

COMPARATIVE ANALYSIS OF FREEDOM OF ASSOCIATION IN THE THREE COUNTRIES

Bahrain, Kuwait, and Yemen share common characteristics in terms of freedom of association. The respective government policies are largely restrictive rather than liberal, and are nationalistic rather than universal. These policies reflect a severely controlling environment starting by prohibiting the formation of an association without governmental approval to openly interfering in their internal management and maintaining conditions that may lead to dissolution at will. Therefore, the ability of associations to be formed and function freely is seriously impaired.

Despite the fact the three countries have become members of the international human rights community, none of them has initiated the process of law adaptation and reforms to bring the national laws, including those related to freedom of association, to be in conformity with international standards.

Governmental Policies Leading to Serious Violations of the Right to Associate

Absence of provisions related to all type of associations

While the Constitutions of three countries recognize and guarantee the right to freedom of association, Bahrain and Kuwait limit this right to NGOs and trade unions only. The Yemen recognizes that right to the three categories - NGOs, trade unions, and political parties. Bahrain only accept the concept of "political associations" while Kuwait does not have any legal framework for political parties, though political groups exist and publicly carry out political activities.

The lack of provisions that guarantee and protect political parties in Bahrain and Kuwait raises concern as to what extent their citizens are enjoying real political freedom. The existence of political parties is one important indicator of the existence of a healthy political life. Political parties are recognized as means of enjoying political rights. The

HRC's General Comment no 25 regarding Article 25 of ICCPR states that “in order to ensure the full enjoyment of rights protected by Article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. (...). It also implies the full enjoyment and respect for the rights guaranteed in Articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations; freedom to debate public affairs; to hold peaceful demonstrations and meetings; to criticize and oppose; to publish political materials; to campaign for elections and to advertise political ideas”. The General Comment adds “[t]he right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25. Political parties and membership in parties play a significant role in the conduct of public affairs and the election process. States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights there under”.¹

Another common characteristic is the fact that the laws of association in the three countries do not envisage human rights organizations, and today, those working in the field of human rights are registered either as social or cultural associations, unless registered as civil companies.

Prior Authorization is a prerequisite

The three countries have, with the exception for the trade unions, the system of prior authorization before an association may carry out any activity.

This is in violation of Articles 22 and 25 of the ICCPR. The Special Representative of the Secretary-General on Human Rights Defenders states clearly states that "registration should not be compulsory. NGOs should be allowed to exist and carry out collective activities without

¹ HRC, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12/07/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)

having to register if they so wish".² The Special Representative recommends that States should 'adopt regimes of "declaration" or "notification" whereby an organization is considered a legal entity as soon as it has notified its existence to the relevant administration by providing basic information, including the names and addresses of the founder(s) and the name, address, statutes and purpose of the organization".³

Exclusion of categories from forming or joining trade unions

Although the legal provisions of trade unions in the three countries comply with international labour standards as far as the deposit system for the formation procedures, unless the administrative authority object its formation, some categories of workers are excluded from this right.

This is the case of workers in the public sector in both Yemen and Bahrain the formation of trade unions in the public sector is restricted. In Bahrain, all the public servants are prohibited from forming unions, in Yemen, are only excluded those holding high level ministerial posts. This is in violation to ILO standards that considered this exclusion to be a violation of the right to freedom of association. The ILO Committee on Freedom of Association reiterated that "[t]he standards contained in Convention No. 87 apply to all workers "without distinction whatsoever", and are therefore applicable to state employees. It is indeed considered inequitable to draw any distinction in trade union matters between workers in the private sector and public servants, since workers in both categories are entitled to organize themselves for the defense of their interests". The only accepted exceptions under ILO standards are the armed forces and the police forces.⁴

2 General Assembly, Fifty-ninth session, Human rights defenders, Note by the Secretary-General, report submitted by the Special Representative of the Secretary-General on human rights defenders, 1 Oct 2004, at III, 82, [Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders] <http://daccessdds.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>. [Special representative Report 2004], at III

3 2004 Special Representative Report 2004, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative Report of the Secretary General on Human Rights Defenders at (b)

4 International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 216, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

Setting repressive standards to hinder the establishment of associations.

The three countries also share common repressive standards for the formation of an association such as requiring a certain number of founding members, age, nationality, the prohibition of the establishment of more than one trade union per establishment, etc..

Considering that it is not always possible to meet such requirement, one can approve that such provisions are “tool to impose a serious obstacle for the establishment of trade unions”. ILO stated that although the registration procedure may often constitute a mere formality, there are a number of countries in which the law endows the relevant authorities various degrees of discretionary power in deciding whether or not an organization meets all the conditions required for registration. In essence, this creates a situation similar to that in which previous authorization is required and as such is used as a tool to impose a serious obstacle for the establishment of trade unions.⁵

The right to establish federations and confederations

Membership in federations is not compulsory in any of the concerned countries in line with ILO jurisprudence which considers that forced membership in federations is a violation of trade unions' right to freedom of association.⁶

The right to form federations and confederations is a manifestation of the right to organize recognized by Article 2 of the Convention 87. Unlike Bahrain, Kuwait and Yemen allow for one federation only. That contradicts Article 5 of Convention No. 87.⁷

ILO expressed concerns regarding the Yemeni law which names the General Federation of Trade Unions of Yemen (GFTUY) and impedes the establishment of a second federation in the country.⁸ ILO Committee on Freedom of

5 Ibid, at 296, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

6 Ibid.

7 The ILO Committee states that “[w]hen only one confederation of workers may exist in a country, and the right to establish federations is limited to such federations as may be established by the unions mentioned in the law... This is incompatible with Article 5 of Convention 87” International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 716, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

8 CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to

Association considers that unification of the trade union movement by the law is contrary to the principles enacted in Articles 2 and 11 of the Convention. The Committee therefore requests of the government to amend the Law on Trade Unions so as to repeal specific reference to GFTUY. There is a marked difference, according to the Committee, between a legally imposed monopoly and a voluntary grouping of workers.⁹

As for Kuwait, the ILO had considered that “the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of the Convention No. 87 and with the principles of freedom of association.”¹⁰ It added that the current law does not allow for the establishment of more than a Federation, so it recommended that the Kuwaiti government takes necessary measures to include in the new draft law the right of workers to establish trade union organizations and federations of their own choosing.

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Prohibiting undefined “political” activities

The three countries prohibits NGOs and trade unions (except Yemen) to be involved in political activities without defining and determining what exactly they consider to be “political”. The Special Representative stresses that such prohibitions should be clearly specified to avoid arbitrary decisions taken by the authorities and recommends that no restrictions should be imposed on activities in the defense of human rights, provided that they respect the basic principles of transparency and non-violence. Any restriction on the ground of “public order/morals/ethics” and any criteria limiting the right to freely associate must be adequately detailed and any human rights-related

Organise Convention, 1948 (No. 87) Yemen (ratification: 1976) Published: 2007, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9114&chapter=6&query=Yemen%40ref&highlight=&querytype=bool&context=0>

9 *ibid*

10 *supra*, note 412

11 ILO, CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kuwait, Published: 2007, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>

activities must be definitely excluded from these restrictions.¹²

Furthermore the Special Representative considers that "the legality of an organization's purposes and its conformity with the law should be reviewed only when a complaint has been lodged against the organization. Only an independent judicial body should be given the authority to review an organization's purposes and determine whether they are in breach of existing laws."¹³

The prohibition placed on trade unions from engaging in any political activity is considered a violation of Article 3 of Convention 87.¹⁴ The ILO affirmed that "*legislative stipulations prohibiting all political activities for trade unions give rise to serious contradictions with regard to the provisions of the Convention. Therefore, some degree of flexibility in legislation is desirable so that the appropriate balance can be achieved between, on the one hand, the legitimate interest of organizations expressing their viewpoint on matters of economic and social policy affecting their members and workers in general, and the separation of political activities from trade union activities in the strict sense of the term, on the other hand.*"¹⁵

Refusal or Rejection of Registration

The three countries give the Administration the right to object to, or refuse altogether, the registration of an association in a variety of ways. In Bahrain, the laws stipulate that the silence of the administrative authority on an application for registration is an implicit rejection. Conversely, in Yemen, the silence of the administrative authority is an implicit approval. In Kuwait, there is no

12 Special Representative Report 2004 , at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders

13 Special Representative Report 2004 , at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders

14 CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Kuwait, published: 2003, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=6712&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>

15 ILO, CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kuwait, Published: 2007, available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=9069&chapter=6&query=Kuwait%40ref&highlight=&querytype=bool&context=0>

provision regarding the silence of the administrative authority.

The UN Special Representative on human rights defenders emphasized that where a registration system is in place, the law must set short time limits for the state to respond to the applications. Additionally, the decisions to deny registration should be fully explained and cannot be politically motivated. Failure to provide a response should result in the NGO being considered as legally operative.¹⁶

In each of the countries, the criteria for approving or rejecting an application use vague, general wording that gives the authorities t broad discretion in interpreting the provisions concerned and thus in making the final decision regarding the registration. This clearly contradicts Article 22 of ICCPR which states that in a democratic society "*the restrictions should be prescribed by law and in interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights of freedoms of others.*"¹⁷ the Special Representative who notes that "*criteria for registration included in national laws, where they exist, are frequently ambiguous enough to allow authorities broad discretion in their interpretation, resulting in arbitrary denial of registration for human rights organizations. In one country, registration can be denied based on an assessment that an NGO's activities do not strive towards the "public interest", without defining what that means. In other countries, authorities are granted wide powers to decide whether a new NGO is needed in a given field and can require organizations to change their objectives. In yet another country, registration can be denied if the applying organization is deemed to be "undesirable" by the registration authorities, once again not providing a definition of this notion or that its proposed activities are "illegal".*"¹⁸

Possibility of Appeal against Rejection

While the ability of NGOs to challenge a negative decision

16 Special Representative Report 2004, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative Report of the Secretary General on Human Rights Defenders at (c)

17 ICCPR, Article 22 para 2

18 Special Representative Report 2004, at III, 57

before an independent court is considered a main guarantee for freedom of association,¹⁹ only Bahrain and Yemen allow for appeals against a negative decision before a judicial court. However, the process appears to be lengthy, particularly in cases where the rejection was implicit.

Control and interference over authorized associations

Interference in internal management

The authorities interfere in the internal affairs of associations by imposing comprehensive regulation of the internal management of associations, setting rules for general assemblies and board meetings, attending the general assemblies and retaining the right to hold elections and entire meetings, requesting annual reports and copies of management decisions. This blatantly violates international standards relating to freedom of association. The Special representative notes in this respect that:

Where State authorities are given the right to monitor and interfere in the management of NGOs, defenders have seen their independence and work threatened. In one State, the law grants the authorities the right to monitor the election of an organization's board members and to request that an internal decision be withdrawn when it is deemed to be in conflict with national regulations.²⁰

The Special Representative recommends that States should be legally barred from interfering with the management structure and activities of NGOs. In particular, the Representative encourages States to repeal legal provisions allowing for any State control of activities carried out in defense of human rights. Where concern arises regarding the activities of a particular organization, such concern must be brought before a fair, impartial and

¹⁹ Ibid, at III, 59

²⁰ Ibid , at III, 63

independent judicial authority through proceedings that are transparent and conducted in accordance with the principles of due process, open to public and international scrutiny.²¹

The executive authorities should issue regulations or executive by-laws to explain the implementation of legislature. But it appears that these by-laws set rules and conditions that are not actually in conformity with the laws. For example in Yemen, the by-law of the Law of Association gives the administrative authority the right to halt the execution of the decisions taken by the associations' board. Another example is the practice of renewal of authorization, a condition neither foreseen in the law nor in the bylaw.

Control over foreign funding

In the three countries, the level of control over foreign funding depends on the categories of association. In Yemen, associations are required to inform the authorities of such transactions, while in Bahrain and Kuwait the authorities have to give their prior approval for such operations.

The HRC and the Committee of Social, Economic and Cultural Rights as well as the Special Representative have stressed that foreign funding should be accessible and unrestricted. The Special Representative argues *that governments have to permit NGOs to access foreign funding as part of international cooperation, to which civil society is entitled like governments*. Transparency is the only legitimate requirement for NGOs.²²

Both Bahrain and Kuwait restrict trade union access to foreign funding. The Committee on ECSR considers that the control on foreign funding available for associations infringes their right to freedom of association and the right to form trade unions.²³ The ILO Committee considers that

21 Special Representative Report 2004 , at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary-General on Human Rights Defenders

22 Special Representative Report 2004 , at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary general on Human Rights Defenders at (f)

23 CESRC, Summary record of the 11th meeting : Egypt. 08/05/2000, E/C.12/2000/SR.11. available at <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/4c8bd7213e4a804c802568dc005755e9?OpenDocument>

it is to the “organizations themselves to decide whether they shall receive funding for legitimate activities to promote and defend human rights and trade union rights”.

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In addition ILO states that "trade unions should not be required to obtain prior authorization to receive international financial assistance in their trade union activities." ²⁵ The ILO further states, that “[a]ll national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers respectively, whether or not they are affiliated to the latter.” ²⁶

Foreign financial support of political parties is strictly prohibited. In Yemen, even donations from moral persons are not allowed. Prohibiting political parties from receiving foreign funding does not contradict international law. The draft General Comment on Article 25 of the ICCPR ²⁷ (participation in public affairs) mentions that to ensure transparency in funding, paragraph 25 obligates States parties to require political parties to disclose all sources of contributions they receive from individuals, corporations and organizations. However, the last version of the GC omitted any mention of the funding issue. ²⁸

Right to Strike

Only Yemen respects the right to strike. Bahrain and Kuwait have made reservations correspond with the non-respect of the right of strike in both countries national laws.

The right to strike is considered as “necessary to safeguard the exercise specifically of trade union rights

²⁴ International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 494, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

²⁵ International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 744, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

²⁶ Ibid, at 743, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

²⁷ HRC, , Summary record of the 1493rd meeting, 20/10/96, CCPR/C/SR.1493, Draft general comment on Article 25 of the Covenant, available at <http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/59022f96612ed335802565d200574169?OpenDocument&Highlight=0,funding>

²⁸ HRC, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12/07/96, CCPR/C/21/Rev.1/Add.7, General Comment No. 25 available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument)

such as (...) the right to strike in non-essential services.”²⁹ The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services which, if interrupted, would endanger the life, personal safety or health of the whole or part of the population.³⁰

Repression that may lead to dissolution

The Bahraini legal provisions allow for the suspension of NGOs whereas Kuwaiti and Yemeni laws are silent on this issue. In some cases, as noted by the Special Representative, governmental bodies such as ministries and territorial administrations have the authority to suspend the activities of NGOs without prior judicial review, for example, suspensions on grounds of “disturbance to public order”. In such cases, ministers are granted the authority to dissolve any association seen to depart from its original objective or whose activities seriously undermine public order or state security. While this ministerial decision may be challenged before an administrative court, the provisions give state apparatus discretionary power sufficient to end the operations of NGOs.³¹

As such legal proceedings, even when they do not result in the actual closure of human rights organizations, constitute a serious constraint on the time, financial and human resources of human rights defenders,³² the Special Representative recommends that the power to suspend the activities of human rights groups should be granted exclusively to judicial courts, only in situations of a clear and imminent threat that may directly result from such activities and when this situation is objectively ascertained.³³

29 ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 388 -395, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

30 Ibid, at 500, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

31 Special Representative Report 2004, at III, 72

32 ibid, at III, 74

33 ibid, at III, 82, (r) Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary General on Human Rights Defenders

The Yemeni legal provisions entitle only a judicial court to order the dissolution of NGOs. It is unclear if court's decision is subject to appeal. Alternatively, although Bahraini law does provide for administrative dissolution, such dissolution may be challenged before a judicial court. Slightly more restrictive, the Kuwaiti law allows for administrative dissolution and includes no possibility to appeal against the decision. Also problematic for associations are the declared grounds for dissolution: such as "serious breach of the provisions of the law; the violation of the stipulated conditions regarding foreign financing and for joining foreign entities". These are ambiguous enough for various interpretations and thus may be manipulated arbitrarily by the administrative authorities. In all events, the three countries prohibit members from continuing activities during court proceedings.

The HRC notes that the requirements of paragraph 2 of Article 22 of the ICCPR indicate that the reasons justifying the dissolution of an NGO must be prescribed by law, such as is necessary in a democratic society and for the interest of national security or public safety, public order and the protection of public health or morals or the protection of the rights of freedoms of others. The Special Representative expressed concern over the possibility of misusing provisions regarding the suspension and dissolution of organizations and noted that "In a number of countries, the law grants the Ministry of Security, or its equivalent, the right to issue warnings to organizations. (...) Authorities, in particular ministries have abused their power to issue warnings as a means of intimidating and threatening human rights NGOs. A significant number of NGOs have been sued or shut down under this procedure". It was further elaborated that the actions taken by the government against NGOs must be proportionate; as such, administrative irregularities or non-essential changes in the specifics of an organization can never be considered as sufficient grounds for closing down an organization. Also, such decisions should necessarily be subject to appeal and judicial review.^{34 35}

34 Special Representative Report 2004, at III, 71

35 Ibid, at III, 82, (s) Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary General on Human Rights

In conformity with the previously mentioned principles, the dissolution of political parties or associations in Bahrain and Yemen can be decided only by a judicial decision. The same applies for the dissolution of trade unions in the three examined countries, in conformity with the declaration of the ILO Committee on Freedom of Association.³⁶

Penalization for Membership of Non Registered or Dissolved Associations

The three countries punish by prison and fine associations for starting activities before registration. The Special Representative considered this issue and noted that a common feature of many laws that restrict freedom of associations is the criminalization of non-registered entities.³⁷ The Special Representative recommends in this respect that NGOs should be presumed to be operating legally until it is proven otherwise, in particular, during the entire registration process.³⁸

Inadequate Protection against anti-union discrimination

National laws contain provisions protecting trade unionists from anti-union discriminatory measures. However there are identifiable shortcomings. Both Kuwait and Yemen do not specify the consequences for acts of anti-union discrimination and fails to protect the worker from losing his/her job. Only Bahrain provides effective protection and remedies through compensation and reinstating workers to their positions if an act of dismissal was taken due to their trade union activities. These provisions contained in the Bahraini laws comply with ILO directives regarding anti-union discrimination protection which constitutes one of the most essential guarantees of workers' freedom of

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36 This declaration states that dissolution of unions is "a measure which should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defense are fully guaranteed" International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 699, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

37 Special Representative Report 2004, at III, 51

38 Ibid, at III, 82, Good practices and recommendations in conformity with the Declaration, recommendations of the Special Representative of the Secretary General on Human Rights
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association, including protection against discrimination in hiring and dismissal for trade union related activities.^{39 40}

Discrimination between Nationals and Non-Nationals

The three countries have demonstrated various degrees of discrimination between nationals and non-nationals in terms of the right to form or join associations or trade unions, in contravention to their international human and labour rights obligations.

In Bahrain and Yemen, migrant workers may form or join NGOs and/or trade unions provided that they are not exclusively composed of foreigners. In Kuwait they may join associations only as supporting members deprived of the right to vote or stand for elections. As for trade unions, they can join on the condition of having resided in Kuwait for at least five years.

The HCR General Comment (15) recalls that (...) State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (ICCPR art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.⁴¹

ILO stresses that all workers should have the right to form or join trade unions without discrimination. The discrimination against migrants' rights in terms of full membership and member rights violates the basic principle of non-discrimination between nationals and non-nationals.⁴² Similarly, ILO considers that all workers regardless of race, nationality or other factors should be permitted to access trade union posts and stand for elections, at least after a reasonable period of residence in the host country.⁴³ The ILO Committee on Freedom of

39 International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 769 et s., available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

40 ILO, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 813, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

41 HRC, General Comment 15 adopted on 22/7/1986 at para.1, available at <http://www1.umn.edu/humanrts/arabic/hrc-gc15.html>

42 International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revised) edition 2006, at 216, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

43 Ibid, at 420, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

Association noted that “[w]ith regard to the denial of the right to organize for migrant workers in an irregular situation, the Committee recalled that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87,” and it therefore requested that the government take the terms of Article 2 of Convention No. 87 into account, in considering the legislation in question.⁴⁴

44 Ibid, at 214, available at <http://www.ilo.org/ilolex/english/23e2006.pdf>

CONCLUSION

Restrictions on freedom of association of trade unions, political parties and human rights NGOs subsist in Bahrain, Kuwait and Yemen, to various levels. Undue restrictions in the three countries include the refusal of registration, sometimes on vague grounds; the interference in the internal management of associations; and discrimination against non-citizens. Other restrictions vary between the three countries. For example, the lack of protection against anti-union discrimination (Yemen and Kuwait); the widespread power of the authorities to suspend (Bahrain) or dissolve NGOs (Bahrain and Kuwait); the control over foreign funding (Bahrain and Kuwait); and undue restrictions on the right to strike (Bahrain and Kuwait).

The willingness of the governments in each of the three countries to allow for participation of civil society in public affairs is a fairly recent development and as a result, this relationship seems to lack a sense of mutual trust. On the one hand, the government regards these entities as a threat, having hidden political agendas. On the other hand, civil society organizations regard the government's declaration to maintain an open, pluralist society as only cosmetic, illusory one, the real intention of the government being to maintain power in its own hands.

As Bahrain, Kuwait, and Yemen are currently amending several of their respective laws of association, the effective participation of the civil society in the elaboration of more liberal laws that would guarantee freedom of association in theory and in practice would indeed be seen as a positive and encouraging sign of greater cooperation.

RECOMMENDATIONS

The International Federation for Human Rights and the Arab Institute for Human Rights urge

The Bahraini, Kuwaiti and Yemeni authorities:

- to ratify all international human and labour rights instruments pertaining to the right to freedom of association and to lift all reservations made at the time of ratification of these instruments ;
- to amend the relevant national laws accordingly and in particular,
 - Regarding the right to associate and establish an association:
 - to suppress from their legislation pertaining to freedom of association all vague provisions allowing for discretionary interpretation and broad restrictions undermining the right to freedom of association;
 - to adopt a policy of “declaration” or “notification” rather than an *a priori* authorization
 - to encourage the formation of human rights NGOs and more generally, not to restrict the establishment of associations because of the presence of another association with similar objectives and/or the limitation to one association only; and to allow the creation of more than one trade union per establishment.
 - to enact more liberal laws pertaining to political parties
 - Regarding the right of an individual to join or not an association, including the protection against discrimination based on citizenship:

-to amend their legislation to guarantee the right to freedom of association to nationals and non-nationals residing and working in the country without any discrimination;

-to amend their trade union laws in order to be in line with international labour standards to ensure to all workers , including domestic workers, workers in the public sector and migrant workers, (with the exception of the armed forces and the police as permitted by the international standards) the right to organize;

- Regarding the right to raise financial resources:

- to ensure and facilitate associations' access to funding, including from foreign sources, (particularly for the purpose of defending human rights) as access of NGOs to foreign funding is considered as an integral element of international cooperation, provided that transparency is guaranteed.

The law may establish restrictive conditions for the funding of political parties.

The law may also provide for the establishment of a control mechanism over foreign financial movements in order to prevent terrorist activities.

- Regarding the right to affiliate with other national and international organizations:

- to amend their legislation in order to ensure that the right of organizations, federations and confederations to affiliate with international entities is not subjected to prior administrative authorization.

- Regarding the respect of the principle of non-interference in the internal management of associations by the authorities:

- to enact laws preventing the administrative authorities from interfering whatsoever in the managerial structure and activities of NGOs and associations in general. In

particular, legal provisions allowing for State control of activities carried out in defense of human rights should be abolished. Where concern arises with the activities of a particular organization, such concerns must be brought before a fair, impartial and independent judicial authority through proceedings that are transparent, conducted in accordance with the principles of due process, open to public and international scrutiny.

- to remove the general prohibition of political activities by trade unions for the promotion of their specific objectives as they are contrary to the principles of freedom of association.
- to clearly define what constitute “unauthorized activities” and in particular “political activities” for NGOs as the absence of definition of the term often leads to the prohibition of NGOs from carrying out activities in their mandate, in violation of the right to freedom of association;

- Regarding the right of individuals not to be penalized for belonging to a non registered association:

- to ensure that dissolution of associations strictly resorts to the competence of a Judiciary that guarantees a fair and due process.

Furthermore, fundamental freedoms which follow from the right to freedom of association such as the right to strike and to peaceful assembly should be fully guaranteed.

The Bahraini, Kuwaiti and Yemeni civil societies :

- to work jointly on a draft law and/or provisions pertaining to freedom of association which comply with the international human and labour rights standards; and to participate in initiatives launched by the authorities in the process of amending or elaborating new laws related to freedom of association ;
- to monitor the effective implementation of freedom of association at the national level;
- To comply with international standards in their

internal structure, in particular with regard to the principle of non discrimination between nationals and non nationals.

The international community:

- The Office of the UN High Commissioner for Human Rights (OHCHR) and the ILO Committee on Freedom of Association should be more active in providing technical assistance to these countries for the elaboration of appropriate legislations and training on human rights. They are also requested through all their mechanisms available (Treaty Monitoring Bodies, Special Procedures as well as the Universal Periodic Review) to duly monitor the practical implementation of freedom of association in the three countries;
- The UN Special Rapporteur on Human Rights Defenders should be solicited in order to: examine the situation of freedom of association more closely; promote and protect this basic and fundamental freedom; establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the right to freedom of association;
- The ILO Committee of Experts on the Application of Conventions and Recommendations is requested to follow up on the observations and other direct requests addressed to Kuwait and Yemen in order to ensure that appropriate measures have been taken to curb infringements to provisions of ILO conventions.
- FIDH recommends to the European Union, based notably on its Guidelines on human rights defenders of 2004, to address the issue of freedom of association in the framework of its dialogue with the members of the Gulf Cooperation Council.

The Arab Institute for Human Rights and **The International Federation for Human Rights**

in cooperation with the **Kuwaiti Association for Human Rights**

with the support of the **European Union**

**Regional Seminar: "Freedom of Creating Association in the Gulf Countries:
"NGOs, Trade Unions and Political Parties**

**Kuwait
17-19/11/2008**

The Final Recommendations of the Seminar

The participants of a regional seminar titled "The Freedom to create associations in the Gulf Countries: NGO's, unions and political parties" convened as representatives for organizations, unions, parties, governmental bodies and experts from 11 different Arab and non-Arab states. Taking as a point of departure the field study prepared by the International Federation for Human Rights (FIDH) and the Arab Institute for Human Rights entitled "Freedom of Association in Bahrain, Kuwait, and Yemen", the participants arrived at the following recommendations

I. Concerning Trade Unions

The Right of Establishment: Every group of workers or employees in the public and .1 private sectors may establish or join trade unions to defend their interests- material or otherwise. This right is for all individuals without discrimination between nationals and non-nationals and is contingent only upon announcement without requiring prior .permission

Trade unions enjoy a juristic personality, their activities and functions are stipulated .2 .in formative statutes and internal system

Trade unions are entitled to create or joining federations and organizations freely, .3 .on national, regional and international levels

The right to strike is an inherent right extended to trade unions and should not be .4 .restricted by procedures that limit it in practice

:Trade unions collect their finances from .5

Membership fees -

Donations -

Income raised from activities -

The union has is free to invest and expand these funds. It also has the right to collect finances from national and international organizations that do not compromise its .independence

.The trade union's finances are subject to the monitoring of its general assembly .6

Workers must be protected from union-based discrimination and cannot under any .7 circumstances be dismissed or punished for union activities; unionists are entitled to paid leaves of absence to partake in union activities and union leaders should enjoy .particular immunity

It is the right of a worker who has been dismissed due his/her union activities to .8 return to their position following a judicial decision and receive compensation for the .duration of the dismissal

:A union may only be dissolved .9

Upon a decision is issued from the general assembly -

Upon a judicial decision issued in abidance with the conditions of a fair and - .impartial hearing

II. – Non-Governmental Organizations and Political Parties

.An NGO is formed upon proclamation and announcement in official publications .1
Membership in NGOs is open to nationals and non-nationals and should not be restricted by a numerical limit. Non-nationals have the right to establish NGOs given that they respect national sovereignty and avoid partisan activities. If conflict occurs regarding the legality of its creation, the judicial authority is the body responsible for .resolving the conflict

NGOs may freely undertake the activities their field without acquiring prior .2
.permission to do so

:NGOs collect their finances from .3

Membership fees -

Donations and gifts -

.Income raised from activities -

NGOs have the right to acquire funding from private or foreign sources that do not
compromise their independence and in abidance with regulations of transparency
.and the submittal of periodical reports to the general assembly of the NGO

NGOs are entitled to freely join international organizations and create national, .4
.regional or international networks

NGO activists enjoy the legal protections stated in the relevant international .5
.declarations and covenants

An NGO may be dissolved upon a voluntary decision made by the members of .6
the NGO and may not occur according to a decision made by the executive
authority. Involuntary dissolution is the responsibility of the judicial authorities
.and the reasons must be those included in the Law of Associations

III. Political Parties

A political party is formed upon proclamation and announcement in official .1
publications. Membership is open for nationals and should not be restricted by a
numerical limit. Political parties should not be established on religious, ethnic,
sectarian or regional or lingual grounds. If conflict occurs regarding the legality of its
.creation, the judicial authority is the responsible body to resolve the conflict

Political Parties are free to undertake their activities without acquiring previous .2
.permission to do so

Political Parties collect their funds from .3

Membership fees -

Donations and gifts -

Income raised from activities -

Political parties have the right to acquire funding from private or foreign sources,
that do not compromise their independence and in abidance with regulations of
.transparency and the submittal of periodical reports to the relevant body

The dissolution may be a voluntary decision made by the members and may not .4
occur according to a decision made by the executive authority. Involuntary
dissolution is the responsibility of the judicial authorities and the reasons must be
those included in the Law of Political Associations

