted with the defect of illegality and necessitating its revocation¹⁴⁷. Regrettably, the Higher Administrative Court did not uphold this position.

Therefore, not only is the formation process contradictory with international standards since it restricts the freedom to associate by requiring registration, but authorities have the discretion to prohibit registration without justification based on judicial precedents. According to one KII, applications to register associations have been denied without justification in a small number of instances.

143. IBID

144. IBID

145. Article 4, Associations Law No. 51/2008

146. Higher Administrative Court, Decision Number 320/2022

147. Administrative Court, Decision No. 451/2020

3.2.3 Defining Goals and Objectives:

The constitution and Associations law prohibit the registration of any association with illegal or contrary to public order goals. No organizations have ever been rejected registration on these grounds. The Associations law requires that the internal Bylaws of an association clearly identify its goals and purposes.

In 2018, the Associations Registrar issued a booklet for the classification of associations in Jordan. The booklet contains 14 sectors that associations that can develop their objectives within predefined text under each sector¹⁴⁸. The whole process is automated, and associations need to abide by the available texts when sitting their goals and objectives.

Before issuing the booklet, the Administrative Court decided that if the objectives of goals are not clear, or drafted in ambiguous form, or difficult to define, then this is a basis to deny registration of the association¹⁴⁹.

It is evident that associations suffer constraints when formulating their objectives and goals, however, there have been no complaints that established objectives do not suit the demands of associations.

3.2.4 Funding

According to the Associations Law, the association is required to state in its financial records the name of the entity providing the contribution or financing, its amount, the purpose for which it will be used, and any conditions linked with the donation or funding. Foreign funding is permitted under the following conditions¹⁵⁰:

1. The source of funding or contribution is legitimate and does not compromise public order or morals.
2. The conditions imposed by the donor or funder do not contradict the provisions of the law or the bylaws of the organization.
3. Donations or financing are utilized for the purpose for which they were donated.

The Council of Ministers must be notified if an association seeks to obtain foreign funds¹⁵¹. This notification should specify the source of the donation or funding, its amount, how it will be received, the purpose for which it will be disbursed, and any conditions associated with the funding explicitly. If the Council of Ministers does not issue a denial within 30 days of the date of notification, the financing should be considered accepted¹⁵². If the Council of Ministers issues a resolution to decline the funding within the timeframe stipulated in the clause, the association must refrain from accepting the donation or funding in question. The denial may be appealed to the Administrative Court within sixty days following notification of the denial.

The Administrative Court clarified that the 30-day term begins when the council of

148. These sectors are 1. Education 2. Health 3. Culture, Heritage, Arts and Sports 4. Agriculture 5. Environment 6. Economic Empowerment 7. Democracy and Governance 8. Social and Professional ties 9. Rights and Freedoms 10. Protection and Social Welfare 11. Tourism and Archaeological Sites, 12. Religions, 13. Supporting the Civil Society Organizations Sector, 14. Collations

149. Administrative Court, Decision No. 80/2015

150. Associations Law No. 51/2008, Article 17.

151. Article 17/c of the Associations Law No 51/2008,

152. IBID.



Ministers is alerted, not when the application is filed to the Registrar or the Board¹⁵³. Some NGOs attempt to argue that they have implicit approval if they do not receive a response within 30 days after making an application to the Registrar. However, this argument fails in light of the statute text and Administrative Court interpretation.

According to Decision No. 21/11/46554 issued by the Council of Ministers on 26 October 2015, the association must submit the application to the Associations Registrar at the MoSD. The Registrar forwards the application to the Relevant Ministry, Ministry of Planning and International Cooperation (MoPIC), and Ministry of Interior (MoI) after confirming compliance with the law's prerequisites. MoPIC is responsible for ensuring that the application aligns with national priorities, determining whether the financing fits under bilateral agreements between Jordan and the donor, and determining whether the funding falls under any international conventions.

The Minister of Social Development must receive each ministry's evaluation of the application within 5 days. The Minister of Social Development must then provide the Prime Minister with a response to the application within five days. The application is then discussed by the Council of Ministers in order to reach a conclusion.

Notably, the Council of Ministers is not required to provide reasons for the denial, The Administrative Court enforced the discretionary authority of the Council of Ministers to refuse funding with no justification. The court ruled that "The Council of Ministers is the highest administrative authority in the state, and it is also the body responsible for overseeing public utilities. As such, it is the most competent authority to make decisions that serve the public interest, and it has discretion in this regard. It is issued with a presumption of legitimacy, and whomever claims otherwise must show it. Since the plaintiff did not submit proof that the contested decision was issued contrary to the public interest, the decision shall be sound, consistent, and legal"¹⁵⁴.

Some representatives of NGOs asserted that all public authorities had granted their approval but were astonished by the Council of Ministers' rejection. In order to secure the approval of the council of ministers, Klls further said that on occasion the representatives from the Registrar Office might intervene in the proposal of an activity involving foreign funding by adding or deleting partners or by allocating specific amounts to government bodies. Also, there is the practice of creating a committee represented by government entities to supervise the implementation of the funded project.

The government modified the approval method for foreign funding in 2020, with the most significant changes being that all officials involved in the process must be directors and the ministerial committee at the prime ministry for foreign funding must have the final say. Despite the 2020 amendments, there was no significant improvement in practices related to foreign funding.

153. See for Example Administrative Court Decision No. 294/2016.

154. Administrative Court, Decision No. 194/2016.

CSOs assert that the decision-making processes for foreign funding are unclear and lack transparency, making it impossible for many organizations to secure such funding. There appeared to be a number of unjustified denials of media, human rights, and women's empowerment projects¹⁵⁵. The National Center for Human Rights also expressed concern over such practices and viewed acceptance for foreign funding as evidence of prior censorship¹⁵⁶.

Klls stipulated that funding denial was based on the political opinions of the NGO's administration. It is a strategy to weaken these NGOs, resulting in their closure. Some NGOs reported that their applications were processed in less than 30 days, while other NGOs claimed that officials reviewing their foreign fund transfer applications used arbitrary criteria to delay or reject their applications, effectively shutting down a number of NGOs. Unexplained, multi-month delays in the decision-making process were noted by a number of associations¹⁵⁷.

Several associations stated that restrictions on international funding rendered them useless. Others reported having to lay off personnel due to persistent government interference, denials of applications for foreign funding, and lengthy delays. According to some non-governmental organizations, the lengthy approval process for even uncontroversial projects and foreign funding impeded civil society¹⁵⁸. These concerns were also raised by the Human Rights Committee established by (CCPR)¹⁵⁹. To further complicate the procedures, banks request government approval to make money transfers¹⁶⁰.

To circumvent foreign funding approvals, civil society organizations sought alternative options, such as registering as for-profit companies.

National funding is available through the Associations Support Fund. The Fund was established in line with Article 22 of the Associations Law, and its purpose is to give local money to associations for the implementation of sustainable programs and projects, in accordance with annual restrictions imposed by the Board. According to Klls and NGOs representatives, the contribution of the Fund is modest and not provided on regular basis. Some private firms are known to assist NGOs under Corporate Social Responsibility, but they typically fund noncontroversial or activities that are not critical to the government.

3.2.5 Oversight of CSOs work.

After the registration is concluded, the registrar issues a registration certificate that includes the name of the association, its headquarters, the name of the competent ministry, the geographical scope of its work, and the approved address for its correspondence.

The competent ministry plays a supervisory role according to the law as it must be notified about date and place of its general assembly meeting and its agenda at least two weeks before the meeting date¹⁶¹.

155. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 30.

156. National Centre for Human Rights, 2020 Annual Report, p 55.

157. US Department of State, JORDAN 2021 Human Rights Report, Freedom of Association.

158. IBID

159. Human Rights Committee, Concluding observations on the fifth periodic report of Jordan, CCPR/C/JOR/CO/5, 4 December 2017, paragraph 32.

160. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 30-31.

161. Article 14, Associations Law No. 51/2008



According to Determining the Relevant Ministry Bylaw No. 13/2009, the relevant ministry can be the Ministry of Health (MoH), Ministry of Environment (MoE), Ministry of Culture (MoC), or the Ministry of Social Development (MoSD). Determining the relevant ministry depends on the objectives of the Association stipulated in the application. Other ministries may also be considered relevant ministries based on the minister of social development's decision and the registrar's recommendation.

The association must notify the relevant minister and registrar at least two weeks prior to the date of its general assembly meeting, location, and agenda. If the association fails to provide the required notification, the meeting is deemed unlawful. The association must also serially record the minutes of the meetings of its administrative board and general assembly, as well as the decisions issued by each of them, at its head office, maintain financial records that detail its income and expenses, maintain a record of its assets and supplies, and maintain any other records required to carry out its activities and works in accordance with its internal Bylaw. The relevant minister and the registrar may each appoint a delegate to attend the meeting of the association's general assembly. In addition, the Board must approve any decisions by the General Assembly to change the association's internal Bylaw.

The association must also provide the competent ministry with its annual work plan, an annual report detailing its accomplishments and activities in the preceding year, its sources of revenue and expenditures, and any other data required by law, as well as a list of its affiliated members.

If an association fails to fulfill its legal requirements stipulated in the law, it could face severe penalties, including dissolution and the establishment of a provisional committee to administer the organization. According to KII, some NGOs lack the capacity to meet these requirements without external assistance.

Associations rely on Public Gatherings Law No. 7/2004 to conduct public meetings and organize rallies in the course of their activities. According to this law, notification of convening a public meeting or organizing a march must be provided to the administrative governor at least forty-eight hours before to the scheduled time of conduct. The notification must include the names, addresses, and signatures of the meeting's or march's organizers, as well as the meeting's or march's purpose, location, and time.

In fact, contrary to the legislation, the administrative governor can permit or deny public gatherings and marches. As a result, many demonstrations and public activities were prohibited¹⁶². NGOs reported that hotels, allegedly at the request of security officials, required them to present letters of approval from the governor prior to holding training courses, private meetings, or public conferences. There were some reported cases of the governor denying approval requests without explanation, according to associations representatives. Without letters of approval from the government, hotels cancelled the events. In some cases, NGOs relocated the events to private offices

162. Human Rights Committee, Concluding observations on the fifth periodic report of Jordan, CCPR/C/JOR/CO/5, 4 December 2017, paragraph 32.

or residences, and the activities were held without interruption¹⁶³. In December 2019, Human Rights Watch was forced to postpone a press conference in Amman after authorities did not approve the event but following press reporting of the cancellation authorities quickly granted permission for the event¹⁶⁴.

Participants and organizers who violate these restrictions risk incarceration under the Crimes Prevention Law No.7/1954 and the Terrorism Prevention Law No. 55/2006, and many have been required to sign pledges not to join in demonstrations or similar activities¹⁶⁵. Also, some reports indicated that Jordanian authorities employ ambiguous and too broad criminal prohibitions, including those in the Penal Law No. 16/1960 and Cybercrime Law No. 27/2015 to limit freedom of assembly¹⁶⁶. According to yearly estimates from the National Center for Human Rights, the number of cases including these allegations nearly doubled in 2020 compared to the previous year¹⁶⁷.

Following the outbreak of the coronavirus pandemic in 2020, the declaration of a state of emergency granted the prime minister broad authority to further restrict civil and political rights. The government also utilized the Cybercrime Law No. 27/2015 to restrict government criticism. This law mandated an immediate three-month mandatory sentence for anyone charged of defamation, slander, or libel. Consequently, CSOs feared criticizing the government for fear that their criticism could be perceived as “threats to national security”¹⁶⁸.

Due to the incapacity of authorities to filter videoconferencing software and social media platforms, NGOs are able to conduct their activities with greater freedom on these online platforms. There were no reports of authorities targeting associations because of the activities, but according to Freedom House the authorities restricted Facebook Live, limiting the ability of social media users to view footage of the demonstrations related to Teachers’ Syndicate¹⁶⁹ closure in 2020¹⁷⁰.

In 2021, Clubhouse, a social media audio app used to discuss themes such as civic and political rights, was effectively prohibited. Several human rights organizations responded by publishing instructions on how to use virtual private networks (VPNs) to access the app, which the government then blocked¹⁷¹.

During the pandemic’s lockdown period, CSOs were unable to leverage the full potential of the digital and technical tools required to adapt to the changing working conditions. Some CSOs lacked the financial means to modernize their information and communications technology (ICT), while others lacked the technical know-how

163. US Department of State, JORDAN 2021 Human Rights Report, Freedom of Association.

164. Human Rights Watch, Jordan Events of 2021. Available online [<https://www.hrw.org/world-report/2021/country-chapters/jordan>], last visited 6 November 2022.

165. Human Rights Committee, Concluding observations on the fifth periodic report of Jordan, CCPR/C/JOR/CO/5, 4 December 2017, paragraph 32.

166. Human Rights Watch: Jordan: Government Crushes Civic Space, Sep 2022. Available online [<https://www.hrw.org/news/2022/09/18/jordan-government-crushes-civic-space>], last visited 6 November 2022

167. The National Center for Human Rights, Annual Report of 2022, pp 53-56.

168. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 31.

169. In September 2019, the Teachers’ Syndicate initiated the longest public-sector strike in Jordanian history, which concluded in October after an agreement was reached. The union later accused the government of breaking the agreement, with its chairman condemning then-prime minister al-Razzaz in a speech delivered in July 2020. Later that month, the government ordered the dissolution of the syndicate for two years, shutting down its offices and arresting its thirteen-member board. As protests against the closing persisted through August, over 250 individuals were subsequently imprisoned. Late in December, a judge sentenced five syndicate leaders to one year in prison and ordered the organization’s permanent liquidation, though the defendants pledged to appeal and were released on bond.

170. Freedom House, Freedom in the World 2021, Jordan. Available online [<https://freedomhouse.org/country/jordan/freedom-world/2021>] last visited 7 November 2022.

171. Amnesty International, 2021 Annual Report, Jordan. Available online [<https://www.amnesty.org/en/location/middle-east-and-north-africa/jordan/report-jordan/>] last visited 7 November 2022.



to implement this technology. In other instances, the use of technology was less effective. For instance, Zoom and other technologies were not as effective as in-person meetings. Furthermore, some potential recipients were unable to access these online services¹⁷².

Given that online platforms are free, it should be underlined that CSOs continue to rely on social media platforms to publicize their operations. The majority of CSOs produce annual programming and financial reports, but they could be more proactive in communicating their accomplishments to the public.

However, there were other reports of individuals being prosecuted for their online activities. For instance, defaming the government or leaders of other countries, upsetting religious beliefs, fomenting sectarian conflict, and inciting sedition are all examples of conduct that fall under this category. The Penal Law No. 16/1960 and other related legislation allow for a maximum prison sentence of three years for these offenses.¹⁷³ According to Human Rights Watch, the authorities detain, interrogate, and harass journalists, political activists, and members of political parties and independent trade unions, and their family members, and restrict their access to basic rights, such as work and travel, to quash political dissent¹⁷⁴.

The Associations Law allows creating coalitions unions. Two or more associations may form among themselves a coalition to implement a joint program aimed at achieving their goals and objectives¹⁷⁵ and one or more unions may be formed for the purpose of coordinating their efforts in providing their services and carrying out their activities in accordance with the provisions of a Bylaw¹⁷⁶.

Based on the law, coalitions and unions can only be created by associations. This explain why the Board refuses to acknowledge some of these coalitions as some of the members are non-for-profit companies and for-profit companies. According to one KII who is also a member of Himmam¹⁷⁷, we are sometimes treated as a coalition and other times as individuals when interacting with the government. All depends on the government's position.

3.2.6 Taxation:

As a general principal, associations are exempted from Income Tax¹⁷⁸, however employee pay are subject to this tax. In accordance with Sales Tax Law No. 6/1994, neither Value Added Tax (VAT) nor Sales Tax is applicable when receiving a grant, as grants are not considered taxable services or goods.

Note that NGOs are permitted to create their own revenues as long as those revenues are used to fulfill their legally mandated purposes. In this situation, they are still exempt from Income Tax, but they must pay sales tax if they supply services or goods covered by Sales Tax Law No. 6/1994. According to the Limits of Registration in Sales Bylaw

172. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 32

173. ICNL, The Right to Freedom of Expression Online in Jordan, 2021.

174. Human Rights Watch, Jordan: Government Crushes Civic Space, Sep 2022.

175. Associations Law No. 51/2008, article 24.

176. Associations Law No. 51/2008, article 23.

177. The Civil Society Organizations Coordination Committee "Himmam" is an alliance of Jordanian civil society institutions that converge in visions and goals and meet periodically to coordinate their positions and actions to uphold the values of democracy and human rights in society. Further details available at [<https://himam.org/>]

178. Article 4/c/1 from the Income Tax Law No. 34/2014.

No. 81/2000, the concerned NGO is registered as a taxable entity required to pay Sales Tax. The current illustration may aid comprehension of the current situation. If an NGO's yearly revenue from the sale of products or services exceeds JD 30,000, it must register with the Income and Sales Tax Department (ISTD) and include sales tax in the price of its items. However, if the total revenue is less than JD 30,000, the NGO is exempt from registering in the Sales Tax record at ISTD; thus, sales tax will not be included in the price of their goods.

Donations made by Jordanians to associations are not exempted from income tax. Acceptable donations to be deducted from tax are restricted only to for government departments, public official institutions, public institutions or municipalities¹⁷⁹. Other donations and subscription fees for religious, charitable, humanitarian, scientific, environmental, cultural, sports or professional purposes can only be deducted from income if approved by the Council of Ministers; however, the exempted income cannot exceed one-fourth of the donor's taxable income¹⁸⁰. Two representatives of NGOs requested to be granted this status, but their requests were ignored.

Therefore, the current legal framework does not encourage Jordanians and private sector to fund NGOs as they will not receive any tax privileges.

3.2.7 Dissolution

Contrary to international standards, the government has the right to dissolve the association. The board has the right to dissolve the association based on the recommendation of the concerned minister in the following cases:

1. If it is not possible to elect a management board in accordance with the internal bylaws.
2. If the association keeps or utilizes a donation or finance from a non-Jordanian source without the required permits.
3. If the association commits a second instance of the violation for which it was previously warned and did not remove the reasons for the violation within two months of receiving written notice.
4. If the dissolution is accepted by two-thirds of the general assembly members at an extraordinary meeting in line with the rules of the Internal Bylaw¹⁸¹.

The dissolution decision is of an administrative nature and can be appealed before the administrative court.

When a government action dissolves an organization, its assets are transferred to any other organization or entity with similar goals and objectives. This entity's name should be specified in the organization's Internal Bylaw. If no such entity is specified in the internal bylaw, the assets are transferred to the Association Support Fund, a separate entity established by law to fund Jordanian associations¹⁸².

179. Article 10/a, Income Tax Law No. 34/2014

180. Article 10/b, Income Tax Law No. 34/2014

181. Article 20/b, Associations Law No.51/2008

182. Article 25, Associations Law No. 51/2008



Other similar organizations, excluding political parties, are disbanded in the same manner. A political party may only be disbanded by Amman First Instance Court¹⁸³.

Through “verification committees” that were established in 2019 to certify the legal status of all registered associations and monitor their financial and administrative performance, the Board closely supervise the operation of CSOs. On the basis of this monitoring, the Board disbanded 166 CSOs in 2020 for breaking laws, regulations, and directives, or for failing to comply with their statutes and achieve the objectives for which they were created¹⁸⁴.

3.2.8 Conclusions

Despite the fact that national legislation in Jordan should be consistent with international and regional conventions accepted by Jordan, the legal framework does not adhere to the requirements specified by these Conventions. Jordan has a positive obligation to assist and preserve the right to peaceful assembly through its legislation and administrative procedures. This section’s analysis demonstrates conclusively that Jordan is not meeting these requirements.

The government’s power over associations is immense. It begins with the registration procedure, establishing goals and objectives, and assuming their work and funding access. In addition, imprecise and unclear laws are used to restrict the operations of non-governmental organizations under the threat of severe penalties that may equate to lengthy incarceration.

In the 2nd¹⁸⁵ and 3rd¹⁸⁶ Cycles of the Human Rights Council Universal Periodic Review (UPR) Process, Jordan received direct recommendations to amend the Associations Law to remove undue restrictions and facilitate the ability of civil society organizations to seek, secure, and use resources, including foreign funding, in order to ensure the full enjoyment of the right to peaceful assembly and association. In neither instance did the government directly approve these recommendations. This raises questions about whether or not the government is truly committed to enacting the necessary reforms.

The right to peaceful assembly must be protected in Jordan in conformity with all international and regional treaties that are currently in force. In addition, Jordan should refrain from deploying security legislation and measures to intimidate members of civil association who exercise their right to freedom of expression, and it should make certain that these individuals are able to operate freely and have access to funding.

The primary obstacles associations confront in Jordan can be summed up as follows:

1. Registration is required, and failure to register will result in penalties.
2. The government can reject registration without citing a reason. The Higher Administrative Court has confirmed this authority.

183. Article 35, Political Parties Law No. 7/2020.

184. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 30.

185. Human Rights Council Twenty-fifth Session Agenda item 6 Universal periodic review Report of the Working Group on the Universal Periodic Review, Jordan, A/HRC/25/9, 6 January 2014.

186. Human Rights Council Fortieth Session 25 February–22 March 2019 Agenda item 6 Universal periodic review Report of the Working Group on the Universal Periodic Review, Jordan, A/HRC/40/10, 7 January 2019.

3. The scope of government monitoring is vast. The reporting standards established by the Law are challenging for the majority of associations.
4. The government may refuse foreign funding without justification. The Administrative Court has confirmed this authority.
5. The government can utilize the denial of foreign funding to weaken specific organizations, ultimately leading to their demise.
6. According to credible claims, the government attempts to interfere with the implementation of foreign-funded projects by proposing the addition of particular partners or distributing funds to government bodies under the threat of rejecting foreign funding.
7. The law restricts the formation of coalitions between non-governmental organizations (NGOs) and can impede their work collaboratively.
8. Associations are not dissolved involuntarily in accordance with international standards by independent courts, but by government decree.
9. The courts apply the law and make no reference to international or regional conventions concerning the right to peaceful assembly. This can be linked to the fact that concerned attorneys are not citing these conventions in their defense, despite the fact that it is well-established that these norms transcend national law.

3.3 Lebanon

3.3.1 The National Legal Framework

Article 13 of the Lebanese constitution of 1926 guarantees, within the limits provided by law, the right to express one's views vocally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association. The preamble of the constitution states that Lebanon is a parliamentary democratic republic based on respect for public liberties, particularly the freedom of opinion and belief, as well as respect for social justice and equality of rights and duties among all citizens without discrimination. Additionally, the preamble recognizes that Lebanon is a founder and active member of the League of Arab States and adheres to its pacts and covenants. In addition to being a founder and active member of the United Nations Organization, Lebanon also adheres to its covenants and the Universal Declaration of Human Rights. The government shall include these concepts in all fields and places.

Lebanon joined the CCPR and CESCRC without reservations in November 1972 and ratified the Arab Charter on Human Rights in May 2011, again without reservations.

Even though the constitution does not directly address the case of inconsistency between international conventions and national law, judicial precedents in Lebanon have established that treaty provisions take precedence. This position was further strengthened in 1983, when a new Civil Procedures Law was enacted, and it was expressly stated in article 2 that courts should regard the international treaty rule to have precedence over the ordinary law norm.



The constitution permits limitations on freedom of assembly if they are provided by law, but this does not include pursuing a legitimate aim such as respect for the rights or reputations of others, the protection of national security, the maintenance of public order or public health or morals, or if the limitation is proportionate in pursuit of the identified legitimate aim, as required by the CCPR.

The main legislation that governs associations is relatively old but considered progressive; the law of Associations of 1909 was enacted when Lebanon was a part of the Ottoman Empire¹⁸⁷. In addition, successive government directives, such as Ministry of Interior Decree No. 4082/2000, were adopted. The Lebanese Penal Law of 1943 and the Public Gathering Law of 1911 are essential in the work of NGOs as they are related to public assemblies.

Lebanon's case law is liberal. It contains a number of judgements intended to preserve the enabling provisions of the 1909 Law and guarantee administrative practice conforms to the law and the Constitution. The Constitutional Council¹⁸⁸ has never had the opportunity to give a judgement directly addressing associational freedom. It has, however, issued two judgements in 1997¹⁸⁹ that awarded the Universal Declaration of Human Rights (UDHR) and the CCPR, a basic source of human rights protection in Lebanon, authority equivalent to the constitution. Since 1946, the State Council¹⁹⁰ has issued numerous rulings regarding the protection of freedom of association¹⁹¹.

3.3.2 Formation of CSOs

Estimates indicate that there are between 14,000 and 16,000 CSOs in 2020. However, only 200 or 300 CSOs are believed to be autonomous, sustainable, and efficiently working¹⁹². The CSO sector in Lebanon is diversified and vibrant, with the ability to mobilize rapidly and respond to emergent needs more swiftly than the majority of government and foreign institutions. This was shown in the adaptability of CSOs during the Corona epidemic and the main harbor explosion in Beirut.

The association is defined as a group of several persons permanently unifying their knowledge or efforts for nonprofit objectives¹⁹³. Establishing a society requires no prior permit but notifying the government of its establishment is a prerequisite¹⁹⁴. The founders of the society must submit to the ministry of interior a signed and sealed

187. It should be noted this law was inspired by the French Societies Law of 1901.

188. The constitutional council has the jurisdiction to review the constitutionality of laws and to rule on electoral disputes (According to Article 19 of the Constitution, Article 1 of the law establishing the Constitutional Council, Article 1 of the rules of the internal statutes of the Council).

189. the UDHR of 1948, the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Social and Economic Rights) of 1966 (ICESCR) have been accorded the same authority as the provisions of the Constitution because they are referenced in the Preamble of the Constitution, which was incorporated by the Constitutional Council into the text of the Constitution in 1997.

190. The Lebanese State Council has both advisory and judicial competences. It is the Supreme Court in charge of administrative cases, as well as monitoring legislative and organizational texts.

191. ICNL, *The Shifting Landscape for American Not-for-Profit Organizations*, Volume 10 Issue 1, 2007.

Notification or Registration? Guarantees of Freedom of Association in Non-Democratic Environments: Case Studies of Lebanon and Jordan, 2007. Available online [https://www.icnl.org/resources/research/ijnl/notification-or-registration-guarantees-of-freedom-of-association-in-non-democratic-environments-case-studies-of-lebanon-and-jordan#_ftn15] last visited 14 Nov. 22

192. ICNL, *2020 Civil Society Organization Sustainability Index for the Middle East and North Africa*, 9th Edition – October 2021, p 38

193. Societies Law of 1909, article 1.

194. *IBID.*, article 2.

statement containing its address, goals, objectives, main office, and the names, capacity, and position of those entrusted with its governance. After receiving the notification, the ministry must formally recognize a new organization by issuing a registration receipt to its founders, which allows them to demonstrate the company's legal status to third parties¹⁹⁵.

This notification is mandatory and not optional. The legislation forbids associations that fail to give notification, which may expose them to legal proceedings such as dissolution and fines for the society's founders and executive board.

The fact that the statute does not establish a time for the issuance of the registration receipt can be utilized by the government in order to restrict assembly rights. This means that they cannot establish legal standing, conduct business with third parties, create a bank account, receive funding or carry out their activities.

Furthermore, the Ministry of the Interior has initiated an investigation and inquiry phase following the submission of the association's notification and before to the issuance of the registration receipt. Throughout this step, the Ministry transmits the documents to the security agencies for review and investigation. The Ministry refuses to issue a Receipt prior to the conclusion of the investigation period on the grounds that the association's "licensing" is contingent upon the outcome of the probe. If the investigation yields unfavorable results, the Ministry withholds the registration receipt, and the organization lacks legal capacity for an unspecified amount of time¹⁹⁶.

This issue was addressed by the State Council, which determined that the association possesses legal capacity by virtue of the explicit terms of Article 8 only upon deposit of the notification mentioned in Article 6 of the Associations Law, and by virtue of the law, the Ministry of Interior is obligated to issue registration receipt (Ilm wa Khabar) without delay and has no discretion in this regard. The Council also stated that an association is established by the will of its founders through reaching an agreement to invest their constant, continuous, and set goals/objectives and to implement their knowledge and activities in this regard. At this stage, the role of the authorities is limited to accepting the statement imposed by the law, granting the concerned parties a notification proving that the processes stipulated by the law have been conducted, and attaching the presented documents after the association has been examined, along with its objectives, and work methods. This notification does not mean that the Ministry of Interior has established the association, for it is established by the will of its founders and this does not require a permit. The Council also decided that the freedom of assembly and association are one of the fundamental freedoms guaranteed by the Lebanese Constitution and set within the limits of the Law in Article 13. Hence, there must be no restrictions for forming associations and their dissolution can only be carried out through a legal text. Neither the authorities nor the judiciary are entitled to interfere in their establishment process¹⁹⁷. The court's decision is considered progressive and more aligned with international standards and puts an end to the government illegal practices.

195. IBID., article 6.

196. Legal Agenda, Preventing an Environmental Activist from Exercising the Freedom to establish a Society, 2015. Available online [shorturl.at/tCQW8 last visited 14 November 2022

197. State Council, N° 135/2003-2004, November 18, 2003, Association for the Defence of Rights and Liberties v. State, Al Adl, as quoted by Internal Governance for NGOs in Lebanon, Reference Book 2004, pp 111 – 116.



To prevent the Ministry from delaying or refusing to issue the registration notification, a number of organizations have devised a legal strategy commensurate with the fundamental character of the notification system. In order to avoid the possibility of the Ministry of the Interior rejecting their declaration, the founders of an organization may have a bailiff under the direction of a Notary Public deliver the notification to the Ministry. This acts as proper communication of the notification to the Ministry under Article 399 of the Civil Procedure Law. As for the Receipt, article 400 of the Civil Procedure Code requires the bailiff to record the outcome of the notification on an official document; this document serves as the Receipt. In the event that the Ministry refuses to be notified, the bailiff will leave the declaration with the Ministry and indicate on the document acting as the Receipt that the Ministry has refused to be notified. Using this procedure, the declaration is made in accordance with the 1909 Law; hence, the association has legal capacity as of the moment it notifies the Ministry¹⁹⁸.

Members of associations must be over the age of twenty, have full civil rights, and lack felony convictions, and no minimum capital is required to be able to register the society¹⁹⁹.

According to a key informant, the authorities ensure that founding members represent diverse religions; if all founding members are Muslims or Christians, then the procedure will likely be delayed. Typically, this factor is considered while forming a new organization.

The Associations Law establishes the general guidelines for the operation of all kinds of associations. However, special laws and decrees have set specific conditions for the operation of some associations and their aims, primarily in legal affairs. Political parties require previous approval, syndicates and cooperatives have their own laws, foreign associations are regulated by a separate decree, and public utility organizations have their own legislation²⁰⁰.

As an exception, there are two types of associations that need prior licensing, i.e., foreign associations and youth and sports associations. Foreign associations are governed under decree No. 369/1939. This law formalized a former licensing system created by a decision of the Council of Ministers²⁰¹. By means of an “administrative decision,” the government can both give a temporary license and revoke it at any time²⁰². The Decree No. 16/72 and the decree N. 6997/2001 regulate youth and sports

198. Association for the Defence of Rights and Liberties conducted this lawful operation for the first time on November 15, 1995, in response to the administration's harassment. It is documented in Moukhaiber and others, *Associations in Lebanon: between freedom, the law, and practice*, Association for the Defence of Individual Rights and Liberties, p. 45. Also quoted by ICNL, 2007 Op. cit.

199. *IBID.*, article 5.

200. Foreign associations are governed under Decision No. 369 LR from 1 December 1939. The association is deemed foreign if its founder or director is foreign, if it is headquartered outside of Lebanon, or if more than a quarter of its general assembly members are foreigners.

Associations with a mentoring authority. These include sports, scouting, and professional syndicate associations. The Ministry of Education's General Directorate of Youth and Sports previously required sports and scouts' associations to obtain prior approval. Following its formation, the Ministry of Youth and Sports was given responsibility for the legal framework (Ministerial Decree No. 9104 dated September 26, 1996).

Cooperatives, syndicates, and mutual benefit associations. These institutions are governed by a specific law promulgated on August 18, 1964, by Decree No. 17199. In 1977, the Decree of Law No.35 pertaining to mutual funds was issued.

Trade unions. The Ministry of Labor issues union licenses.

Religious associations. Decision No.60 LR granted legal recognition to organisations with charitable, cultural, or educational goals, such as monasteries, within the established sequence of confessions on March 13, 1936. The religious authorities thus became the point of reference for associations that requested the withdrawal of their notification statement on the grounds that it was no longer applicable to their work because they were no longer controlled by the 1909 Law.

201. Decree No. 369/1939, article 1

202. Decree No. 369/1939, article 2

associations. They are excluded from the 1909 Law's scope of applicability and placed under the control of the Ministry of Education, Youth, and Sports²⁰³. In addition, the law establishes a licensing system that imposes stringent controls on their operations. In addition, these organizations are required by law to utilize specific, standardized articles of incorporation; otherwise, a license will not be issued²⁰⁴.

The formation process grew complicated after 2020 when CSOs were required to provide extra documentation with the Ministry of Finance containing thorough details on all revenue sources. These new procedures have resulted in considerable delays that can last up to three years before the relevant government provides registration receipt.²⁰⁵ According to some reports, these delays may be attributable to the political actions of the organization's founders or their support of refugees that is clearly stated in the organization's goals and objectives²⁰⁶. A key informant reported that a group of Lebanese attempted to establish an NGO to aid Syrian refugees, but they never received notification and were never given a reason for the delay.

In light of these obstacles to attaining legal status, some international non-governmental organizations (INGOs) assisted small grassroots CSOs in registering as civil companies, which is a considerably less burdensome process²⁰⁷. This procedure requires an attorney and costs approximately \$ 6000 US.

Although retaining legal counsel could mitigate these obstacles, the majority of CSOs lack the financial means to do so. Some CSOs rely on competent attorneys who offer their services on a pro bono basis; however, this frequently results in their cases not receiving adequate attention. Some INGOs provide legal support to their local CSO partners²⁰⁸, but this kind of support is limited.

It is worth mentioning that associations for LGBTQ community were banned in Lebanon based on article 543 of the Penal Law that states any sexual intercourse contrary to nature is punishable by imprisonment for up to one year. But Lebanese courts decided that consensual sex between people of the same sex is not unlawful nor contrary to nature, these ruling provided a solid basis for this community to create their own associations²⁰⁹.

3.3.3 Defining Goals and Objectives:

Associations have the liberty to put their own goals and objectives and they need to be included in the notification submitted to the government. The notification needs also to include the address, goals, main office, and the names, capacity, and position of those entrusted with its governance. The government needs to be informed about any alterations or amendments related to their statutes, goals, or objectives²¹⁰.

203. Decree No. 16/72, article 1

204. decree N. 69972001, article 1

205. Internal Governance for NGOs in Lebanon, Reference Book 2004, p 19.

206. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, pp 38-39

207. Many social enterprises are registering as Civil Companies which is a legal form applied for services as opposed to products and used mainly for law firms, private health clinics and small consulting firms. Oxfam Lebanon, The Lebanese Social Entrepreneurship Ecosystem, 2020, p 25.

208. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 39

209. Human Rights Watch, Lebanon: Same-Sex Relations Not Illegal, July 19, 2018. Available online [<https://www.hrw.org/news/2018/07/19/lebanon-same-sex-relations-not-illegal>] last visited 14 November 2022.

210. Societies Law of 1909, articles 2, 3 and 6.



It is prohibited to establish associations on illegitimate grounds that contradict the provisions of laws and public morals, that disturb the peace of the country, that aim to change the standing form of government, or that aim to politically separate the country²¹¹. It is well documented that the ministry of interior refused to issue registration receipt due to its believe that the association is of a political nature or have political goals and activities²¹².

Youth and Sports associations are required by law to utilize specific, standardized articles of incorporation; otherwise, a license will not be issued²¹³

Other than these restrictions, no reports were found demonstrating direct interference in defining the goals and objectives of associations. However, according to some reports, delays in obtaining a registration receipt may be attributable to the political actions of the organization's founders or their support of Syrian refugees if this is clearly stated in the organization's stated goals and objectives²¹⁴.

3.3.4 Funding

The law imposes no restrictions on funding if the organization has fulfilled all legal criteria²¹⁵. Multiple sources reveal that there are no legislative restrictions on soliciting or receiving foreign funding by CSOs. In fact, the government encourages associations to bring foreign currency into the country²¹⁶.

As a result of the financial crisis, however, new obstacles surfaced. CSOs were unable to open or access their bank accounts and were forced to struggle with currency swings and endemic inflation. The instability of the banking industry and the recurrence of national economic and financial crises necessitated that CSOs make regular adjustments to how they handled money. According to key informants, some NGOs employ the services of specialist companies to transport money from the country of the donor to the office of the NGO in Lebanon. Due to these restrictions, donors are required to pay NGOs in cash, which can enable corruption and make it difficult to safeguard significant sums of money. Some NGOs also utilize foreign internet banking to circumvent official limitations.

If the NGO does not receive the registration receipt (IIm wa Khabar), they are unable to create a bank account; thus, several NGOs have established civil companies to expedite the opening of bank accounts.

There is government assistance, albeit it is not well-established. Each ministry has its own conditions and processes for funding non-profit organizations. Contracting NGOs to provide specific services is the most prevalent method for providing financial support, but this only applies to a minority of NGOs²¹⁷. Some CSOs directed by the

211. IBID., article 3.

212. CIVICUS Civil Society Index, An Assessment of Lebanese Civil Society, Country Report Lebanese Civil Society, 2006.

213. decree N. 69972001, article 1

214. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 40.

215. Societies Law of 1909, article 8.

216. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 41.

217. Shaden Daief, The National Evaluation of the Enabling Environment for NGOs: The Case of Lebanon, EENA, 2014, p 18

wives of politicians have access to national government funding, although the majority do not. Following a reduction in the national budget and a debate over whether or not to restrict the amount of support provided by the Ministry of Social Affairs to CSOs, questions of transparency over which CSOs receive government funding and the selection criteria were raised²¹⁸.

After the explosion in Beirut Harbor, crowdfunding became a popular technique of gathering funds from both the diaspora population and local sources to support relief operations. Some of these money was allocated to non-governmental organizations in response to proposals they submitted to deal with the implications of the crisis. CSOs also began to receive more direct contributions from political groups created by coalitions of businesses. However, given their linkages to political actors, CSOs could easily lose their independence if they accept such money²¹⁹.

Due to the Central Bank's anti-money laundering regulations, NGOs are required to show documentation to the bank prior to accepting any foreign payments, including contracts or funding agreements with donors. If an association wants to conduct operations in Syria, the account may be closed.

Few associations contemplated establishing themselves in Cyprus, Turkey, or any other European countries to circumvent all finance limitations, but this is not a viable option for most associations.

3.3.5 Oversight of CSOs work.

The year 2005 is regarded a turning point in the activities of nongovernmental organizations (NGOs) in Lebanon, as the Syrian guardianship began to wane, and their work grew with government assistance.

The 1909 law gives the government oversight authorities over associations. These authorities were enhanced by consecutive decrees. All associations are required to provide the ministry of interior every year with a list containing the names of its members and with a copy of its annual budget and from its previous account²²⁰. Failing to meet these requirements, the society will be fined between five hundred and two thousand Lebanese Liras and the fine will be doubled in case it has been repeated²²¹

The society has complete autonomy over the selection of its administrative body. The absence of a legal provision for the presence of a representative throughout the electoral process exempts this election from oversight by the authorities. The society must submit to the authorities a copy of the election minutes signed by the members of the General Assembly²²². The police have the authority to inspect associations, but they must provide a search warrant to demonstrate that the inspection was undertaken for proper grounds²²³.

218. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 42.

219. Mona Fawaz, Mona Harb, Is Lebanon Becoming Another "Republic of the NGOs"? Beirut Urban Lab, 2020. Available online [<https://beiruturbanlab.com/en/Details/697>] last visited 14 November 2022

220. Decree No. 10830/1962, article 7.

221. IBID, article 8

222. Societies Law of 1909, articles 7 & 8.

223. IBID., article 18.



There are certain alarming practices related to associations by the government. The ministry of interior sends the notification documents of an NGO to the security forces in order to launch an investigation into the organization's founding members²²⁴. In addition, authorities have unlawfully prohibited peaceful LGBQ community gatherings, which has been accompanied by a flood of anti-LGBT hate speech on social media by individuals and some religious groups. According to activists, the security forces attempted to justify their intervention by asserting that the organizers “failed to get prior consent from the authorities,” citing the Law on Public Gatherings of 1911. However, this law only applies to gatherings open to the public²²⁵.

The Public Assemblies Law enables the government to prohibit public gatherings that threaten public safety, public order, or public morals. In recent years, the government has prohibited a number of gatherings on the grounds that they constituted a threat to public safety or would otherwise disrupt it. The law stipulates that public gatherings must be reported at least 48 hours in advance to either the Ministry of Interior (if the gathering is to be place in Beirut) or the local administrative body (if outside Beirut)²²⁶. NGOs working on Civil Marriage and including Syrian refugees in their activities are subject to the same policies.

Concern was also expressed by the Human Rights Committee regarding reports of the prevalence of discrimination, hate speech, and homophobic attitudes in society; harassment, violence, and extortion directed at lesbian, gay, bisexual, transgender, and intersex individuals; violations of their rights to freedom of expression and peaceful assembly; and the lack of protection against such acts²²⁷.

It was also reported that authorities, political parties, armed groups, and individuals have reportedly responded to peaceful demonstrations with violence on occasions. For instance, riot police used force to disperse demonstrators in downtown Beirut in January 2020, during the formation of the government, and in August, after an explosion at the Beirut port. Throughout the year, supporters of other political parties also assaulted demonstrators and attacked their encampment²²⁸.

Several coalitions between NGOs were formed with no interference. For example, in 2020 a coalition to defend freedom of expression was formed by 14 national and international organizations²²⁹, the coalition also defends the rights of LGBTQ community²³⁰. CSOs were also able to harness their contacts with international institutions to engage in effective national advocacy campaigns, which is an intriguing example. For instance, a coalition of environmental CSOs expressed grave safety concerns regarding the proposed construction of the Bisri dam, highlighting the devastating impact the project would have on biodiversity and agriculture in the region.

224. US Department of State, 2021 Country Reports on Human Rights Practices: Lebanon, paragraph B, Freedom of Peaceful Assembly and Association.

225. Human Rights Watch, Lebanon: Unlawful Crackdown on LGBTI Gatherings, July 2022. Available online [<https://www.hrw.org/news/2022/07/04/lebanon-unlawful-crackdown-lgbti-gatherings>] last visited 14 November 2022.

226. Public gathering Law of 1911, articles 3 & 4.

227. Human Rights Committee, Concluding observations on the third periodic report of Lebanon, CCPR/C/LBN/CO/3, 9 May 2018, paragraph 13.

228. Freedom House's 2021 report on Lebanon. Available online [<https://freedomhouse.org/country/lebanon/freedom-world/2021>] last visited 14 Nov. 22

229. Human Rights Watch, Lebanon: New Coalition to Defend Free Speech, 2020. Available online [<https://www.hrw.org/news/2020/07/13/lebanon-new-coalition-defend-free-speech>] last visited 16 November 2022.

230. L'Orient Today, Coalition of rights groups condemns crackdown on LGBTQ community, 04 July 2022. Available online [<https://today.lorientlejour.com/article/1304672/coalition-of-rights-groups-condemns-crackdown-on-lgbtq-community.html>] last visited 16 November 2022

Their combined efforts ultimately resulted in the World Bank suspending a financing to construct the dam in June 2020²³¹.

Networking and coalition-building initiatives have the potential to expand further. Donors continue to fuel the majority of coalitions, but their approach has shifted; they now encourage rather than compel that their CSO partners participate in coalitions. Organic coalitions tend to be more effective than financed coalitions; the Bisri Dam coalition, for instance, was an organic coalition that was successful in suspending the dam's construction²³².

3.3.6 Taxation:

Legislative Decree No. 58/67 exempted from taxation industrial or commercial public businesses and public interest organizations. In accordance with Article 5 (A) of Decree No. 78/77, public utility organizations are likewise exempt from taxation. The government issues a decree granting public utility status in response to a request from the society to the Ministry of Social Affairs.

According to the decree, the status may be given if an organization meets the following requirements:

- It must be a non-profit organization with a focus on social and public-service sectors.
- It must provide inclusive and sustainable services.
- It has been in operation for more than three years.
- It devotes all its resources to achieving its objectives.
- Its members are skilled and specialized.
- It provides shelter and care for orphans in tough circumstances.
- Health care and hospitalization are provided in charitable dispensaries.

On the other hand, all employees, staff, and personnel working in the NGOs are subject to income tax deductions. NGOs must therefore keep records for each employee, deduct the tax, and pay it. Non-residents Tax is also applicable, this tax is paid in return for a service conducted by any legal or natural person with unknown workplace in Lebanon, the due tax must be deducted and paid to the Income Tax Department in the Ministry of Finance²³³. These requirements imply that NGOs must employ a certified public accountant to ensure that all taxes are paid to the Ministry of Finance.

Imported items are subject to customs regulations. Through a specific authorization, they are exempt from customs costs if they serve a public purpose. As for indirect taxes, also known as the entertainment tax, a 5% tax is applied on subscription fees and admission tickets for fundraising events hosted by charitable organizations, social and cultural organizations, clubs, and labor unions. Each public utility organization is exempt from this tax once every calendar year. This exception does not apply to organizations that have not submitted notifications²³⁴.

231. World Bank, Q&A: Bisri Dam Project Cancellation, Sep 2020. Available online [<https://www.worldbank.org/en/news/fact-sheet/2020/09/04/bisri-dam-project-cancellation>] last visited 16 November 2022.

232. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 45.

233. Shaden Daief, Op. Cit., p 41.

234. Internal Governance for NGOs in Lebanon, Op. Cit., p 68.



There are speculations of placing new taxes on foreign aid, according to key informants, but no concrete steps have been taken prior to the writing of this report.

3.3.7 Dissolution

Even while the Associations Law of 1909 has several beneficial characteristics, it falls well short of international standards, especially when it comes to dissolution and termination of NGOs.

Self-dissolution is possible, this could be through a decision taken by the general assembly or by virtue of the Law of Associations²³⁵. Self-dissolution must be established and defined in the statutes or bylaws of the organization. It must also specify the decision-making authority (often, the general assembly) and the entity charged with the association's assets.

Dissolution by the authorities is also possible in accordance with the Associations Law of 1909 and Decree No. 10830/1962. Based on the Law of Associations, the Council of Ministers may issue a decree dissolving an association if it violates the general laws and code of ethics; aims to disturb the peace and stability of the empire (the state); attempts to change the current form of government or politically divide Ottoman bodies; or has a nationalistic or ethnic political nature and mission²³⁶. In addition, the Council of Ministers may issue a decree dissolving political groups if their members “commit a crime against state security in their role as party members and are convicted of it.”²³⁷

The government has also utilized the concept of “Secret Associations” to justify the dissolution of NGOs. This notion was adopted by Decree No. 2231/92. The permeable of this legislation states “Whereas certain political, social and charitable associations exercise activities in a secret manner, contrary to the licenses given to them and without informing the Ministry of Interior of any of their activities for a period exceeding ten years, violating the laws and regulations that govern the incorporation and the operating of the associations’ activities, and the principle of public order.” Article 1 of the Decree states the following: “The licenses (Ilm wa Khabar) granted to the associations mentioned below and that operate contrary to these licenses have been withdrawn.” This decree was used to dissolve hundreds of associations in the 1990s²³⁸, despite being in conflict with the Associations Law, which defines secret groups as those that failed to notify the Ministry of any of their operations for more than ten years²³⁹, in addition to using the term “license” which does not exist in the law.

In such instances, the founders or members of the association may appeal this decision to the State Council, which has the authority to review such decisions for illegality or *Uta Vires* acts²⁴⁰.

235. Societies Law of 1909, article 14.

236. Societies Law of 1909, articles 3,4 & 5.

237. Decree No. 10830/1962, article 4

238. Chaden El Daif, *Op Cit.*, p 18

239. *The Shifting Landscape for American Not-for-Profit Organizations*, *Op. Cit.*, p

240. Latin, meaning “beyond the powers.” Describes actions taken by government bodies or corporations that exceed the scope of power given to them by laws.

In accordance with the Penal Law of 1943, the association may also be dissolved by the courts. If a society is charged with violating articles 336²⁴¹, 337²⁴², and 338²⁴³, which penalize the formation of illegal and clandestine organizations, the criminal court may issue a decision to dissolve the organization.

There were no recent reports of dissolving NGOs by the government or criminal courts.

3.3.8 Conclusions

There are certain beneficial components in the legislative framework governing non-governmental organizations, but government actions and practices restrict freedom of assembly, including the unlawful exercise of discretionary powers. The judiciary, however, proven to be the true guardian of freedom of assembly in accordance with international human rights conventions and the law of 1909. Confirming that the registration receipt (IIm wa Khabar) is of a declaratory nature and expressing unequivocally that the LGBT community is not engaged in acts against nature are considered milestones for freedom of assembly. It is necessary to develop a transparent formation process for NGOs to limit and prevent influence from authorities.

During the third cycle of the UPR for Lebanon, the government approved five recommendations concerning the promotion and protection of peaceful assembly²⁴⁴. This indicates the existence of genuine intents to assess and enhance the legislative environment for NGOs in Lebanon and can also be utilized as a tool for advocating these objectives.

As a first step, all laws prohibiting informal associations or criminalizing so-called secret associations must be repealed. Also, all types of interference and licensing should be eliminated from all legislation that govern Youth and Sports Associations. Moreover, allowing the government the authority to dissolve NGOs is a violation of their autonomy. It should be attainable via an impartial court.

241. Article 336: Any three or more individuals running armed street gangs in cities and/or the countryside, with the intent to rob passers-by or to commit other acts of thievery are sentenced to at least seven years hard labour. If the above acts are actually committed, the sentence increases to a life sentence of hard labour. Any person committing murder, attempted murder, torture, or barbaric acts is sentenced to capital punishment.

242. Article 337: Any association or community having the capacity of association is deemed clandestine if its objectives abuse the law and if its functions (or some of its functions) are conducted in secret. The associations or communities whose objectives have been proved to have abused the law and which have not informed the government of their statutes, names and positions of members, their meeting topics, property statements, and sources of income, or which have provided the government with false or incomplete information are also considered clandestine.

243. Article 338: amended by virtue law 239 dated 27/5/1993. Each and every clandestine association shall be dissolved. Their administrative and executive personnel shall be sentenced to between six months and two years' imprisonment and fined between one hundred thousand and one million Pounds. The other members of clandestine associations shall be sentenced to half of the aforementioned sentence.

244. Human Rights Council Forty-seventh session 21 June–9 July 2021 Agenda item 6 Universal periodic review Report of the Working Group on the Universal Periodic Review, Lebanon, A/HRC/47/5, 7 April 2021, paragraphs 150/68, 150/155, 150/156, 150/162 & 150/163



3.4 Morocco

3.4.1 The National Legal Framework

The Moroccan constitutional chose to follow the path of conditional primacy of international conventions over national law, as the preamble to the Moroccan Constitution of 2011 stipulates the following: “To make international conventions, as ratified by Morocco, and within the scope of the provisions of the Constitution, the laws of the Kingdom and its established national identity, prevail, immediately upon their publication, over national legislations, and to work on harmonizing these legislations, with what is required by such ratification.”²⁴⁵

According to this preamble, the international conventions ratified by Morocco take precedence over national legislation if three conditions were met, these are the condition of immediately upon publication, the condition of the compatibility of these conventions with the national legislation, and the third condition is respect for the provisions of the Constitution, laws and established identity. According to article 55 of the Constitution, if the Constitutional Court, upon the referral of the matter to it by the King, the President of the House of Representatives, President of the House of Councilors, one-sixth of the members of the first House [the House of Representatives], or one-quarter of the members of the second House [the House of Councilors], declares that an international obligation contains a provision contrary to the Constitution, then ratification of this obligation shall not take place until the Constitutions is referred to.

The Constitution expressly stipulates in article 12 thereof that civil society associations and non-governmental organizations operate freely within the scope of respect for the Constitution and the law, and that these associations and organizations concerned about issues of public interest contribute to the framework of participatory democracy, and the preparation of decisions and projects with elected institutions and public authorities, as well as to the activation and evaluation thereof; these institutions and

organizations shall regulate this contribution in accordance with the conditions and means specified by the law.²⁴⁶ The Constitution also affirms in article 29 thereof the guarantee of freedom of reunion, assembly, peaceful demonstration, and the establishment of associations in accordance with the conditions specified by law, it also guarantees the right to strike in accordance with the regulatory conditions specified by law.²⁴⁷

With regard to international conventions, Morocco has ratified a number of ²⁴⁸international conventions and covenants, foremost of which is the International Covenant on Civil and Political Rights, which obliges member states, in article (21)

245. Constitution of the Kingdom of Morocco of 2011. Dahir No. 1.11.91 issued on 27 Shaaban 1432 (29 July 2011) implementing the text of the Constitution

246. Article 12 of the Constitution of Morocco of 2011

247. Article 29 of the Constitution of Morocco

248. The International Covenant on Civil and Political Rights was signed on 19 January 1979 and ratified on 3 March 1979, and published in the Official Gazette No: 3525 on 21 March 1980.

thereof, to guarantee the right to peaceful assembly; and the right to form associations, including the right to establish and join trade unions, in article (22)²⁴⁹. The Moroccan judiciary has previously relied on the provisions of the International Covenant on Civil and Political Rights in its verdicts, even when they were contrary to the national legislation²⁵⁰.

Morocco has also ratified the International Covenant on Economic, Social and Cultural Rights, under which states parties are committed to guarantee the right of everyone to form and join trade unions, pursuant to article 8 thereof²⁵¹. The Kingdom has also signed the Arab Charter on Human Rights, which referred to the right of citizens to form and join associations, in addition to the right of peaceful assembly.²⁵² However, the Kingdom has not acceded to the African Charter on Human and Peoples' Rights, as of the date of preparation of this report²⁵³.

Morocco has ratified the Convention on the Rights of the Child, which affirms in article (15) thereof that states parties shall recognize the right of the child to freedom of association and to freedom of peaceful assembly, and that these rights may not be restricted except when necessary, in a democratic society to maintain national security, public safety or public order.²⁵⁴

The Code of Public Liberties is deemed as the first law that explicitly stipulated the right to establish associations in Morocco, as this code included three Dahirs issued on 15 November 1958,²⁵⁵ related to the right to establish associations; the code included the definition of associations and defined the procedures for their establishment, it also addressed political parties and freedoms of trade unions, as well as public assemblies, where it specified the conditions for assemblies, and the possibility of preventing them in case of breach of public security and order, in addition to the press law.

3.4.2 Formation of CSOs:

The number of associations in Morocco exceeded 200,000, according to a statement by the Minister Delegate in charge of relations with parliament and the official spokesman for the government. But according to other government statements, the number of associations did not exceed 160,000. Some believe that this discrepancy in the numbers is an indication of an imbalance in the official policy towards associations²⁵⁶.

249. The International Covenant on Civil and Political Rights, Articles 21 and 22

250. See, for example, Decision No. 1404 of 20/9/2000, File No. 372/00, that since Article 11 of the International Treaty of 16/12/1966 ratified by Morocco stipulates that "no one may be imprisoned solely on the basis of his inability to perform a contractual obligation", the implication is that what is prohibited according to the said article is the imprisonment of a person who is unable to perform his contractual obligation, but if he is able to perform it or refrains from doing so, there is no place for the said prohibition. The inability of the debtors to pay is not assumed, but the burden of proving it falls on him, and in the same direction, another decision was issued under No. 2163 dated 9/4/1997, file No. 7171/99.

251. The Covenant was signed on 19 January 1977 and ratified on 3 May 1977, without any reservations.

252. Article 24 of the Arab Charter on Human Rights. Morocco signed the Arab Charter on Human Rights on 27 December 2004.

253. King Mohammed VI of Morocco announced in 2016 that Rabat decided to return to the African Union after withdrawing from the Organization of African Unity in 1984 in protest against the admission of the Sahrawi Arab Democratic Republic represented by the "Polisario Front"

254. On 12 June 1993, Morocco ratified the Convention on the Rights of the Child which was adopted by the General Assembly of the United Nations on 20 November 1989

255. Dahir No. 1.58.376 issued on 15 November 1958 defining the right to establish associations, Official Gazette No. 2404 repeated, date 27 November 1958.

256. Hespress, Establishment of Associations in Morocco . An urgent necessity or useless inflation?, 6 March 2022, available on Link [shorturl.at/MQ028] Last visited on 16 January 2023.



The Moroccan Constitution, in article (12) thereof, stipulates the right to establish associations, and sets the general framework for the establishment of civil society associations and non-governmental organizations, whereby the recognition of the principle of freedom is considered as the base for exercise within the scope of respect for the Constitution and the law.

The Code of Liberties has limited the types of associations, they are private associations, which are established pursuant to the law of obligations and contracts, and these are called associations in general; associations recognized as public interest associations; and finally, federal associations and universities, which are alliances between a group of associations to practice lobbying for the objectives they seek to achieve.

The Decree No. 2.04.969 was issued on (10 January 2005) to implement Dahir No. 58.376 of 3 Jumada I 1378 (15 November 1958) regulating the right to establish associations. Dahir No. 1.58.376 regulates the right to establish associations. It stipulates in article 1 thereof that an association is “an agreement to achieve continuous cooperation between two or several persons to use their information or activity for a purpose other than the distribution of profits among them. And in terms of its validity, it shall be subject to the general legal rules applicable to contracts and obligations”.

Under the Dahir, the number of founding members of an association may not be less than two persons. The Dahir did not specify a certain age for members of the association, nor did it distinguish between citizens and foreigners in terms of the right to establish associations, except in terms of the formation of political parties and associations of political nature, where members must be citizens only.²⁵⁷ Based on practice, foreigners have the right to form and join associations without any legal obstacles.

In article (2), the Dahir affirms that associations of persons may be established freely without prior authorization, provided that the requirements of article (5) are taken into account, which stipulates that “each association must submit a declaration to the headquarters of the local administrative authority where the headquarters of the association is located, whether directly or via a bailiff, for which a temporary receipt stamped and dated immediately shall be issued. The said local authority shall send to the public prosecution of the competent court of first instance a copy of the said declaration, as well as copies of the documents attached thereto, referred to in the third paragraph thereafter, in order to enable it to express its opinion on the application, if necessary. And when the declaration fulfills the procedures stipulated in the following paragraph, the final receipt shall be sent obligatorily within a maximum duration of 60 days, in the event it was not sent within this duration, the association may carry out its activities in accordance with the objectives set forth in its laws”.

257. Dahir No. 1.58.376 regulating the right to establish associations, Article 17

Which means that associations in Morocco are established according to the notification system, but this notification or declaration is subject to several conditions. Under article (5) of the Dahir, the notification must include the following:

1. The name and objectives of the association.
2. A list of the personal and family names, nationality, age, date and place of birth, profession, and address of residence of the members of the managing office.
3. The capacity in which they represent the association under any name whatsoever.
4. Copies of their national identification cards, or residency cards for foreigners.
5. The headquarters of the association.
6. The number and location of branches and institutions established by the association, affiliated, or separate from it, that operate under its management or have continuous relations with it and aim to carry out joint work.

The applicant shall sign his/her declaration as well as the documents attached thereto and shall certify their authenticity. The statutes and the list of members in charge of managing or operating the association shall be subject to the applicable tax/duties' rights.²⁵⁸

This means that under article (5) of the Dahir, the local administrative authority that falls under the authority of the Ministry of Interior must replace the temporary receipt with another final receipt within 60 days from the date of the temporary receipt, and the association shall have the right to legally start its work even if the final receipt is not received, as long as the authorities did not formally oppose the declaration of the association, and its work conforms with the objectives contained in the documents attached to the declaration.

Thus, the temporary receipt is considered as an essential document that gives the association a registration that qualifies it to work officially and properly according to the law, and without a dated and stamped receipt, the association cannot prove the submission of its documents to the concerned authorities. Accordingly, the association cannot start practicing its activity in practice, even if the authorities do not issue a decision against announcing its establishment, in the event that the administrative authority refused to receive the documents.

Many sources confirm that the Moroccan government did not abide by what was stated in the Dahir, it even deprived some associations from registration without any justification. This was confirmed by the Human Rights Committee, which was created pursuant to the International Covenant on Civil and Political Rights, in its concluding observations on the sixth periodic report of Morocco in 2016, which states "The Committee welcomes the fact that the procedures for filing a declaration of association have been streamlined but is nonetheless concerned about the fact that many associations are refused the right to register". In its observations, the Committee noted that the State party should urgently take all necessary steps to put an end to

258. Dahir No. 1.58.376 regulating the right to establish associations, Article 5



violations of the right to freedom of association and any practices that place restrictions on that right which go beyond the strictly defined limitations set forth in paragraph (2) of article (22) of the Covenant. It should ensure that it does not exert any undue influence over human rights defenders and that they are free to work without fear of reprisals or any unjustified restrictions on their activities.²⁵⁹ Other reports indicate that the relevant authorities sometimes ask associations to return after several weeks or months to obtain the receipt; it is also possible that no receipt would be granted in the first place. While some government bodies may also impose different requirements or documents that were not stipulated in the legislation.²⁶⁰

A group of human rights organizations have previously denounced the refusal of the executive authority to issue receipts to some organizations concerned with human rights. The organizations stated that the refusal of local officials to issue receipts is a violation of article (5) of law (75),²⁶¹ which governs the right to form associations. In this regard, the Moroccan Federation for Human Rights reported that the ministry has refused to issue a receipt for it for the past 5 years²⁶². Among the organizations whose registration was rejected was the National Federal of Amazighs Associations, an organization that supports the involvement of the Amazighs (Berber) in the public life, and it is being denied a receipt since 2017. Local authorities also refused to accept the application of a Casablanca-based religious freedom organization that tried to register.²⁶³

The Ministry of Interior requires non-governmental organizations to register (obtain a receipt) before being recognized as legal entities, but there is no comprehensive national register available to the public, the potential organization must submit to the local officials in the ministry its objectives, internal regulations, address and copies of the identification cards of its members, and accordingly the local officials in the ministry issue a receipt stating the official approval. Organizations that do not have receipts are not officially registered. However, according to the law, any association whose registration was not refused, and it did not receive a receipt within 60 days of submitting the required documents, has the right to participate in activities. These same organizations have reported long delays in getting correspondence from the ministry regarding the receiving issue.²⁶⁴

The National Human Rights Council in Morocco referred to this form of violation through practice, as in 2021, the Council received (11) complaints related to grievances against administrative decisions to refuse giving a legal receipt for the establishment

259. International Covenant on Civil and Political Rights, Human Rights Committee Concluding observations on the sixth periodic report of Morocco, CCPR/C/MAR/CO/6, 1 December 2016, paragraphs 41 & 42.

260. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 57.

261. Law 75 is contained in the report of the American Ministry Foreign Affairs, Dahir No. 1.58.376 regulating the right to establish associations, Article 5

262. 2021 Country Reports on Human Rights Practices: Morocco, 2021. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/morocco>] last visited 8 Jan 2023

263. 2021 Country Reports on Human Rights Practices: Morocco, 2021. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/morocco>] last visited 8 Jan 2023.

264. 2021 Country Reports on Human Rights Practices: Morocco, 2021. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/morocco>] last visited 8 Jan 2023.

of the association without justifying the reasons for refusal, or refuse to give the legal deposit receipt, or the authorities' refusal to grant the legal deposit receipt for the renewal of the association's structures.²⁶⁵ Here, it should be noted that the refusal or delay in issuing the receipt falls under the jurisdiction of the Kingdom Mediator Foundation, where a number of grievances resulting from inequities related to the delivery of licenses and administrative documents²⁶⁶ were looked into, however, the recommendations of the Mediator Foundation lack the element of obligation.

3.4.3 Defining Goals and Objectives:

Dahir No. 1.58.376 stipulates in article (3) thereof the objectives of associations. It states that any association established for a purpose or objective that is illegal, contrary to laws or public morals, or that may aim to harm the Islamic religion, the integrity of the national territory, or the monarchy, or that calls for all forms of discrimination, shall be null.

According to numerous reports, the Moroccan authorities regularly use these criteria provided in article (3) to deny granting receipts to the Amazighs (indigenous Berber) organizations, and the Sahrawi (Western Sahara) organizations, including associations of Izourane, Imal, and the Sahrawi Association for Victims of Torture.²⁶⁷

3.4.4 Funding:

Article (6) of Dahir No. 1.58.376 affirms that every association with a legal capacity shall have the right to plead before courts, to acquire in return of a compensation, and to own and dispose public subsidies, the duties on its members' involvement, the duties on annual subscription of its members, private sector subsidies, and aids received from foreign entities or international organizations.²⁶⁸ Article (10) of the same law grants associations the right to own funds, movables or real estate necessary for its purpose.

Under the Dahir, any association recognized as a public interest may, within the conditions prescribed in its statutes, and following the permission issued by the Prime Minister by virtue of a decision, acquire without giving a compensation, by means of contracts between living persons or by will, and with compensation, property, whether funds, values, movables or real estate. No association of public interest shall accept a donation of a movable or real estate if such grant is reserved for the benefit of the donor.²⁶⁹

According to the Dahir, associations that periodically receive subsidies from a public group must submit their budget and accounts to the ministries which grant them the said subsidies, and ledgers of the aforementioned associations shall be organized in

265. National Council for Human Rights, Human Rights 2021 – The Repercussions of COVID-19 on Vulnerable Groups and Actual Paths, 2022, p. 75.

266. The full report of the Kingdom Mediator Foundation for the year 2020, p 160.

267. INCL, Morocco, Legal Snapshot. Available online [<https://www.icnl.org/resources/civic-freedom-monitor/morocco>] last accessed 7 Jan 2023.

268. Article 6 of Dahir No. 1.58.376 regulating the right to establish associations.

269. Article 11 of the same Dahir



finance by virtue of a decision of the Secretary of Ministry of National Economy, as well as the conditions by which the budget and accounts mentioned in the first paragraph are submitted to the ministers. Ledgers are subject to the control of this ministry inspectors. Each officer-in-charge shall be punished for violations of the decision mentioned in the paragraph above, with a fine between 12000 to 100000 francs, and the association shall be civilly liable.²⁷⁰ (i.e., equivalent to 1161.60 USD to 9680 USD).

The Dahir obliges associations that receive foreign aid to declare this to the General Secretariat of the Government, specifying the amounts obtained and their source within the duration of full thirty days from the date of receipt of assistance. Any violation of the requirements of this article shall subject the concerned association to dissolution.²⁷¹ Some reports have documented that accusations against some associations have been made regarding inappropriate use of foreign funding.²⁷²

Associations that periodically receive subsidies exceeding 10,000 dirhams (i.e. equivalent to 986 USD) from a local group, public institution, or companies in which the State contributes in whole or in part in their share capital, must submit their accounts to the entities that grant them the said subsidies, taking into account the requirements of the law relating to the Code of Financial Courts, provided that ledgers that shall be kept by the associations referred to in the preceding paragraph shall be determined by a decision of the Minister in charge of Finance, and the inspectors of the Ministry of Finance shall supervise the ledgers.²⁷³

Associations that have only obtained the temporary receipt suffer from the fact that their scope of work remains limited, in addition to not enjoying some of the rights acquired by associations that have completed the registration procedures and obtained the final receipt. For example, most government entities will not consider an application for partnership or request for support from an association that does not have the final receipt. Also, the Inter-Ministerial Delegation for Human Rights considers the final receipt as proof of the legitimacy of the association and refuses to work with any association that has not received it, and refuses to grant it any material support. Therefore, depriving the association of the final receipt is effective means to cease its work and its obtaining of material support, and obstructing its cooperation with the official bodies with which it is supposed to be a partner, all that without any official objection that can be challenged.²⁷⁴

It should be noted that the Penal Code in Morocco punishes with imprisonment from one to five years in addition to a fine of up to 10,000 dirhams (i.e. approximately 968 USD) anyone who receives from a person or foreign organization, in any way, support that is intended or used to finance an activity or propaganda capable of undermining

270. Article 32 of Dahir No. 1.58.376 regulating the right to establish associations.

271. Article 32 repeated of Dahir No. 1.58.376 regulating the right to establish associations.

272. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 58.

273. Article 32 repeated twice of Dahir No. 1.58.376 regulating the right to establish associations.

274. Cairo Institute for Human Rights Studies, Freedom of Association in Morocco – Legal Gaps and Security Practices, 2016, page 20.

the integrity, sovereignty or independence of the Kingdom, or undermining the loyalty that citizens owe to the State. This article allows for the punishment of a wide range of human rights-related activities, as it may be broadly applied to active civil society entities and their free access to funding within the framework of the law.²⁷⁵ While the government does not restrict the source of funding to non-governmental organizations operating in the country, non-governmental organizations that receive funding from foreign sources are required to report the amount and its origin to the government within 30 days from the date of receipt. The government has refused to officially recognize non-governmental organizations that it had considered them to be preaching against Islam as the religion of the State or questioning the legitimacy of the monarchy or territorial integrity of the country. The authorities also obstructed the registration of a number of associations which are considered critical of the authorities, by refusing to receive their application for registration, or refusing to send receipts confirming the deposit of submitted applications, thus automatically denying access to funding opportunities.²⁷⁶

3.4.5 Oversight of CSOs Work

Monitoring associations in Morocco starts from the registration. According to the Dahir, each association must submit a declaration to the headquarters of the local administrative authority where the headquarters of the association is located, whether directly or via a bailiff, for which a temporary receipt stamped and dated immediately shall be issued. The said local authority shall send to the public prosecution of the competent court of first instance a copy of the said declaration.

Funding is also monitored through the association's submission of its budget and accounts to the ministries that grant it subsidies, so that these ministries are the body monitoring the funding, and ledgers are controlled by virtue of a decision of the Secretary of the Ministry of National Economy in finance. Whereas associations that receive foreign aid declare this to the General Secretariat of the Government, specifying the amounts obtained and their source, within a duration of thirty full days from the date of receipt of the aid. Any violation thereof exposes the concerned association to dissolution.

With regard to monitoring the holding of public meetings, Dahir No. 1.58.377²⁷⁷ on public assemblies was amended and supplemented, where public assemblies were defined as “any temporary planned gathering that is permissible to the public and during which issues listed on a predetermined agenda are examined.”²⁷⁸

The Dahir affirms in articles (2) and (3) thereof on the possibility of holding public meetings without prior authorization, provided that the following are taken into account:

First: Each public meeting shall be preceded by a declaration submitted to the local administrative authority of the meeting place, indicating the day, time, place and subject of the meeting. Meetings held by legally established associations and bodies

275. Moroccan Penal Code Article 206

276. 2021 Country Reports on Human Rights Practices: Morocco, 2021. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/morocco>] last visited 8 Jan 2023.

277. Dahir No. 1.58.377 on Public Assemblies

278. Article 1 of Dahir No. 1.58.377 issued on 15 November 1958 defining public assemblies.



which specifically aim for cultural, artistic or sports purposes are exempt from this declaration, same for meetings held by associations and ambulance or charitable institutions.

Second: It must be signed by three persons residing in the employment or the region in which it is being held, and it shall include the names, capacities, and addresses of the signatories, in addition to a certified copy of each of their national identification cards.

Third: The meeting shall not be held until a duration of not less than (24) hours has elapsed from the date of receiving the receipt, or (48) hours after the date of sending the guaranteed letter.

Fourth: Meetings shall not be held on public roads nor extended beyond 12 o'clock at night or beyond the hour specified in the declaration.

Fifth: Each meeting must have an office consisting of a chairman and at least two consultants from among the signatories of the declaration. In the absence of the chairman, one of the consultants shall act on his behalf.

Sixth: The Office shall be entrusted with maintaining order and preventing any violation of laws, and preventing any error that contradicts with the public order or morals or involves incitement to commit a crime, and shall ensure no (discussion) outside the subject of the meeting is allowed.

Seventh: The administrative authority that received the declaration may appoint in writing one of its employees to attend the meeting, provided that he provides the office chairman with a copy of his appointment decision, and s/he has the right to adjourn this meeting if requested by the office or if clashes or acts of violence occur.

Violation of the above conditions leads to a fine ranging from 2000 to 5000 dirhams (i.e., equivalent to 193.60 to 484 USD). And in the case of recidivism, the violator shall be punished by imprisonment for a duration ranging from one month to two months and a fine ranging from 2000 to 10000 dirhams or one of the two penalties only, regardless of the penalties that can be applied for crimes or misdemeanors committed during these meetings.²⁷⁹

It is worth mentioning that under the Dahir, in the event that the conditions of assemblies mentioned above were violated, such violation shall result in freedom-depriving penalties of up to two months.

The Moroccan jurisprudence attempted to protect the right to assembly, in a number of court decisions. For instance, a decision issued by the Administrative Court stated that: "Freedom of peaceful assembly is fundamental among individual freedoms, similar to freedom of opinion and movement, and without freedom of assembly, it is not possible to exchange opinions and discuss ideas about public affairs. Freedom of assembly means the right of individuals to gather somewhere to express their ideas

279. Dahir No. 1.58.377 on Public Assemblies, Article 9

in the form of speeches, seminars, conferences, and discussions. All legislations, constitutions and international covenants recognize the right to assembly as a precondition for the promotion of human rights and as a generalization of the principles of democratic practice.”²⁸⁰

On the other hand, the Moroccan government has limited the freedom of peaceful assembly of associations. For instance, some sources indicate, the law guarantees the right to peaceful assembly, and the government has generally allowed authorized and unauthorized peaceful demonstrations, and that under the law, groups of more than three people require permission from the Ministry of Interior to demonstrate publicly. Some associations complained that the government used administrative delays and other methods to suppress or discourage unwanted peaceful assemblies. Security forces have intervened at times to disperse both authorized and unauthorized protests when officials have deemed these demonstrations as a threat to public security. Amnesty International has reported continued arbitrary restrictions on the right to freedom of peaceful assembly and forming of associations, particularly for individuals who support the Western Sahara’s independence. Also, several organizations that support independence and some non-governmental organizations concerned with human rights in the Western Sahara have stated that, in the recent years, the number of applications for authorizations to organize demonstrations has decreased, as the police has rarely granted them. In most cases, organizers carried out planned demonstrations without an authorization, and there was no discernible difference in the reaction of the security forces to authorized or unauthorized protests.²⁸¹

Other sources indicate that some associations complained that the authorities have not applied approval procedures to organize demonstrations, on a regular basis; and have used administrative delays and other methods to suppress or discourage any unwanted peaceful assembly. The authorities have also canceled several events of some associations in the recent years, and have disrupted associations’ efforts to rent and open bank accounts.²⁸²

According to Amnesty International, activists are likely to be imprisoned and prosecuted, especially if it is related to criticizing the government, or tackling the Western Sahara’s independence.²⁸³

As for preventing organizations from carrying out their activities under the pretext of censorship over them, media reported that the authorities prevented a non-governmental organization from conducting a training on “The National and International Mechanisms for the Protection of Human Rights Activists” in Meknes. The media stated that the hotel received a notice from the authorities to cancel the activity,

280. Decision No. 01/202 issued on 26 September 2001, contained in the Guide to Judicial Judgments, No. 16, 2004, pp. 112-117.

281. 2021 Country Reports on Human Rights Practices: Morocco, 2021. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/morocco>] last visited 8 Jan 2023.

282. Freedom House, Freedom in the World 2022, Morocco. Available online [<https://freedomhouse.org/country/morocco/freedom-world/2022>] last visited 8 Jan 2023.

283. Amnesty International, Country Reports – Morocco and Western Sahara, 2021. Available online [<https://www.amnesty.org/en/location/middle-east-and-north-africa/morocco-and-western-sahara/report-morocco-and-western-sahara/>] last visited 7 Jan 2023.



according to the government, the local authorities did not cancel the event, but the hotel refused to host it after the organizers were unable to provide the authorizations necessary for the meeting.²⁸⁴

According to the Human Rights Watch, the authorities have severely obstructed the activities organized by the branches of the “Moroccan Association for Human Rights”, by preventing them from reaching the places where the activities will be held, in a repeated incident, security forces in the city of Beni Mellal closed the entrance to the headquarters of a community institution, where the local branch intended to hold a conference, the authorities did not provide any written justification for the ban, and according to the Moroccan Association for Human Rights, 16 of its activities were cancelled between January 2017 and July 2018 all over Morocco, whether after the authorities have prevented participants from entering the activity venues, or after they pressured the managers of these venues to cancel the activity.²⁸⁵ As an example on banning the activities of associations, we mention that a joint activity of the Moroccan League and “Transparency” on ways to combat bribery and corruption, was banned by a decision of the Ministry of the Interior.²⁸⁶

As is evident from different reports, there are challenges to the work of associations and activists through the internet, as some of them were summoned and investigated for using social media to call for protests or boycotts. Also, the Facebook account of one of the activists was suspended and his posts were deleted.²⁸⁷ It was also observed that arrests and charges were made against social media users for criticizing the Moroccan authorities.²⁸⁸

3.4.6 Taxes:

Civil society organizations are exempt from income tax (profit). All civil society organizations must keep accounting records and submit financial reports to the Moroccan General Directorate of Taxes at the end of each fiscal year. Civil society organizations are also subject to withholding income tax from salaries or compensations paid to third parties, such as experts and trainers.

284. 2021 Country Reports on Human Rights Practices: Morocco, 2021. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/morocco>] last visited 8 Jan 2023.

285. Human Rights Watch, World Report 2021, Morocco/Western Sahara. Available online [<https://www.hrw.org/world-report/2021/country-chapters/morocco/western-sahara>] last visited 8 Jan 2023

286. Our Moroccan news, the Ministry of Interior bans a joint activity of the Moroccan League and “Transparency” on ways to combat bribery and corruption, 6 May 2016. Available at [<https://www.akhbarona.com/social/165620.html#ixzz7pplxGd7N>] Last visited 8 January 2023

287. Freedom House, Freedom on the Net 2022, Morocco. Available online [<https://freedomhouse.org/country/morocco/freedom-net/2022>] last visited 10 Jan 2023.

288. Human Rights Watch, Morocco: Crackdown on Social Media Critics, February 2020. Available online [<https://www.hrw.org/news/2020/02/05/morocco-crackdown-social-media-critics#>] last visited 10 Jan 2023.

A memorandum was issued containing the tax system applicable to civil society associations,²⁸⁹ specifying the conditions and criteria for exempting civil associations from corporate tax, and subjecting associations to a special tax regulation that entitles them to several privileges in the field of corporate tax, income tax, value-added tax and registration duties.

Under this regulation, non-profit associations benefit from a permanent full exemption from corporate tax in respect of only the operations that conforms with the purpose specified in their statutes. It should be noted that this exemption also applies to entities that are legally regarded as non-profit associations.

However, the aforementioned exemption does not apply to institutions that sell, or provide services, which are owned by the aforementioned associations and entities; as the principle of exemption is revoked whenever the association achieves operations aimed at obtaining profit, whether these operations are of a commercial, industrial, financial or other nature.

The regulation provides for indirect privileges for associations, as companies subject to corporate tax can deduct from their tax proceeds the cash and in-kind donations granted to them and without specifying any limit, and for associations recognized for public interest that work for a charitable, scientific, cultural, artistic, literary, educational, sports, educational or health purpose, and for microcredit associations regulated by law no. 97,18 which was promulgated by Dahir no. 1-99-16 of 15 Shawwal 1419 (5 February 1999).

Concerning income tax, the regulation stipulates that the wages and incomes that are regarded as such, which are paid by associations and entities that are regarded as such, to their paid workers, shall be subject to income tax through withholding at source in accordance with the provisions of the public law, which is the General Tax Code. Paid workers shall bear the income tax according to their wages, but the employer shall be the one who calculates it according to the prices of the progressive scale stipulated in Article 1-73 of the General Tax Code and pay it to the tax administration collector.

The rental value of real estates placed at the disposal of associations that are considered for public interest, shall be excluded from the scope of application of income tax according to the real estate income, when the said real estates are intended to accommodate charitable institutions and do not seek to obtain profit.

It is worth mentioning that non-governmental organizations do not benefit from tax exemptions if they are not officially recognized as for public interest in accordance with article (1) of Decree 969 issued on 10 January 2005, for the application of the Dahir that is related to regulating the right to establish associations, which requires the association that requests to be recognized in a public capacity to be established in accordance with the provisions of the Dahir, and to be managed in accordance with its statute, and to have the financial capabilities that enable it to accomplish its tasks, and to have a statute and internal regulation that ensures for all its members actual

289. The Ministry Delegate to the Prime Minister in charge of Relations with the Parliament, Memorandum on the tax regime applicable to associations. Available at [shorturl.at/bcksK], last visited on 8 January 2023.



participation in the operation and management of the company, and that its goal is the public interest, and to keep accounting system that allows for the preparation of synthetic lists that fairly reflect its financial disclosure, and to respect the obligation to provide the required information and being subject to administrative control.²⁹⁰ Therefore, only a few non-governmental organizations are recognized as not-for-profit, which makes civil associations obliged to pay taxes, as these obligations add a considerable financial burden on these organizations. Some reports indicate that the procedure for applying for the capacity of public interest is complicated and require many documents, and at the end, the authorities have discretionary powers whether to grant such capacity or not. Only a few associations were able to obtain this capacity,²⁹¹ and that is due to their political connections. Some suggest that the number of associations that have been able to obtain this capacity is within 206 organizations.²⁹²

3.4.7 Dissolution

The Court of First Instance shall have jurisdiction over requests for the dissolution of associations if the association was in a situation contrary to the law, whether at the request of anyone concerned, or at the initiative of the public prosecution. The court may also, despite all means of appeal, order as part of the precautionary measures, to close premises and ban all meetings of the members of the association.²⁹³

The association can be dissolved in several situations, including: if its objective is illegitimate, meaning that it is contrary to laws or public morals, or it aims to harm the Islamic religion, the unity of the national territory or the monarchy, or it calls for any form of discrimination.²⁹⁴

The association shall also be dissolved in case of breach of the conditions of the aforementioned declaration, which must be submitted to the local authority that has territorial jurisdiction over the headquarters of the association. The association shall also be dissolved in case it was of a political nature and breached the following conditions:

1. To be composed of Moroccan citizens only and to be open to all Moroccan citizens without discrimination in terms of race, gender, religion or territory.
2. To be established and managed with funds of national origin only.
3. To have statutes that entitle all its members to participate effectively in the management of the association.

290. Decree on the granting of the status of public interest: Decree No. 2-04-969 issued on 28 Dhu al-Qa'dah 1425 (10 January 2005) for the implementation of Dahir No. 1-58-376 issued on 3 Jumada I 1378 (15 November 1958) regulating the right to establish associations

291. ICNL, 2020 Civil Society Organization Sustainability Index for the Middle East and North Africa, 9th Edition – October 2021, p 58.

292. ICNL, Civic Freedom Monitor, Morocco, 20 October 2022. Available online [<https://www.icnl.org/resources/civic-freedom-monitor/morocco>] last visited 8 Jan 2023

293. Chapter 7 of Dahir No. 1.58.376 regulating the right to establish associations.

294. Article 3 of Dahir No. 1.58.376 regulating the right to establish associations.

4. It shall not be open to active military personnel, nor to judiciary, officials of authority, police personnel, assistants of auxiliary forces, prison guards, forestry guards and officers, or active assistants of the customs department.
5. It shall not be open to persons deprived of national rights.²⁹⁵

An association can also be dissolved by a decree:

1. If it incites armed demonstrations in the street.
2. If, in terms of its form or military structure or the like, it has the character of fighting categories or special armed forces.
3. If it may aim to undermine the integrity of the national territory, taking over the reins of power by force, or attack the monarchy of the State.²⁹⁶
4. Pursuant to the Dahir, associations that receive foreign aid shall be dissolved if they breach the condition of declaring to the General Secretariat of the Government, specifying the amounts received and their source within a duration of (30) thirty full days from the date of receipt of the aid.²⁹⁷

Each association that carries out an activity other than that prescribed in its statutes shall also be dissolved.²⁹⁸

Upon the automatic dissolution of the association, its funds will be transferred in accordance with what is prescribed in its statutes, or, in the absence of such provisions in the statutes, funds will be transferred as decided in the general meeting. If the dissolution of the association is affected by a court ruling, this ruling shall specify the manner of liquidation in accordance with or contrary to the requirements contained in the statutes.²⁹⁹ In general, there have been no reports that associations in Morocco have been arbitrarily dissolved.

3.4.8 Conclusions:

In summary, the legal status of the civil society in Morocco is similar to other Arab countries, and it needs some legislative amendments and a reduction in some arbitrary practices, especially that the Moroccan Constitution stipulated the right to freely establish associations, but the national laws and practices that are being implemented limit the establishment of associations, in addition to depriving them of exercising some of their activities without any legal justifications. Accordingly, the following was concluded:

295. Article 17 of Dahir No. 1.58.376 regulating the right to establish associations.

296. Article 29 of Dahir No. 1.58.376 regulating the right to establish associations.

297. Article 32 repeated of Dahir No. 1.58.376 regulating the right to establish associations

298. Article 36 of Dahir No. 1.58.376 regulating the right to establish associations.

299. Article 37 of Dahir No. 1.58.376 regulating the right to establish associations.



It was noted that the right to peaceful assembly is guaranteed in the Constitution, but its implementation in reality requires a number of formalities stipulated in some national laws, such as the Law on Public Assemblies, which impede and violate the exercise of this right.

Also, there is a delay in the recognition of unwanted associations by the authorities, without any legal justification and with the absence of means of effective remedy, that is by refusing to deliver receipts; as the temporary receipt is deemed as an essential document that gives the association a registration that qualifies it to work officially and properly under the law, and without a dated and stamped receipt, the association cannot prove the submission of its documents to the competent authorities, consequently, the association will not be able to start practicing its activities even if the authorities do not issue a decision against the announcement of its establishment in the event the administrative entity refuses to receive the documents.

Accordingly, refusing to recognize associations and not giving them receipts deprive them of carrying out their activities, including obtaining funding, as associations that do not have a legal status shall not receive any funding.

It was also noted that the Ministry of Interior, represented by local authorities, arbitrarily prevented associations from practicing some of their activities, such as holding trainings and seminars, in violation of national laws, and also with the absence of means of an effective remedy.

The association recognized as a legal entity can obtain funding, and if the funding is from a foreign source, the association must declare this to the General Secretariat of the Government specifying the amounts obtained and their source within (30) thirty full days from the date of receipt of assistance.

Also, under the Public Assembly Law, freedom-depriving penalties are used in the event the conditions of peaceful assemblies were violated, the penalty is up to two months of imprisonment.

It is worth mentioning that associations in Morocco are dissolved by a decision of the Court of First Instance, and it was noted that the courts in Morocco apply the international law and consider its precedence over the national laws, in their decisions.

3.5 Tunisia

3.5.1 The National Legal Framework

In 2010, Tunisia sparked the ‘Arab Spring’ – movements of civil revolt unrest and continued conflict affecting several Arab countries. The Tunisian Revolution, also called the Jasmine Revolution, succeeded in toppling the dictatorship of Ben Ali,³⁰⁰ a regime characterized by its human rights abuses. Till today, Tunisia’s national system of governance remains in transition,³⁰¹ zigzagging towards achieving the goals of the revolution.

In Tunisia’s ‘democratic experience’ civil society has been successful in carving a solid place and consolidating its role as a core contributor to promoting justice and democratic transition in the country. Tunisia’s civil society organizations (CSOs) numbered over 23 thousand in 2020,³⁰² and continue to grow being empowered by collective action through freedom of speech and peaceful protests to bring about change, affect policy formulation and legislation.

While Tunisia’s Constitution of 1959³⁰³ did guarantee the freedom of assembly and right of association that could only be limited by duly enacted laws or to protect rights and legitimate objectives of the State. Under the old regime, these rights and freedoms were greatly curtailed by extra-legal means that restrict the activities of CSOs.³⁰⁴

Among the early actions taken during the transitional phase after the Revolution by the ‘High Authority for Achievement of the Objectives of the Revolution, Political Reform and Democratic Transition’, was the issuing of the Decree-Law No. 88 of 2011 (the “Decree”),³⁰⁵ which contains 49 articles concerning general principles; formation and running of CSOs; merger and dissolution; financial rules, record keeping and accounting, penalties as well as well transitional and final provisions. The Decree replaced the Law on Associations No. 154 of 1959 as amended,³⁰⁶ and covers the formation of national CSOs, set up of branches of foreign CSOs and the establishment of CSOs networks.

300. See: Britannica, Jasmine Revolution- Tunisian History. Available online [<https://www.britannica.com/event/Jasmine-Revolution>] last visited 15 Jan 2023.

301. On July 25, 2021, Tunisia entered political and institutional uncharted territories when President Kais Saied proclaimed a state of emergency, suspended the parliament and carried out a national referendum to amending the constitution. See: Q&A: Tunisia’s Constitutional Referendum, Human Rights Watch, published on 14 July 2022. Available online [<https://www.hrw.org/news/2022/07/14/qa-tunisia-constitutional-referendum>] last visited on 9 Jan 2023.

302. According to the Center of Information, Studies and Documentation on Associations (IFEDA), Tunisia numbers 24,216 ‘registered associations’, including 1,815 devoted to science, 216 to women’s issues, 3,047 to sports, 4,795 to cultural activities, 2,698 to social issues plus 209 foreign associations, among others. Rihab Boukhayatia, ‘Freedom to form associations: The Bouden government’s restrictive draft law’ article dated 21 Feb 2022, Available online [<https://nawaat.org/2022/02/21/freedom-to-form-associations-the-bouden-governments-restrictive-draft-law/>] last visited on 9 Jan 2023.

303. These are “to protect the rights of others, the respect of public order, national defence, the development of economy and social progress” as defined in article 7 and Article 8 of the 1959 and its Amendments up to 2008, available online [https://www.constituteproject.org/constitution/Tunisia_2008.pdf?lang=en#page=12&zoom=100,237,70] last visited 15 Jan 2023.

304. 2009 Euro Med Human rights network reports available online [<https://www.refworld.org/publisher,EMHRN,,TUN,,0.html>] last visited 15 Jan 2023.

305. Available at [https://www.icnl.org/wp-content/uploads/Tunisia_88-2011-Eng.pdf], last visited 15 Jan 2023.

306. As well as Law 80-1993 dated July 26, 1993 concerning the formation of non-governmental organizations in Tunisia that covered foreign CSOs. Chapter Nine Final Provisions of the Decree 88-2011.



The Decree was issued as a primary legislation to regulate civil society, and by extension, affecting the right to freedom of association and assembly. It was intended to be replaced by an organic law after the issuing of a new constitution. However, the government never submitted any such draft law to parliament,³⁰⁷ after the adoption of the new Constitution in 2014,³⁰⁸ and parliament never converted the Decree into an organic law.³⁰⁹

The 2014 Tunisian Constitutional passed on 10 February 2014 reaffirms fundamental political, social and economic rights, including the Freedom of Association in Article 35 and Freedom of Assembly in Article 37.

The Decree-Law No. 88 of 2011 while containing a few legal loopholes that allow authorities discretion in implementation, is largely permissive with regard to the registration, activities, funding, and oversight of civil society. The Decree that has full standing in the Tunisian legal system remains in force despite several attempts by the government to amend it, the latest as early as early February 2022.³¹⁰ These proposed amendments threaten the freedom of association and assembly rights currently provided by the Decree, described as one of the most enabling civil society laws in the MENA region.³¹¹ Indeed, it is through the strength of the Tunisian civil society that the status quo has been preserved.

The current Tunisian President Kais Saied, who is presiding over a political crisis; compounded by an economic crisis that led in 2021 to the suspension of parliament and the removal of the prime minister, announced in September of the same year upcoming reforms to the 2014 Constitution. A public referendum was held in July 2022³¹² that resulted in support for the draft 2022 Constitution,³¹³ which once promulgated, would put in place a new political system. A review of the proposed text, specifically Chapter 2 related to 'rights and freedoms,' confirms that the draft text guarantees the fundamental rights and is aligned with international standards and Tunisia's commitments under international treaties.

Tunisia is a Member State of the United Nations, the League of Arab States, and the African Union. It has human rights obligations at both the regional and universal levels, having ratified key international and regional human rights treaties. Namely, CCPR; CESCR; Convention on the Rights of the Child (CRC) (with some reservations).³¹⁴ As

307. Available online [https://www.constituteproject.org/constitution/Tunisia_2014.pdf], last visited 15 Jan 2023.

308. The 2014 Constitution was adopted on 26 January 2014 by the Constituent Assembly elected on 23 October 2011 in the wake of the revolution that overthrew President Zine El Abidine Ben Ali. It was passed on 10 February 2014 replacing the constitutional law of 16 December 2011 that temporarily formed the basis of government after the suspension of the Constitution of 1959.

309. See: Remarks by the State's delegate Ms. Anwar Mansri in the case No. 124593 filed to the Administrative Tribunal; published in the Annual Report of the Administrative Tribunal, 2014.

310. Proposal published at <https://legislation-securite.tn/law/105213>. See: <https://www.newarab.com/analysis/kais-saied-sets-his-sights-tunisia-civil-society>. For detailed on the proposed changes see: Kais Saied's Next Target in Tunisia: Civil Society, by Sheridan Cole, Amy Hawthorne, and Zachary White, on 24 Feb 2022. Available online [<https://pomed.org/kais-saieds-next-target-in-tunisia-civil-society/>]. Last viewed on 16 Jan 2023.

311. See: <https://www.icnl.org/resources/civic-freedom-monitor/tunisia>

312. The opposition boycotted the referendum that resulted in an over 90% support to the new constitution out of a small 30% turnout. See: Tunisia constitutional referendum marked by low turnout as opposition boycotts, France 24, 26 July 2022. Available online [<https://www.france24.com/en/africa/20220726-tunisia-constitutional-referendum-marked-by-low-turnout-as-opposition-boycotts>] last visited on 10 Jan 2023.

313. Draft text was published in the Official Gazette on 30 June 2022, available at [<https://legislation-securite.tn/ar/law/105310>] last visited 28 Dec 2022.

314. UN Treaty Body Database online database [https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Country-ID=178&Lang=EN] last visited 28 Dec. 2022.

well as the African Charter on Human and Peoples' Rights (ACHPR)³¹⁵, but has not yet ratified the Arab Charter of Human Rights (ACHR).³¹⁶ What is important to note here, is that Article 20 of the Tunisian 2014 Constitution states that international agreements approved and ratified by the Assembly of the Representatives of the People has a status superior to that of laws and inferior to that of the Constitution. With a like provision (no.74) contained in the proposed 2022 draft constitution.

3.5.2 Formation of CSOs

Under the new governance structure, the oversight of CSOs has been transferred from the Ministry of the Interior to the Prime Ministry in the 'office of association' under the 'Secretary General' – also referred to as notary general.'

The Decree-Law No. 88 of 2011 governing associations stipulates that two or more natural persons can form an association, provided they are Tunisian nationals or foreign nationals residing in Tunisia and are not less than 16 years of age. The Decree bans individuals who are in a management position in political parties from establishing or managing associations. Tunisian nationals or foreign residents also have the right to become members of associations at the age of 13 or to withdraw from an association in line with the conditions of membership and the law.

The establishment of association in Tunisia is subject to a 'notification system' that has encouraged a staggering increase in registered associations. Individuals wishing to establish an association need only notify the government's general notary in writing of the establishment along with supplying supporting documents³¹⁷ to be followed with publication of a notification (announcing the formation of the association and its basic information) in the Official Gazette. The establishment process contains clear administrative steps, requirements and timelines.³¹⁸ The Decree stipulates that failure to adhere to the set timelines by the authorities triggers an automatic completion of the process, yet some steps were left without deadlines. The association gains full legal personality on the date of the publication of the Notification in the Office Gazette, and is thereafter able to operate, carry out activities and accept financial contributions.³¹⁹

Similar procedures exist for setting up associations network, mergers of associations with corresponding goals and objectives to setup a new association,³²⁰ and establishing a legal presence of a foreign association. In the latter case, the Government's Secretary general may, within 30 days of receipt of the notification, give a reasoned decision rejecting the foreign association's application to have an in-country branch, which can be appealed before the administrative courts.

As for the required government fees, they are limited to covering the administrative fees for document review that normally do not exceed 100 Tunisian dinars (about 33

315. Tunisia has not submitted a national report to the African Commission on Human and Peoples' Rights since 2007. See: African Commission on Human and Peoples' Rights online [<https://www.achpr.org/statepartiestotheafricancharter>] last visited 28 Dec 2022.

316. International Justice Resource Center (IJRC) Available online [<https://ijrcenter.org/>] last visited on 28 Dec. 2022.

317. Article 10 of the Decree-Law No. 88 of 2011 list the information and required documents that includes: the association's name, purpose, objectives, address and branches; copy of the national identity card of the founders of the association who are natural Tunisian persons, or a copy from the guardian's identification card if the founder is under 18 years old, a copy of the residence certificate for the founder's foreigners, 2 original copies of the articles of association signed by the founders or their representatives.

318. Requirements cover supply of specific information in the notification and the Article of Association that including its name, its goals and objectives, its address and any branches, membership requirements, and membership fees, structures and authorities.

319. Article 12 of the Decree-Law No. 88 of 2011.

320. Article 32 of the Decree-Law No. 88 of 2011.



USD), and for publication in the Office Gazette that are calculated based on a set cost rate of 6.3 dinars per line (about 3 USD).

The formation processes are centralized in the capital, which present transportation difficulties for individuals in the regions. The establishment process has been described as bureaucratic, involving at least three different government institutions, and may stall due to inexperience of the filling individuals or errors in the paperwork. To respond to these challenges, a proposal was made by the government to digitals by having an online platform which has not been implemented. Moreover, in some cases, authorities have exploited the gaps in the text, for example, by delaying the issuing of the confirmation of receipt of the notification that is required for publication in the Office Gazette, as the Decree does not specify timelines for this step.

The ‘notification system’ adopted in the Decree that does not require prior approval by the authorities, is itself threatened by other measures that impose additional administrative requirements on associations, such as Law No. 30-2018 establishing the National Registry of Institutions that requires not only public and private companies, but all civil society organizations to register with this new public entity. According to the International Centre for Non-Profit Law (ICNL), this compulsory registration requirement “would effectively lead to an aversion to civic work and would affect the transformative role played by associations. It would also limit the principles of freedom of association”³²¹. Critics of the procedures believe that they expand governmental surveillance and oversight of civil society. Applications for registration may be declined at the discretion of the National Registry Council.³²² Furthermore, several non-governmental organizations argued that the government violated the law by delaying the registration of associations by erecting unnecessary bureaucratic obstacles, often for political motives.³²³

In 2020, the parliament passed two new laws pertaining to civil society: Law No. 30-2020 detailing a “social and solidarity economy” (SSE), which includes specific types of cooperatives and development groups; and Law No. 37-2020 on crowdfunding, providing CSOs with a new source of finance. However, due to political developments, the laws were not implemented.³²⁴

3.5.3 Defining Goals and Objectives

Associations are active in social, economic, cultural and political fields, on a not-for-profit basis. Once established, members are allowed to work under the CSO to achieve its goals and objectives on a permanent basis, provided that in its Articles of Association; activities and funding, the association respects the principles of the rules of law; democracy; pluralism; transparency; equality and human rights, as set in international agreements ratified by Tunisia.³²⁵

321. Monitor Track Civil Space, CIVICUS, article posted 6 Sep. 2018, Available online [<https://monitor.civicus.org/updates/2018/09/06/regulation-restriction-tunisia-new-law-threat-flourishing-civil-society/>] last visited 14 Jan 2023.

322. Freedom House, Freedom in the World 2022, Tunisia, E2. Available online [<https://freedomhouse.org/country/tunisia/freedom-world/2022>] last visited 15 Jan 2023.

323. US Department of State, 2021 Country Reports on Human Rights Practices: Tunisia. Available online [<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/tunisia/>], last visited 15 Jan 2023.

324. ICNL, 2021 Civil Society Organization Sustainability Index, for the Middle East and North Africa, 10th Edition, December 2022, p 67

325. Article 3 of the Decree-Law No. 88 of 2011.

Associations are explicitly prohibited from; adopting goals or undertaking activities that call for violence; hate speech; intolerance, and discrimination on religious, national or regional grounds. Associations may not undertake commercial activities to distribute profits to their members for personal gain or for tax evasion, nor may associations collect funding or provide financial contributions to political parties or political candidates in any elections. This does not prevent associations from expressing their political opinions or position with regard to issues of public interest.³²⁶

Despite the guarantees afforded by the Decree, there has been some reports of instances where the authorities required the removal of certain types of goals, such as ‘fighting corruption’ and ‘monitoring government performance’ from a CSOs Articles of Association at the time of notification for establishment.³²⁷ Noting that Article 5 of the Decree provides associations with the right to evaluate the role of government institutions. It is also well documented that LGBTI activists were detained and punished in accordance with laws that penalize consenting same-sex sexual interactions, “indecenty,” and conduct deemed “offensive to public morals.”³²⁸

3.5.4 Funding

Once associations are formed, they gain full legal personality to act in accordance with the law. This entails the right to ownership,³²⁹ litigation, and disposal of assets, as well as the to accept aid, contributions, donations and bequests. The Decree specifies the financial resources of associations into four types: (i) membership fees; (ii) public aid, (iii) donations and financial contributions, whether local or foreign (while banning the acceptance of financing from countries that do not have diplomatic relation with Tunisia or from organizations that defend the interests and policies of those countries), and (iv) returns derived from the CSOs properties, activities and projects.³³⁰ Associations expenditure is tied to the implementation of the activities that achieve its objectives, and all financial transactions exceeding five hundred (500) dinars (about 163 USD) must be carried out bank or postal transfers or checks, and financial transactions cannot be fragmented in order to circumvent this threshold.³³¹

Accordingly, all associations must open an account with financial institutions that can be either commercial banks or at the post office.³³² Accounts are setup normally within a week upon supply of supporting documents that include a copy of official notification duly published in the Official Gazette, Articles of Association, a copy of the founders’ identification card, the approval of the Government’s General Secretary, and a copy of the tax registration certificate.

326. Article 4 of the Decree-Law No. 88 of 2011.

327. The Erosion of Freedom of Association in Tunisia, Policy Brief by the Kawakibi Democracy Transition Center (KADEM) and the International Center for Not-for-Profit Law (ICNL), December 2014. Available online [<https://www.kawakibi.org/wp-content/uploads/2020/01/Policy-Brief-Vs-Anglaise-1.pdf>] last visited 13 Jan 2023.

328. Amnesty International Report 2021/2022, Tunisia. Available online [<https://www.amnesty.org/en/location/middle-east-and-north-africa/tunisia/report-tunisia/>] last visited 15 Jan 2023.

329. Article 37 of the Decree limits the ownership of property by CSOs to the extent necessary to take a center for it and centers for its branches, or a place for its members to meet, or to achieve its goals in accordance with the law, equally the association may dispose of any real estate that is no longer necessary for its objectives and the price is considered a resource for it.

330. Article 34 of the Decree-Law No. 88 of 2011.

331. Article 37 and 38 of the Decree-Law No. 88 of 2011.

332. La Poste Tunisienne is the company responsible for postal service and operates banking services within Tunisia.



The stipulated threshold of 500 Tunisian Dinars (about 163 USD) is probably inspired by European Union funding rules, and its administrative burden is justified against ensuring written records of expenditure necessary to safeguard the interests of members and the general public. Moreover, the Decree guarantees that the bank or postal accounts of CSOs may not be frozen except by a judicial decision.

Pursuant to the Decree, the State has a responsibility to allocate the necessary amounts within the budget to assist and support associations on the basis of competence, projects and activities. To this end, Decree No. 5183 of 2013 regarding the setting of criteria, procedures and conditions for granting public funding to associations was issued to discriminate and provide oversight on said public expenditure. Up till now, public funding remains modest and carries significant reporting requirements and oversight that includes submitting an annual report to the Court of Audit, providing a detailed description of the public sources of funding and its expenditures.³³³ Leaving a respectable portion of CSOs to benefit from foreign support.

There is limited detailed information on the exact amount of foreign funding to individual CSOs,³³⁴ though 2016 figures show that approximal 11% of associations receive financial support through international and regional sources of funding.³³⁵ Associations receiving foreign funding are required, within one month from the date of the decision to request or accept the funding, to publish a detailed announcement of the foreign funds in a local media publication and on its website and to inform the government's Secretary General in writing against a receipt of guaranteed delivery.³³⁶

In 2018, in response to raising concerns from the international community, such as the European Parliament, related to money laundering, terrorist financing or criminal risks, the Tunisian authorities strengthened its financial monitoring system. This control over the accounts and financial transactions of CSOs by institutions such as the Central Bank, which must approve almost all international transactions, has added costs and results in the loss of time, as associations go through authentication processes to receive funding from legitimate external sources.³³⁷

It is worth noting that local fundraising is allowed with prior approval from the authorities, and acceptance of a donation from companies or individuals is allowed and encouraged. Such donations benefit from an income tax deduction of up to 2%, provided they are to organizations serving the general interest or having a charitable, training, scientific, social or cultural character.

333. Article 44 of the Decree-Law No. 88 of 2011.

334. Foreign Funding to Tunisian CSOs Can Harm Social Capital available online [<https://studies.aljazeera.net/ar/node/1397#a25>] last visited on 14 Jan 2023

335. Enabling Environment National Assessment of Civil Society in Tunisia, report by Al-Kawakibi Democracy Transition Center dated September 2016. Available online [<https://www.civicus.org/documents/reports-and-publications/eena-reports/eena-tunisia-en.pdf>] last visited on 12 Jan 2023.

336. The government has devised standards form to be filed to accept foreign funding.

337. For more information see: 3rd Enhanced Follow-Up Report for the Republic of Tunisia, Middle East and North Africa Financial Action Task Force, dated December 2018. Available online [<https://www.fatf-gafi.org/media/fatf/content/images/MENAFATF-3rd-FUR-Tunisia.pdf>] last visited 22 Dec 2022.

3.5.5 Oversight of CSOs' Work

The Decree guarantees the independence of CSOs and has the necessary tool to monitor CSOs. Under the Decree, CSOs are required to maintain an accounting system in accordance with the national accounting standards and to keep records³³⁸, including financial documents and records that must be kept for a period of ten (10) years. Further requirements and approvals are placed on CSOs with annual resources exceeding one hundred thousand (100,000) dinars (about 32,500 USD) and those receiving public funding, that include the mandatory appointment of an external auditor and submitting annual reports to the government, publication and dissemination to the CSOs general assembly for approval, and in some cases inspection of records.

In this context, Government oversight of CSOs is limited, as administrative authorities are not allowed to interfere with the system of management adopted by the CSO in its Articles of Association. In addition to the fact that competencies are scattered across multiple bodies in charge of monitoring, the Government's General Secretary in charge of CSOs has limited human and material resources to conduct efficient controls. However, inspections may be carried out by administrative authorities in other areas and under various legal instruments, such as the Ministry of Social Affairs and Social Security Fund, that inspect employment and labour conditions, or the Ministry of Finance, that manages the tax system, and can threaten CSOs with tax inspection that might lead to imposing of financial penalties and tax burdens.

Failure to comply with obligations under the Decree will subject a CSO to penalties applied by the authorities in an effective manner, with no protest on the part of civil society. These penalties ascend in severity, starting with a 'warning' to take corrective action, followed by a 'suspension' of activities for a period not exceeding thirty (30) days in case of non-conformity. The suspension is issued by the President of the Court of First Instance in Tunis based on a request by the government and may be appealed. Ending with forceful / juridical 'dissolution' in the event that the CSO in question persists in the violation. The forceful dissolution is done by a decision of the Court of First Instance in Tunis issued at the request of the government or a person with interest. The court's decision may be appealed by the CSO. The penalties imposed under the Decree are next to financial and criminal sanctions imposed by other laws.

The freedom to peacefully assemble or protest is restricted by a 1969 law that allows officials extensive power to ban public assemblies and is severely restrictive. In addition, Tunisia declared a state of emergency on November 25, 2015, which permitted further restrictions on the civil liberties of persons and CSOs. After a terrorist attack on the presidential security transport in Tunis, it was justifiable. The State of Emergency authorized, among other things, the imposition of curfews and the complete prohibition of public demonstrations without a court order³³⁹.

338. These are members' register, the deliberations of the association's management structure, its activities and projects, as well as a record of aid, donations, donations, and bequests, distinguishing between cash and in-kind, public and private, national and foreign.

339. ICNL, Civic Freedom Monitor, Tunisia, last updated 28 October 2022. Available online [<https://www.icnl.org/resources/civic-freedom-monitor/tunisia>], last visited 15 Jan 2023.



in July 2021 based on Article 80 of the constitution, President Kais Saied issued a decree forbidding public meetings of more than three people. The order restricts the activities of non-governmental organizations. Despite the decree, the government did authorize some peaceful protests.³⁴⁰ Nevertheless, it was reported that security personnel employed excessive force to disperse protesters decrying economic hardship and demanding social justice and an end to police repression.³⁴¹

In Tunisia, content filtering is unusual. Popular social media applications such as Facebook, YouTube, Twitter, and foreign blog hosting services are freely accessible. Media and civil society representatives have reported disruptions to Zoom and Microsoft Teams, two online collaboration tools. In March 2022, the two platforms were temporarily disabled when members of the parliament who had been suspended by the President in July 2021 attempted to conduct an online plenary session. Hours after the session, President Kais Saied dissolved parliament permanently.³⁴²

3.5.6 Taxation

The Decree does not contain any specific provisions dealing with tax issues, nor does it provide for a public benefit status for CSOs. CSOs are subject to the national tax systems that are comprised of several laws, mainly: Personal and Corporate Tax Code; Value-Added Tax (VAT) Code; Stamp Duties and Registration Fees; Local Tax Code and Tax Rights and Procedures Code. Pursuant to which CSOs, as juridical entities, need to obtain a taxpayer identification number and submit monthly and annual tax returns.³⁴³ The multitude of laws, administrative burdens, fees and associated additional costs, has made the issue of taxation among the more challenging issues facing CSOs, which have the same obligations as companies. That, if not met, will lead to freezing of transfers and fines.

Due to the ‘not-for-profit’ nature of CSOs, the income tax of 20 percent does not accrue on CSOs’ activities unless they are profit-generating and being distributed to their members. A 2017 decision by the tax authorities³⁴⁴ reaffirmed this principle. A deduction is offered to funding agencies of up to 5% of its income and may reach 10% if the funding is granted to organizations working in priority development areas.³⁴⁵

340. US Department of State

341. Human Rights Watch, World Report 2022, Tunisia. Available online [<https://www.hrw.org/world-report/2022/country-chapters/tunisia#8f8e63>], last visited 15 Jan 2023.

342. Freedom House, Freedom of the Internet, Tunisia. Available online [<https://freedomhouse.org/country/tunisia/freedom-net/2022>] last visited 2023.

343. Review of Tunisia’s tax system, Oxford Business Group, available online [<https://oxfordbusinessgroup.com/reports/tunisia/2016-report/economy/need-to-know-the-national-tax-system-at-a-glance>] last visited on 14 Jan 2023

344. The General Directorate of Studies and the Tax Legislation (DGELF). Available online [http://www.finances.gov.tn/ar/loi_finance] last visited 14 Jan 2023

345. Page 152, Registering Civil Society Societies: A guide to the main laws from 10 countries in Europe and the Middle East and North Africa Region, 2018. Available online [<https://ecnl.org/sites/default/files/files/ECNL-ICNL-Registration-Handbook-Arabic.pdf>] last visited on 14 Jan 2023.

With respect to value-added tax (VAT) or sales tax, which is general rate set at 19 percent, CSOs' purchases and activities are subject to VAT unless they are in certain vital fields or for free and, in all cases, should obtain an exemption certification from the tax authorities. Exempt filed are charitable, educational and training purposes, the food bank, care of the poor and elderly and the like.

In this context, a 2018 decision³⁴⁶ clarified that utilization of grant funds by CSOs are exempt from VAT for local purchases only and capped at the amount of funding received. Foreign CSOs branches that are funded in total from the mother organization abroad may enjoy VAT exemption, however, only within the context of international cooperation. The procedure to obtain the VAT exemption is a heavy one that should be carried out for each purchase or activity, and many CSOs abstain from obtaining the VAT exemption.³⁴⁷

Otherwise, CSOs are subject to other direct and indirect fees and taxes, such as property tax and customs. However, CSOs receiving public funding are not subject to taxes and may benefit from other fiscal advantages such as customs duties if they fall under the supervision of the state in case of import of cultural or sports materials, or materials designed for social and educational promotion.³⁴⁸

3.5.7 Dissolution

The dissolution process of a CSO is clearly outlined in the Decree and can take one of two forms. The first is 'voluntary dissolution', done freely by a decision of the CSO's members issued pursuant to its article of association. Article 19 of the Decree requires that an association's statutes contain the methods of temporary suspension, or dissolution and the rules for the liquidation of assets. In the case of voluntary dissolution, the CSO must, within 30 days of issuing said decision, inform the government's Secretary General in writing of the decision; its details and the appointed accredited liquidator.

The second case is 'juridical (forceful) dissolution'. As noted earlier, this is imposed as a penalty only when the CSO in question violates the law and as a last resort. As noted earlier, it comes at the request of the government or an interested party and is issued by the Court of First Instance of Tunis (the capital) that appoints the liquidator.³⁴⁹ The Dissolution takes effect only once the exhaustion of appeals. The judicial procedures applied in relation to the dissolution and the liquidation of a CSOs property are in

346. Enabling Environment National Assessment of Civil Society in Tunisia, report by Al-Kawakibi Democracy Transition Center dated September 2016. Available online [<https://www.civicus.org/documents/reports-and-publications/eena-reports/eena-tunisia-en.pdf>] last visited on 12 Jan 2023.

347. The standard rate of VAT is 19%. Lower rates of 13% and 7% apply to specifically designated operations. Note that these rates are effective as of 1 January 2018 (previously 18%, 12%, and 6%, respectively). Some operations, products, or services are out of the scope of VAT in Tunisia, and some others are expressly exempt from VAT. For more information please see: PWC Worldwide Tax Summary: Tunisia, dated 22 July 2022. Available online [<https://taxsummaries.pwc.com/tunisia/corporate/other-taxes>] last visited on 16 Jan 2022.

Page 121-122, Registering Civil Society Societies: A guide to the main laws from 10 countries in Europe and the Middle East and North Africa Region, 2018. Available online [<https://ecnl.org/sites/default/files/files/ECNL-ICNL-Registration-Handbook-Arabic.pdf>] last visited on 14 Jan 2023.

348. Enabling Environment National Assessment of Civil Society in Tunisia, report by Al-Kawakibi Democracy Transition Center dated September 2016. Available online [<https://www.civicus.org/documents/reports-and-publications/eena-reports/eena-tunisia-en.pdf>] last visited on 12 Jan 2023.

349. Article 33 of the Decree 88-2011.



accordance with the Code of Civil and Commercial Procedure. For the purpose of liquidation, the CSO must submit a declaration of its movable and improvable property that will be utilised for the purpose of fulfilling its obligation and the disbursement of remaining funds in line with the CSOs articles of association. However, if the funds were a result of aid, domination, gifts or bequests, then they are transferred to another CSO, selected by the authorities, with similar objectives.

These procedures are in line with international standards, and in view of the increasing number of CSOs set up after the revolution, coupled with a rise in unlawful activities, they have been utilised and led to dissolution of hundreds of CSOs for failures to comply with the requirements of the Decree. For example, failure to notify the reception of foreign funding outside the legal deadline or failure to send a copy of the CSO's financial and management reports to the Government's Secretary General and the like. Moreover, the suspension of CSOs and their juridical dissolution has been resorted to indirectly address money laundering risks or of terrorism fears, which threatens the legitimate activities of the community of democratic and human rights activists. It should be noted that no incidents of arbitrary dissolution were reported.

3.5.8 Conclusion

The development of civil society is one of the main accomplishments of the 2011 Tunisian Revolution, empowered by the new legal structure reflected in its Constitution and the Decree No. 88 of 2011. With respect to the rights of freedom and assembly, the authorities must continue to protect these rights in their actions, and the overall legislative and administrative structures that should complement these rights, as their reforms.³⁵⁰

Fears exist that the authorities, in their attempts, to amend or replace Decree No. 88 of 2011 and related laws governing CSOs, have been trending in the wrong direction. Held at bay only by the relentless efforts of the community of CSOs that refused to relinquish their hard-earned gains. This is also true of situation related to Government actions or inactions. For example, the use of force and imprisonments by the authorities or failure to act on recommendations approved by Tunisia during the 3rd UPR cycle in 2017, that aims to accelerate measures to ensure the protection of free speech and freedom of the press, ensuring that human rights defenders are able to carry out their legitimate activities.³⁵¹

This review has identified room for improvements, concerning procedural and administrative modifications such as setting deadlines in the formation procedure, simplification of tax requirements, empowering CSOs' financial capacities, lack of accurate and up-to-date data, as well as putting in place capacity-building programs for workers in CSOs and the public administration bodies that interact with civil

350. In the 2018 the authorities use of force and imprisonment against protestors represented a clear violation of international law. Tunisia: respect and protect the right to freedom of assembly, article published by the ICH on 16 Jan 2018. Available online [<https://www.ich.org/tunisia-respect-and-protect-the-right-to-freedom-of-assembly/>] last visited on 15 Jan 2023.

351. Were no concerted steps have been taken to achieve this objective. See: Human Rights Council, Thirty-sixth session, 11-29 September 2017- Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Tunisia, A/HRC/36/5, 11 July 2017, paragraph 125.92.

society directly and indirectly. These will address part of the challenges and must be accompanied by institutionalising the path for dialogue between government and civil society, in a compulsory, real and transparent manner to guarantee a seat and voice for CSOs in the crafting of legislative tools and administrative measures.

3.6. Libya

3.6.1. The National Legal Framework

3.6.1.1. The Dilemma of the Libyan Legal Framework: As a result of February Revolution of 2011, and the political division since July 2014 that split the country into two legislatively rival regions (the east and the west), there are three main legal frameworks theoretically competing over governing association's work in Libya:

- Gaddafi-era's Law no. 19 of 2001 "on Re-regulating of Civil Associations"; believed to be repealed hypothetically, by the Revolution's Constitutional Declaration of 2011³⁵², and practically by the below mentioned decrees that re-regulate association's work in an entirely different manner³⁵³.
- Decrees no.1 on "Adopting the Regulations for (Local)³⁵⁴ Civil Organizations" and no. 2 of "Regulations on International Non-Governmental Organizations Working in Libya" of 2016, effective in the east.
- Decree no. 286 of 2019 on "Adopting the Organizational Regulation for CCS's (Commission of Civil Society³⁵⁵) Work", effective in the west³⁵⁶.

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 Gaddafi's Law will make it unrealistic for it is not in force neither by CCS-Benghazi nor CCS- Tripoli³⁵⁷ (it is not even on their websites³⁵⁸). 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 (GNA) before the political and legislative division's revival in April 2019.

352. "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." 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-mena-2020-report.pdf>], accessed on February 12, 2023)

353. "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.", Mohamed Omran, Civil society legislation in Libya, Democratic Transition and Human Rights Support Center, October 22, 2021, available at: [<https://daamdth.org/archives/18003?lang=en>], accessed on February 12, 2023.

354. Explanation is added.

355. Some sources call it CSC (Civil Society Commission) but CCS (Commission of Civil Society) is the way it calls itself on its websites. See the web addresses for CCS in footnote no.7.

356. "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 January 23, 2023.

357. "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 February 12, 2023.

358. See CCS-Benghazi's website: <https://ccs.gov.ly/> and CCS-Tripoli's website: <https://ccs.ly/eng-home.html> Both accessed on February 12, 2023.

- 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, 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).

3.6.1.2. The Structure of the Legal Framework in Libya: Any comprehensive legal framework for not-for profit 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 life cycle. 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 that frequently needs prompt 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.

A. Enshrining 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 association that is clandestine or non-peaceful or violating public order, morals, and national security (art 15 of the Constitutional Declaration) that is punishable under article 211 of the Penal code of 1954³⁵⁹ and article 14/2 of the Law No. (3) of 2014 on Counterterrorism³⁶⁰.

359. "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".

360. "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".

- Forming and joining associations by military³⁶¹ staff. It is worth mentioning, herein, that police members are exempted from this restriction according to article 76/1³⁶² of Law no. 6 of 2019 on Amending Law no. 5 of 2018 on Police Force.
- Forming³⁶³ and joining³⁶⁴ 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 sharply opposes the provision of article 15 of the Constitutional Declaration and article 22/1 of the International Covenant on Civil and Political Rights/ICCPR (to which Libya is a member³⁶⁵), 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 like “members of the armed forces and of the police”.³⁶⁶

B. Regulating Association’s Life Cycle: Every association has a life cycle stretches from formation for achieving certain defining goals to dissolution. Consequently, the upcoming sections of this study will focus on analyzing relevant provisions in Decree no. 286 of 2019 that determine these stages along with other vital signs affecting association’s life and work, such as access to funding, government oversight and taxation. It is time to mention, here, that the abovementioned two-article Decree contains as attachment an “Organizational Regulation for CCS’s Work”³⁶⁷ (the Regulation, hereinafter) comprises of seventy detailed articles that will be the substance of our intended thorough analysis.

3.6.2. Formation of CSOs

3.6.2.1. Responsible State Agency: Historically, state agency responsible about registration of associations in Libya has been constantly moving from ministry to another³⁶⁸ until recently settled down at the hand of CCS the “Commission of Civil

361. “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.

362. “[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.

363. “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.

364. “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 organisations whose headquarters is abroad.” Article 208 of the Penal Code.

365. Libya acceded the ICCPR on May 15, 1970. See OHCHR’s website, Status of Ratification Interactive Dashboard, available at: <https://indicators.ohchr.org/> accessed on February 12, 2023.

366. Article 22/2 of ICCPR.

367. «بشأن اعتماد اللائحة التنفيذية لعمل مفوضية المجتمع المدني» 2019 تم تسلسل 286 مقرر بني طولاً قافولاً تموكحاً بيئياً ساجماً رارقاً

368. 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).



Society³⁶⁹; the solo³⁷⁰ responsible agency that works directly under the supervision of the Council of Ministers³⁷¹ with legal and financial independence from other ministries³⁷².

3.6.2.2. Formation Procedures: Formation/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”³⁷³.

A. Formation Procedures for Local Association: Four steps need to be fulfilled 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, type of activities it will assume, in addition to its defining goals and its means of achievement (art 3/1).

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).
2. Defining goals, to check its compatibility with international instruments that are fundamental for the state of law and national legislations, according to the exact wording of the Regulation (art 3/2).
3. Bylaw, to confirm its availability (otherwise application shall be deemed canceled³⁷⁴) in one hand, and in the other, to confirm its fulfillment to the criteria of bylaw’s definition in article 1/4. 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).
4. Number of founding members which should not be less than ten persons as per to article 1/9.

By the end of this step, 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).

369. See Decree no. 649 of 2013 on “Altering the Name of a Center and Reorganizing it”: Renamed the support center to be “the Commission of the Civil Society” while keeping its affiliation to Ministry of Culture (article 1).

370. See Decree no. 286 of 2019 on “Adopting the Organizational Regulation of CCS’s work”: 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).

371. See Decree no. 1160 of 2018 “on Forming CCS’s Board of Administration and Deciding a Provision”: Moved CCS’s affiliation to the Council of Ministers (article 2) and nominated its Board’s members.

372. See Decree no. 1605 of 2018 “on Re-structuring CCS and Deciding Some Provisions”: 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.

373. Paragraph 59 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)

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

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 the 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).
 - **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 judicial review.

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 the 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 contrario³⁷⁵).
- Presumptive approval after the 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).

B. Formation Procedures for Foreign Association: Before the commencement

375. 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.



of its activities in Libya, and in contra with best practices' orientation that foreign associations "must be allowed to register and function without discrimination"³⁷⁶, the Regulation obliges them to undergo a discriminatory and extremely discretionary permission-obtaining process (equals registration) of four steps.

Step (1) Submission: Foreign association should submit a request on a pro forma combined with a very long and exhausting list of documents and requirements, as shown in article 45/1-8³⁷⁷. 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.

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. 26).
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).

Step (3) Deciding: CCS has to decide the request (subject to authorization or denial)³⁷⁸ within one month of submission (art 48). The result of this deciding process shall be one of three:

376. Paragraph 82/k of Report of 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 paragraph 59 of Report of Special Rapporteur of Freedom of Association 2012, and paragraph 20 of African Commission on Human and Peoples' Rights (ACHPR) Guidelines on Freedom of Association and Assembly in Africa 2017 (hereinafter referred to as ACHPR Guidelines), and section 10.1/A+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)..

377. 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.

6. The organization's work program to be implemented in Libya, to include a statement of the following: (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 February 12, 2023.

378. See article 49 of the Regulation.

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 practices³⁷⁹. 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:
 - **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.
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).

C. 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.

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



It is noteworthy, in this regard, to highlight the fact that according to best practices “registration should not be compulsory”³⁸⁰ 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 report³⁸¹.

D. 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”³⁸², unless its members decide otherwise.

3.6.3. Defining Goals and Objectives

Although best practices call upon authorities to “refrain from exerting a priori scrutiny into the objectives”³⁸³ 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:

3.6.3.1. 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.

3.6.3.2. 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.

3.6.3.3. 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 ICCPR³⁸⁴, as long it does not violate the right to freedom of expression enshrined in article 19/1+2 of ICCPR³⁸⁵.

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

381. “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 February 12, 2023.

382. 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).

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

384. “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.”

385. “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.”

3.6.3.4. 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 22³⁸⁶. 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”³⁸⁷.

3.6.3.5. 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. In this regard, the best practices’ belief is that an association should not be punished “merely for altering their activities in relationship to the objectives they originally set out”³⁸⁸.

3.6.3.6. 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 shall be discussed in the next section.

3.6.4. Funding

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 practices³⁸⁹, it ought to enhance association ability to access the various type of funding 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.

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

A. 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 (according to article 37, shall be requested ten days before such acceptance) is at odds with best practices³⁹⁰. 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.

B. Public Campaigning for Funding: Fundraising in public places is forbidden

386. “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.”

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

388. Paragraph 48/e of ACHPR Guidelines.

389. Fundamental principal no. 2 of ACHPR Guidelines.

390. 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), and section 7.2/A of OSI/ICNL Guidelines.



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 accepted³⁹¹. Still, not-for profit associations “should generally be permitted to engage in any legitimate fundraising activity”³⁹². This means that the aforementioned provisions of the Regulation and best practices are 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 the 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.

C. Foreign Funding: 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).

D. Governmental Support: Though the Regulation provides nothing in this regard, other Libyan laws include 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.

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

392. Section 7.1 of OSI/ICNL Guidelines.

3. Article 4 of Law no. 4 of 1972 on Additional Tax for the Benefit of Blind³⁹³ 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)...

3.6.4.2. Foreign Association's Ability to Access Funding.

A. 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).

B. 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).

3.6.5. Oversight of CSO's work

As can be concluded from the different relevant sections of this study, CCS's oversight power stretches all over association's life cycle from formation to dissolution, in an invasive fashion with almost no judicial supervision. This section will be focusing on CCS's oversight powers that are not mentioned in the other ones.

3.6.5.1. 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).
- 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).
- 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 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).

393. 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).

- 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 association 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”³⁹⁴

3.6.5.2. Petitions’ Deciding: CCS has not only the power to take first instance decisions regarding local and foreign associations’ different issues (from registration and permission 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 life cycle.

3.6.5.3. 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). Nonetheless, this requirement, has been the subject of Libyan activists’ complaints who believe that the “financial reporting requirements... surpass the capacity of modest-sized organizations.”³⁹⁵

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):

394. 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 February 12, 2023.

395. 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 February 12, 2023.

1. Legal accountant's report regarding 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."³⁹⁶

3.6.5.4. Auditing Foreign Association: 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.

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). The problem with this intrusive provision is that it leaps directly from violation to punitive oversight (leaving no space for association's self-correction) without any judicial permission.

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).

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



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.

3.6.6. Taxation

Regarding association's preferential treatment (exemption) in taxation, 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).

3.6.6.1. 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.

A. 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."

B. Custom Fees: 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 benefit association from the preferential treatment it contains.

- 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 ³⁹⁷. 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 ³⁹⁸. This can be very useful for association receiving subsids from the public treasury.

C. Other Taxes: Different 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, exempts endowments and recognized associations of purposes related to education, charity, social reform, and sport and culture from the real estate registry fees³⁹⁹.

397. "the 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".

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

399. In a very close wording article 8/b of Decree no. 26 of 1989 of "Regulation Regarding Socialist Real Estate Registry".

- Article 21/2 of Law no. 12 of 2010 on Stamp Tax, exempts documents and acts of association recognized by the state from the stamp tax.
- Article 70/3 of Law No. (11) of 1984 on Traffic Regulations, 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, exempts entertainment activities designed to benefit charitable, cultural, and social purposes from this tax.

D. Social Security: According to article 31/First/3 of Law No. 13 of 1980 on Social Security, it 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 oral⁴⁰⁰) as association is not among those exempted from Law No. (12) of 2010 on Labor Relations⁴⁰¹, association’s workers shall be benefited from the provisions of social security law.

3.6.6.2. Taxation of Foreign Association: Once more, foreign association is a subject for 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 the 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).

3.6.7. Dissolution

It is true that best practices stress on association’s right to “be allowed to have perpetual existence”⁴⁰², 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 resort⁴⁰³ 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.

400. “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”.

401. 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).”

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

403. Paragraph 58 of ACHPR Guidelines. Also, see paragraph 234 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.



3.6.7.1. Dissolution of Local Association.

A. 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).
- Upon a decision of association's general assembly in an extraordinary meeting (para 3).

B. Involuntary Dissolution and Suspension: Reasons and Procedures.

I. 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).
- Association's failure to reach its goals (art 25/2 and 32/2).
- Committing a violation to any provision of in force legislations or repeating violation to its bylaw (art 32/1).
- 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).

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 stop 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).
- 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).

II. Procedures for Involuntary Dissolution (article 36).

- Issuance of dissolution decision that should be reasoned/with a rationale (art 32) for one of the above-mentioned 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 (art 35), 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).

3.6.7.2. Dissolution of Foreign Association.

A. Voluntary Dissolution: The Regulation provides no specific or clear provisions regarding this issue, Notwithstanding, 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).

- 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).

B. Involuntary Dissolution: Reasons and Procedures.

I. 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 its 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 3.6.2.2/B/ 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).

II. 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) the procedures are extended in Section 3.6.2.2/B/ Step (3).

In both cases, the conditions of articles 68 and 69 mentioned in section 3.6.7.2/A are also applicable here.

3.6.8. Conclusion

Although Libya is a member to almost all fundamental international and regional human rights instruments⁴⁰⁴ 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^{405”406}; and albeit the fact that it is among CCS’s existential goals to observe “international rules and general norms” and to promote “good practices”⁴⁰⁷, 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.”⁴⁰⁸
- Couple of years later, the anticipated concerns by US DoS had materialized and documented briefly by HRW in two sperate reports and by the DoS itself (2020 and 2021 reports): “Decree 286 ... includes burdensome registration requirements”⁴⁰⁹and “stringent regulations on funding. Fundraising inside and outside Libya is prohibited”⁴¹⁰. “The decree mandates onerous advance notification

404. See the dates of Libya’s accession/ratification to those instruments on the following survey: 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), ICPED **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).

405. This ruling was explicitly codified in article 13 of Libya 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.”

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

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

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

408. 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 February 12, 2023.

409. 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 February 12, 2023.

410. 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 February 12, 2023.



for group members wanting to attend events”⁴¹¹. 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”⁴¹²

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. 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 Unity⁴¹³) 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”⁴¹⁴ 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”⁴¹⁵.

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.”⁴¹⁶

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, that assessed the Libyan civil society as “continued to have the lowest level of overall sustainability”⁴¹⁷. Additionally, it seems that Decree no. 286 and its Regulation

411. 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 February 12, 2023.

412. HRW, World Report 2022, Events of 2021, Libya, Freedom of Association, available at: [https://www.hrw.org/world-report/2022/country-chapters/libya#04d1d2]. Also, see 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 February 12, 2023.

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

414. Freedom House, Freedom In The World, 2022, Libya, E: Associational and Organizational Rights, Libya: Freedom in the World 2022 Country Report | Freedom House, accessed on February 12, 2023.

415. Defender Center For Human Rights, Libya: Authorities must roll back repressive regulation on civil society and support new legal framework, November 12, 2021, available at [https://defendercenter.org/5596], accessed on February 12, 2023.

416. 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 February 12, 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, [Libya: Freedom in the World 2022 Country Report | Freedom House], accessed on February 12, 2023.

417. 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 5, available at: [https://www.fhi360.org/sites/default/files/media/documents/csosi-me-na-2020-report.pdf], accessed on February 12, 2023 For more details on that weakness see Libya Chapter, Pages 47-55.

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.”⁴¹⁸

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.

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. Nevertheless, 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 ⁴¹⁹ to cast its long grim shadow over Libya’s civil society.

4. Findings

In the selected countries, the legal framework of associations is problematic, does not match international standards, and is surrounded by several legal hurdles that restrict the exercise of this right. The issues are often linked to the primary legislation that governs associations, but in other cases they stem from administrative practices and other legislation that pertains to the activities undertaken by these NGOs, most notably any legislation relating to freedom of assembly and speech.

It is evident that there is no genuine desire to empower civil society, as related laws do not meet international standards, discretion is granted to the public administration to restrict associations, and abuses of power by the public administration are not subject to judicial oversight in most cases. Statutory deadlines pertaining to the formation of an association and its core functions are not met, and if the statutes provide for legal remedies in the event of non-compliance, these remedies are impeded by practical obstacles.

This section summarizes the key findings of the legal analysis based on the international standards identified in section two of the report, including the formation of CSOs, defining their goals and objectives, access to funding, oversight of their activities, taxation, and dissolution.

418. 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 February 12, 2023.

419. 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”.



4.1 Formation of CSOs

The formation of associations with or without legal personality should be permitted for all natural and legal people, nationals and non-nationals, and groupings of such persons. The formation procedure should be straightforward and easily accessible, with the option to challenge any denial in a court of law. In addition, the law must expressly recognize informal associations or permit them to exist without legal consequences.

Libya, Jordan and Iraq require registration of associations through official channels, whereas the formation of associations in the other countries is accomplished through a notification system. There are several violations of the founders' right to free association in both instances.

Jordanian law permits the government to prohibit the registration of associations without cause, this authority is validated by judicial precedents. The registration process in Iraq is complicated and can take up to two years, although the existing law restricts the state's ability to deny registration applications, and denials must be based on a specific provision of law.

In Lebanon, Tunisia, and Morocco, which use the notification system, the authorities use a variety of methods to prevent or unreasonably delay the formation of certain associations, such as administrative requirements that are not included in the main legislation governing associations, refusal to receive the application, or refusal to issue a document to acknowledge the receipt of the application.

Some associations in Lebanon resorted to a creative legal solution by having a bailiff under the direction of a Notary Public deliver the notification to the Ministry of the Interior. However, this option is impractical for the majority of associations because it necessitates hiring an attorney, which can be expensive. Associations have filed complaints with the National Human Rights Council and the Mediator's Institute in Morocco, although their recommendations are not binding on the government. In Tunisia, the notification system is challenged by other administratively burdensome measures, such as the establishment of the National Registry of Institutions.

Failure to complete the formation process will render the organization to an informal entity without legal capacity. In Lebanon, they will also be subject to sanctions, as they can be categorized as secret organizations. In Libya, Iraq and Jordan, they are prohibited from operating in any form.

4.2 Defining Goals and Objectives

The objectives and activities of associations are to be chosen by the founding members and participants, with no participation from the government. In addition, legislation and administrative procedures governing associations should not limit the activities they may engage in or the objectives they may pursue. Associations should be able to pursue the same objectives and engage in the same activities as individuals, with the exception of making a profit. Due to the fact that the right to freedom of association is not absolute, exceptions to this general rule may be permissible as long as they comply with international human rights standards.

Regarding the definition of the goals and objectives of associations, Jordan appeared to be the most restrictive country. In 2018, the Associations Registrar published a classification guide for Jordanian associations. The publication has fourteen sectors in which associations can establish their objectives within preset text. In Libya, legislation scrupulously applies “a priori scrutiny” by prohibiting civic association registration applications from pursuing a list of goals.

In the other countries, the law prohibits associations from adopting objectives or performing actions that violate the Constitution, other national laws, or the public order and manners by using broad language. In practice, these provisions offer authorities considerable discretion in implementing the law to restrict freedom of assembly.

It is intriguing that each country perceives associations with distinct objectives as a threat. In Lebanon, integrating Syrian refugees in the association’s objectives and goals can result in delays or denial of a registration receipt. Women’s rights, human rights, and free speech organizations in Jordan are most likely to be denied approvals by the government. Associations in Morocco that deal with sensitive themes such as Western Sahara, the monarchy, and religion are more likely to be harassed. In Iraq, militias and the government are most likely to target organizations that expose corruption. In all of the selected countries, authorities and the general populace target LGBTQ organizations and any organizations that support them.

4.3 Access to Funding

National law pertaining to associations must expressly provide them the freedom to seek, receive, and utilize funds in accordance with their non-profit purposes. In addition, states should not demand authorization prior to receiving funds. At the same time, Associations shall be subject to the same requirements in laws that are generally applicable to customs, foreign exchange, prevention of money laundering and terrorism, as well as those pertaining to transparency, to the extent that these requirements are compatible with international human rights standards.

It was evident that funding of associations is a common issue in the selected countries, particularly when it comes to public funding, as it appeared insufficient and lacked transparent criteria to distribute funding among associations, and there were no effective means to challenge such decisions.

Jordan appears to have the most stringent legislation regarding foreign funding, as the government has the authority to prohibit foreign funding without providing any grounds. In addition, NGO members alleged that government officials intervene in the proposal of an activity involving foreign funding by adding or removing partners or providing particular sums to government bodies. In Libya, funding is regulated, requires prior authorization, and is subject to minimal judicial oversight.

In the other countries, associations are only required to report foreign funding to the government, but in Lebanon, the financial crisis and lack of access to foreign currency have created new obstacles. Some NGOs use the services of specialized companies to move funds from the country of the donor to the office of the NGO in Lebanon, while others have turned to foreign online banking services to evade official restrictions.

Concerns have been expressed in both Iraq and Lebanon over the fact that some associations get funding from political groups to promote the agendas of political parties, so losing their independence and deviating from their goals and objectives.



Lastly, it should be highlighted that in countries that use the notification system, associations are denied all forms of funding and even the ability to create bank accounts if they do not receive the required documentation from the authorities.

4.4 Oversight of CSOs work

Associations should self-regulate, and when external oversight is required, it should be carried out by an impartial and independent authority and be confined to the bare minimum of institutions and norms for internal governance.

In Iraq, Lebanon, Tunisia, and Morocco, monitoring is conducted by government agencies, such as the interior ministry or the prime minister's office. The law in Jordan established a registry board with the authority to approve the registration of associations and appoint the ministry responsible for overseeing the associations, but the government dominates the board. None of these countries meet the requirements for having an impartial and independent external oversight authority. In Libya, monitoring authority extends over the whole life cycle of an association, from formation to dissolution, in an intrusive manner with essentially little judicial oversight.

There are other deficiencies in the laws of the selected countries, as associations are required to provide specific information such as meeting minutes, membership rosters, or members' personal information. There is no protection if inspections of associations are conducted for unjustified reasons, and the law does not provide a reasonable amount of time for associations to compile documentation required for inspection.

It was also observed that the authorities in the chosen countries employ various laws to restrict the activities of associations, particularly those pertaining to freedom of assembly and public gatherings. These laws fall far short of international norms since authorities may impose many limitations and prohibit activities with restricted recourse to the courts to review these decisions. In Jordan and Morocco, the authorities do not adhere to the legislation, which explicitly states that just prior notice is required for public meetings and gatherings. In Lebanon, the government prohibits public meetings on the grounds of public safety, public order, or public morality. In the chosen countries, freedom of speech is also a struggle, and the criminal law is utilized to prosecute activists which imperil their freedom. Therefore, freedom of association cannot be achieved if other laws pertaining to civic freedoms are incompatible with international norms. In both Iraq and Lebanon, political parties and armed groups may react to nonviolent rallies with violence, putting the lives of activists at risk.

Monitoring the internet activities of associations and their members is another widespread technique. In Jordan, Iraq, Morocco, and Tunisia, it has been established that social media accounts of certain activists have been restricted. Online activism may potentially result in criminal penalties for activists.

4.5 Taxations

In general, minimal tax breaks are provided for associations. Commonly, if an organization acquires public utility status, it enjoys unique tax exemptions; nevertheless, obtaining this status is difficult, the procedure is convoluted, and there is a lack of transparency. Some associations in Jordan applied for this status based on the legal requirements, however they never got a response. In the remaining nations, this status is granted at the discretion of the authorities. In all chosen countries, the number of associations that have obtained this status is minimal. Regarding preferential treatment (exemption) in taxation for associations in Libya, the Regulation states nothing for local associations and only indicates for foreign associations concerning the taxes that must be paid to the state.

Also, domestic contributions cannot be tax-deductible, which explains why associations in the chosen countries depend more on foreign funding.

4.6 Dissolution

Associations should be enabled to dissolve freely in compliance with rules established to safeguard creditors and other stakeholders. Regarding involuntary dissolution, it should be carried out only by impartial, independent courts. If a government entity is given the ability to dissolve an organization administratively, there should be a right of judicial appeal, and the organization should not be dissolved until the appeal is determined or the time for submitting an appeal has passed. A superior option for dissolution would require that the state entity or state attorney ask the court for the association's dissolution in every case.

The Jordanian law grants the registry board the competence to dissolve an organization based on the proposal of the relevant minister in certain restricted circumstances. The decision is enforced instantly before the appeal is settled or the time to file an appeal has passed. The Council of Ministers may issue a resolution dissolving an organization in Lebanon that is applied instantly, however there have been no allegations of this power being abused. Worrisome, however, is that the Lebanese government has used the notion of secret societies to justify dissolution, with the potential to apply this concept to organizations that did not gain government approval (Ilm wa Khabar). In Iraq, the government has the capacity to suspend organizations under specific situations, however, there have been no allegations of this power being misused. In Libya, the CCS has the authority to terminate the functioning of an association through de-registration/dissolution or suspension for specified grounds.

5. Recommendations

All countries analyzed in this research acknowledge the legal value of international treaties and grant them legal standing via their constitutions. International treaties should take priority over national legislations. The selected countries are obligated by public international law to take the necessary steps, in accordance with their constitutional processes and the terms of international and regional treaties, to adopt the laws and other measures required to give effect to the rights recognized in these treaties. These international obligations may serve as the foundation for all attempts to build a legal environment that allows associations to form and fulfill their legitimate goals.

The concluding observations of treaty bodies, the recommendations of the UPR, and associated general comments by treaty bodies and other comparable institutions serve as guides for establishing a legal framework in which the right to peaceful assembly might flourish in the selected nations.

The recommendations needed for each country based on the analysis undertaken and international commitments that must be observed are listed in the table below.

5.1 Formation of Associations	
Iraq, Jordan & Libya	<p>The Federal Law No. 12/2010, KRG Law No. 1/2011, Jordanian Law No. 51/2008 and Libyan Decree no. 286 of 2019</p> <ul style="list-style-type: none"> • Consider revising the law to replace registration (prior permission) system with the notification system. • Submissions and applications should be handled expeditiously and in accordance with the law's response time requirements. • Create an independent regulatory body to administer all association-related laws. • Negative decisions on the establishment of associations must be justified in writing and subject to judicial scrutiny. • Concerned authorities must provide associations with official documentation to practice their work without delay, copies of registration forms must serve as proof of formation for all types of transactions, and the law must expressly recognize informal associations, or it must allow them to operate without legal consequences. • Eliminate the yearly registration renewal requirement for associations in the Kurdistan Region.
Lebanon	<p>Lebanese Association Law of 1909</p> <ul style="list-style-type: none"> • Instead of the Ministry of the Interior, all association-related legislation should be administered by an independent regulatory body. • Set a realistic deadline for issuing a registration receipt depending on the founders' notification. In the event of a delay or denial to provide the registration receipt, legal assurances and alternatives must be presented. • The phase of investigation and inquiry should only be done under extraordinary and justifiable conditions within a reasonable timeframe. • The notification system should be applicable to all types of associations, including foreign, youth, and sports organizations. • Concerned authorities must provide associations with official documentation to practice their work without delay, copies of notification forms must serve as proof of formation for all types of transactions, and the law must expressly recognize informal associations, or it must allow them to operate without legal consequences.

Morocco	<p>Moroccan Decree No. 1-58-377</p> <ul style="list-style-type: none"> • Instead of local governments, an independent regulatory body should handle all association-related regulations. • All dates specified by law must be adhered to, and sufficient legal alternatives must be provided in the event that deadlines are not met, such as copies of notification forms serving as evidence of formation for all sorts of transactions. • All actions and inactions affecting the formation of associations negatively should be subject to judicial examination. • Clearly state the right of foreigners to form and join associations. • The law must explicitly recognize informal associations, or it must let them to function without legal repercussions.
Tunisia	<p>The Tunisian Decree-Law No. 88 of 2011</p> <ul style="list-style-type: none"> • Instead of general notaries, the government's secretary general, or any other government entity, establish an independent regulatory body to oversee all areas of association activities. • Establish precise timelines for completing all administrative work associated with the creation of associations. • All actions and inactions affecting the formation of associations negatively should be subject to judicial review. • In the case that deadlines are not met, adequate legal alternatives must be given, such as copies of notification forms acting as proof of formation for all types of transactions if publication of the Notification in the Office Gazette was delayed for an unjustifiable cause. • Reduce bureaucracy in all steps related to formation of associations. • Activate the online platform to simplify the establishment of CSOs, particularly for founders located outside the capital.

5.2 Goals and Objectives

Jordan and Libya	<p>Jordanian Law No. 51/2008 and Libyan Decree no. 286 of 2019</p> <ul style="list-style-type: none"> • Eliminate any administrative constraints on the definition of the goals and objectives of associations. Associations should have access to the same objectives and activities as individuals acting alone, with the exception of profit-making. • Provide judicial review for any intervention by the government in the development of associational aims and objectives.
Iraq, Lebanon, Morocco, and Tunisia	<p>The Federal Law No. 12/2010, KRG Law No. 1/2011, Lebanese Association Law of 1909, Moroccan Decree No. 1-58-377 and Tunisian Decree-Law No. 88 of 2011</p> <ul style="list-style-type: none"> • Authorities should always believe that an association's intended goals and objectives are legitimate, and they should avoid making hasty conclusions or speculative interpretations of terms used in the organization's goals and objectives. • Prohibit any intervention in establishing the association's goals and objectives, as specified by its founders, so long as they are legal and in accordance with international standards. • Provide judicial review for any intervention by the government in the development of associational aims and objectives.

5.3 Access to Funding

Iraq, Jordan, Lebanon, Morocco, Tunisia, and Libya	<p>The Federal Law No. 12/2010, KRG Law No. 1/2011, Jordanian Law No. 51/2008, Lebanese Association Law of 1909, Moroccan Decree No. 1-58-377, Tunisian Decree-Law No. 88 of 2011 and Libyan Decree no. 286 of 2019.</p> <ul style="list-style-type: none"> • Any national public funding provided should be done a process that is transparent, including selection criteria, decision-making process, amounts of cash provided, their recipients, and the rationale for funding decisions. • If the organization receives no state benefits, including tax exemption, and does not engage in economic activities or public fundraising, reporting to state authorities should be limited to periodic updates of information required to be included in the public registry, such as the identity and contact information of the general representative authorized to receive official notices on behalf of the organization. • all associations, whether registered or unregistered, should have the right to seek and secure funding and resources.
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<p>Additional Recommendations – Jordan and Libya</p>	<p>Jordanian Law No. 51/2008 and Libyan Decree no. 286 of 2019</p> <ul style="list-style-type: none"> • The law should not require permission before accepting foreign funds, and the current system of prior approval should be replaced by a notification system. • All negative decisions about the denial of foreign financing should be justifiable and directly tied to the requirements of laws generally applicable to customs, foreign currency, money laundering prevention, terrorism, and transparency. Moreover, they are subject to swift court review. • To guarantee that legitimate opportunities for foreign funding are not lost or missed, all statutory deadlines must be adhered to, and reasonable and realistic alternatives must be made available. • Authorities should avoid from interfering with the funded project at all phases, including design, partner selection, execution, and completion.
<p>Additional Recommendations – Lebanon</p>	<p>Lebanese Association Law of 1909</p> <ul style="list-style-type: none"> • Associations without a registration receipt (Ilam wa Khabar) should not be prevented from establishing bank accounts or gaining access to funds. • Take the appropriate steps to mitigate the impact of limitations placed on associations as a result of the financial crisis, including accepting foreign money via Lebanese banks.

5.4 Oversight of CSOs Work

<p>Iraq, Jordan, Lebanon, Morocco, Tunisia, and Libya.</p>	<p>The Federal Law No. 12/2010, KRG Law No. 1/2011, Jordanian Law No. 51/2008, Lebanese Association Law of 1909, Moroccan Decree No. 1-58-377, Tunisian Decree-Law No. 88 of 2011 and Libyan Decree no. 286 of 2019.</p> <ul style="list-style-type: none"> • The governing board of an association should have ultimate power over administration, formulate policies, and exercise regular control and oversight over its finances, operations, and activities. • When external monitoring is required, it should be undertaken by an unbiased and independent body and be kept to a minimum. • Associations should not be required to provide particular information, such as meeting minutes, membership rosters, or members' personally identifiable information. • Any kind of examination by public entities should be authorized only in response to a court order based on legal reasons and international standards. • Associations must be given sufficient time to produce the necessary documents for examination, which must be clearly described and reasonable. If inspections are done for unjustifiable reasons or if this power is used to harass, the law should provide recourse to the judicial system as a method of protection. • Other laws pertaining to associational activities should be compliant with international norms, particularly those governing peaceful assembly, public meetings, and gatherings. • The use of the internet and social media should be free from intervention by the government, including restrictions on information access, censorship, and privacy.
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5.5 Taxation

<p>Iraq, Jordan, Lebanon, Morocco, Tunisia, and Libya.</p>	<p>The Federal Law No. 12/2010, KRG Law No. 1/2011, Jordanian Law No. 51/2008, Lebanese Association Law of 1909, Moroccan Decree No. 1-58-377, Tunisian Decree-Law No. 88 of 2011 and Libyan Decree no. 286 of 2019.</p> <ul style="list-style-type: none"> • For the purpose of obtaining special state advantages, such as special tax benefits, the process of gaining Public Utility status should be straightforward and transparent, with distinct phases. • In the event of unfavorable decisions, judicial review should be possible. • The awarding of tax advantages should be unbiased, non-partisan, and transparent, based on clear and objective standards, and the giving of benefits should not be used to undermine the independence of the civil society space. • Expand the purposes and objectives of organizations that may qualify for Public Utility Status, including the promotion of education, health, research, culture, the relief of poverty, human rights, minority interests, and the environment. To achieve inclusion, a catchall category such as "or any other organization created mainly for the public welfare" should be included.
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5.6 Dissolution

<p>Iraq, Jordan, Lebanon, Morocco, Tunisia, and Libya.</p>	<p>The Federal Law No. 12/2010, KRG Law No. 1/2011, Jordanian Law No. 51/2008, Lebanese Association Law of 1909, Moroccan Decree No. 1-58-377, Tunisian Decree-Law No. 88 of 2011 and Libyan Decree no. 286 of 2019</p> <ul style="list-style-type: none"> To promote a vigorous and autonomous civic sector, all laws and administrative procedures contain intermediate sanctions for a variety of breaches such as fines. The dissolution of an association should be a last option. The state should only be allowed to take such action for the most flagrant and evident infractions, and then, unless there is an urgent danger of irreparable damage, only after providing the association a chance to correct its conduct.
<p>Additional Recommendations – Jordan, Lebanon, and Libya.</p>	<p>Jordanian Law No. 51/2008, Lebanese Association Law of 1909, and Libyan Decree no. 286 of 2019</p> <ul style="list-style-type: none"> Involuntary dissolution is a severe action that must be carried out by impartial, impartial courts. If a state entity is given the ability to dissolve an organization administratively, there should be a right of judicial appeal, and the association should not be dissolved until the appeal is determined or the time for submitting an appeal has passed. A better option for dissolution would require that the state entity or state attorney ask the court for the organization's dissolution in every case.

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