

Fraternity Foundation for Human Rights (FFHR)

Associations law

one step forward
too many steps backward

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one step forward too many steps backward

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Fraternity Foundation for Human rights

a non - governmental and independent organization founded in 2013. registered in accordance with German law for non-profit associations (Birati Foundation for human rights e.V) FFHR seeks to promote political freedom and focuses its effort on promoting and protecting the rights of Syrian people to freedom of peaceful assembly and of association in Syria and in the neighbouring countries. It also endeavours to raise awareness of political and civil freedoms to help Syrian communities recover from the effects of the conflict

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Definitions

The right to form associations:

The right of freedom of gathering and a peaceful association is considered as one of the important rights stipulated in the international and regional human rights instruments as well as in many constitutions of states.

This right derives its importance from the fact that it constitutes a fundamental pillar on which many political rights are based, and to defend human rights violations, and thus, to press for the translation of other rights into reality. In addition, it's considered as a measure of the state's commitment to respect human rights in general.

The right to freedom of gathering, joining associations or forming them is the right to join an official or informal group to engage in a group's work. This right includes the right to form or join an association.

By contrast, it also includes the right not to be forced to join such associations. A gathering may include associations, civil society organizations, clubs, cooperative societies, non-governmental organizations, religious associations, political parties, trade unions, foundations or internet groups.^[1]

There is no requirement that obliges the association to be registered for the right of a freedom of gathering. States may not limit this right to certain categories on the basis of race, color, gender, language, religion, political opinions, national or social origin, property, birth or other status or circumstance. The only exception includes members of the armed forces and the police, whose rights to gather may be restricted under international law. States must commit themselves to take positive measures to create and maintain an enabling environment for free gathering. It should also refrain the unjustified obstacles to exercising the right of free gathering and the respect for the privacy of those

The right to freely form associations also includes the right of communities to access finance and resources.

The civil society:

Which means the independent associations that are completely out of the control of the state, the voluntary to joining them, such as parties, trade unions, professional and labor associations, in which referred to as civil to be restricted only for civilians, not the military personnel.

The World Bank defines civil society as a number of non-profit, non-governmental organizations that rely on the promotion of the interests and values of the people joining them and are based on ethical, charitable, religious, scientific or cultural grounds. Community organizations, non-governmental organizations, indigenous peoples' groups, charitable organizations, trade unions.

The summary of this definition as the institutions that established by individuals or groups of a humanitarian nature, where its works are shown through the ability of its members, these institutions are characterized of being away from politics and completely independent of government authorities.

The non-governmental organizations:

A group of individuals or entities in a particular country, region or countries working to achieve cooperation in certain fields and to defend the values and principles of these organization. It's not intended to achieve profits, as distinct from the economic activities "companies" and it should enjoy financial and administrative autonomy from the official authorities, and it should be of a local, regional or international characteristic. Non-governmental organizations should have a kind of cooperation and good relations that allow

[1] <https://www.frontlinedefenders.org/ar/right/freedom-association>

them exchange experiences and information, training, capacity-building, joint campaigns, fact-finding missions and other activities that contribute to the protection and promotion of human rights.

While some other non-governmental organizations are associated with a joint activity with the United Nations, in particular, those receive consultative status in accordance with Economic and Social Council resolution 1296 of May 1968, to see if they act in accordance with the criteria set by in the mentioned resolution: that the organization is concerned with matters within the competence of the Economic and Social Council, and whether the goals and objectives of the organization are in conformity with the spirit of the charter of the United Nations.

The organization vows to support the work of the United Nations and to promote knowledge of its principles and activities, and it should be democratically administrated, internationally recognized, with clear and independent financial resources.

The right to organize:

The right to organize is the right of every citizen, regardless of their professional or educational identity, they are workers or business owners, without any kinds of distinction in establishing organizations, federations, and entities that defend their interests and express their views.

They also have the right to join these organizations, without a prior authorization of the authorities, in this context, the freedom of finding associations, trade unions, and parties, this right is considered as the cornerstone of any democratic system, and any violation of it by the authority is considered to be the destruction of social elements, its growth, and its social, economic, political and cultural development. This also includes the right of associations, trade unions, and

to carry out activities to achieve the common interests of their members, persons, groups, issues or interests they are working to achieve.

It also guarantees the right of citizens to joining them and their right to work without arbitrary interference by the authorities, a fundamental aspect of this right is that no one may be compelled to join any party, organization or trade union, as it also means the need for a multiplicity of associations, unions, and parties.

Where only allowing the establishment of institutions that conform to the direction of the political system of government is merely a clear violation of the right. The right to form associations, unions and parties must be exercised without any restrictions, only those legalized by the international law.²

Legislative and legal instruments:

The constitution:

The constitution is a set of texts that regulate the basic powers of the state, "executive, legislative, judicial", that defines their respective competencies, identify the basic constituents of society and defines the rights and duties of individuals. The constitutional texts are the basis of every rule of law followed by rank since the constitution is the supreme law in the state.

The law:

The legislative texts approved by the parliament/legislative authority and ratified by the head of state, for example, most constitutions stipulate that the organization and the determination of the public rights and freedoms provided for in the constitution should be regulated by law, taxes or fees may only be imposed by law, as well as international treaties, the general budget, and other basic or complementary laws.

² <http://www.lchr-eg.org/legal-rights>

Decree-Law:

The legislative texts issued by the president, the king or the head of state between the sessions of the parliament, or the period of dissolution of the parliament, these decrees should have the force of law, not to be contrary to the constitution, and to be submitted to the parliament within the time specified in the constitution, and if presented and not approved by the council, it also fails to have the force of law. Laws and decrees come in the following order of constitutional texts and must be issued in accordance with the provisions of the constitution.

The regulation:

An instrument in which the president begins issuing decrees authorized by the constitution where decrees are issued, and regulations for the implementation of the laws. The law may appoint a lower instrument than the decree to issue the necessary regulations for its implementation.

The decrees are also the instrument for issuing regulations, regulations for the order of departments and public administrations, "regulations for the establishment and organization of ministries".

While the regulations are in the form of administrative acts in terms of its formalization to be issued by the executive authority, they are similar to the law in terms of subject matter because of the general rules and abstraction, and therefore the administrative authorities must abide by its provisions

The Decree-Law:

One of the legislative instruments, which is constitutionally vested for the president of the republic. It should be ratified in the first role of the legislature, which has the right to approve, amend or repeal it, which is similar to the law. The decree-law is issued in matters of organizational or administrative matters, which are urgent to be issued.

The Decree-Law in this paper is meant as Decree No. (3) of 2017, the law of organizations, associations, and institutions of civil society, issued on 2 February 2017.

The executive regulations:

The regulations are the detailed rules which are necessary for the implementation of laws issued by the legislative authority without modification or deletion or addition of new texts, and may not contradict the executive list with the law attached to it, and may not contradict with the constitution, as it is the top legislative pyramid in the state, and the executive regulations differ from the organizing regulations which are issued by the executive branch of legislation to regulate and manage the work in public utilities.

As it differs from "the regulation" in which the executive branch sets by legislative restrictions in the general form abstract on the individual aspects of activity in order to maintain the public order with its three components: "public security, public tranquility, and public health", as the executive authority has the right to issue administrative control regulations without reliance on an existing law.

The executive regulation differs also from the administrative declaration of its binding will by virtue of laws and regulations with a view to establishing or modifying one of the legal centers whenever it is possible and legally permissible, with the aim of achieving the public interest. The administration's declaration of its will is either express or implied, and the implicit decision is the conclusion of the management's silence for a given position.

The executive regulations in this paper refer to "implementing regulations of the law of organizations, associations and civil society institutions issued by decree No. (3) of 2017, and ratified by the legislative council and the joint governorate of the province of Al-Jazira."

Charter of the social contract of The Autonomous Democratic Administration:

It acts as the constitution of The Autonomous Democratic Administration, ratified on January 6, 2014, and issued by sole will of the ruling party in Autonomous Administration, which is known as "grant" of the ruler to the people in the drafting of the constitution.

The issuance of the constitution by the unilateral will of the ruler is one of the ways of issuing constitutions, or the agreement between the people and the ruler, including the constituent assembly to draft the constitution, as the method of a popular referendum is considered as the most democratic way of drafting constitutions.

The charter of the social contract of The Autonomous Democratic Administration consists of ninety-eight articles divided into nine sections:

The general principles, the basic principles, the rights and freedoms, the legislative council, the executive council, the judicial council, the higher electoral commission, the supreme constitutional court, and general provisions.

The social contract contains four amendments, issued in the form of annexes ratified by the legislative council, the first appendix on April 15, 2014, the approval of the structure of the judicial council.

The second annex of 10 June 2014 amending article 54, which states the governor should be a gender partner, and the third annex of 1 January 2016, the organizational structure of the executive council of Al-Jazira province.

The fourth annex of 13 June 2018, the executive council form of the joint presidency and a number of deputies and bodies, as the joint presidency of the executive council may select some of the advisers from the legislative council.³

Democratic Self-management:

It was established on 21 January 2014 by the "Democratic Society Movement" which is a coalition of political organizations, most notably the "Democratic Union Party PYD" includes Arab, Syriac and Kurdish parties involved in the governance of democratic self-management. The administration opposes the "Kurdish National Council Parties" as a member of the opposition Syrian National Coalition.

The democratic self-management formed a committee of 19 personalities representing the political and social spectrum in the region. Its mission was to formulate the joint interim administration project, prepare the social contract document and prepare an electoral system. "Democratic Self-management" is divided into five sections: the Legislative Council, the High Electoral Commission, the Supreme Constitutional Court, the local councils, and the Executive Board of the management.

The General Council for Self-Management consists of 70 members, representatives of the local councils of the seven provinces.

The mission of this department is to coordinate between the seven departments in each of the provinces of the Al Jazeera, the Euphrates, Afrin, and the local administrations in Al-tabqa, Raqqa, Manbaj and Deir Al-Zour, and work under one administration to secure the needs of the people.

Areas under the control of democratic self-management:

It consists of seven provinces: Al Jazeera, Afrin, Ain Arab (Kobani), Raqqa, North-East Deir Al-Zour, Al-Taba, Manbaj. Amouda is the center of self-management in Al Jazeera province. Syriac

³ <http://www.encumenazagonsaz.com>

Kurdish and Arabic languages were also recognized as official languages in the province. These areas are subject to military, administrative and service control of democratic self-management, with the presence of the Syrian regime in the center of the city of Hasaka and Qamishlibelonging to the province of Al Jazeera.⁴

Al Jazeera province:

Is the area extending from the eastern city of Al-Abyad of the city of Kobani, currently in the Euphrates province, towards the Iraqi-Syrian border. It is bordered to the south by the Euphrates River. The province is the largest geographical and population center for democratic self-government and is the main center of the Kurdish community in Syria.

Social Affairs and Labor Authority :

One of the bodies of the democratic self-management and supervise the follow-up of the work , workers and social conditions and the work of NGOs through the Bureau of Organization Affairs in the region "Serve as a ministry"

the Bureau of Organization Affairs:

It is the body responsible for supervising the organisations in areas under the control of the Autonomous Democratic Administration of Northern Syria according to the law that we are addressing

Law of organizations, associations and civil society institutions

Issued by Decree No. 3 of 2017 and was issued on the basis of the provisions of the social contract in the province of Al-Jazira, it was also referred to the issuance of the continuous flow of international organizations and the increase of local associations and civil society institutions, the promulgation of the law was supposed to be a legal framework for regulating the right to form civil associations.



- Democratic Self-management- Afrin District, Syria -

Social Affairs and Labor Authority Decree No. (1) of 15 June 2017

⁴ <http://syriauntold.com>

Introduction

This policy paper is the production of early work of Fraternity Foundation for Human Rights (FFHR) that aims at influencing the decision-making processes and enriching the debate regarding the rights to freedom of association. Moreover, this paper aims at activating the role of relevant actors – Non-Governmental Organisations – on the Syrian and Kurdish scene, in order to ensure the full enjoyment of the rights to peaceful assembly and association. Since the foundation of FFHR, it pays particular attention to the legal framework regulating assemblies work, through research and field work, engaging with official and unofficial bodies in order to motivate them to adopt an integrated and fair system based on the principles of justice, equity and non-discrimination, to involve more people in public affair and to guarantee their rights to freedom of associations that reflect and express their orientations and humanitarian and human rights goals.

This is aimed at establishing a comprehensive and just law that regulates the work of associations and civil society organisation and is compatible with international human rights standards and in accordance with article 20 of the Universal Declaration of Human Rights; article 22 of the International Covenant on Civil and Political Rights; the Freedom of Association and Protection of the Right to Organize Convention; article 5 of the Declaration issued by the General Assembly of the United Nations (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms) which is frequently abbreviated to “The Declaration on human rights defenders”.

The right to freedom of association is located in the intersection between civil and political rights. As a civil right, it grants protection to individuals against arbitrary

arbitrary interference by the State or its private agency when they wish - for whatever reason – to associate or has already associated with others.⁸

As a political right, it is an indispensable element for a proper and functioning democracy, since the political interests can be effectively defended only within a collective framework with others

In this regard, African Commission on Human and Peoples' Rights emphasises – in Nigerian Bar Association vs. Nigeria case – that “Every individual shall have the right to free association provided he abides by the law. Freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations.

There must always be a general capacity for citizens to join, without State interference, in associations in order to attain various ends. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the Constitution and international human rights standards”.⁹

In the Case of Huilca Tecse vs. Peru, the Inter-American Court of Human Rights stated that “In its individual dimension, freedom of association is not exhausted by the theoretical recognition of the right to form assemblies, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. In its social dimension, freedom of association is a mechanism that allows the members of an assembly to achieve certain objectives together and to obtain benefits for themselves. Moreover, the State must ensure that people can freely exercise their freedom of association without fear of being subjected to some kind of violence;

⁸. Special Rapporteur on the situation of human rights defenders, August 4th, 2009

⁹. Communication 101-93, civil liberties organization in respect of the nigerain Bar association v. niger
<http://www1.umn.edu/humantr/Africa/comcasec/101-93>).

otherwise, the ability of groups to organize themselves to protect their interests could be limited”¹⁰

In this context, the autonomous government, in the areas under Kurdish control in Syria, For more restrictions and abuse towards people involved in cooperation and working with non-governmental organizations and institutions. The spread of abuse and violation to the same organizations On June 15, 2017 Resolution No. 1 issued by the Commission for Social Affairs and Labor Afrin-Syria, the administration of the Democratic self-boycott, under which pass a solution and the abolition of the license year of organizations, two of whom their status in Turkey and four of them their status in Afrin and so on the support of saying Due to the necessity of public interest in the province and compliance with applicable laws and regulations is.

It is legally interesting that there is no administrative reason for the dissolution of the organizations and the revocation of their authorization. There are legal reasons or even mention the items and numbers of the materials in question. This is why the organizations are between the two pillars of security prosecution and the hammer of the solution and cancellation because of the issuance of a book by the Bureau of Organization Affairs in the Executive Council, which not only decided to dissolve and cancel the six organizations, He did not miss threatening other organizations where the resolution was decided in item II, that in the absence of other organizations and associations work and their duty in full will also be doomed to resolve and revoke; increasingly restricting the right to association and peaceful assembly.

the 6 organisations and civil society were closed by an administrative decision on the ground of

“they pose security risk”. In the absence of clear legal and judicial mechanisms to appeal and challenge the decision, the situation becomes not only dangerous and disruptive, but also as a declaration of the death of these organisations and as a warning and intimidating message to the organisations that have not been impacted by that decision.

On 15 August 2018, there were media reports that the head-¹¹quarters of 61 organizations had been closed by the Democratic Self-management. In the absence of legal and judicial mechanisms to challenge the decision to close the organizations, it is dangerous and disruptive. It is a declaration of the death of these organizations and a message of intimidation and intimidation of existing organizations that have not yet reached the sword of closure. These actions constitute a violation of the reality of public rights and freedoms in areas under the control of self-Democracy and prevent citizens from exercising their right to association. This reflects the negative perception of self-management towards organizations and associations, which do not realize the importance of the pivotal role played by the associations in integration with the institutions of self-management and their various authorities in a large number of jobs and fields, most notably: development and sustainable human development; Energy, rationalization and orientation of its members, ensuring its institutional sustainability and independence, strengthening democracy and its culture, and strengthening civil society..¹²

In light of this negative reality, the initiative of the Fraternity Foundation for human rights is the drafting of a policy paper on Decree-Law No. 3 of 2017 "Law of Organizations, Associations and Civil Society Institutions" as a basic entry point for activating my rights to amend the legislative structure of associations in areas under the control of self-management

¹⁰ . The case of Huilca- tesse v. peru –judgment of 3 march 2005 of inter-amerocan court of human righys,bara69

¹¹ <http://ns3011681.ip-151-80-102.eu/news/syria-news>

¹² Declaration of principles and standards on freedom of association "Amman Declaration" 1999

Background

The right to form associations:

The right to freedom of association has been recognized in many international and regional instruments, both binding and non-binding. The protection of the right to freedom of association is essential for any democratic society, since there is a direct relationship between democracy, pluralism and freedom of association.

Freedom of association is located at the intersection between the civil and political rights. Considering that freedom is a civil right, it grants protection against arbitrary interference of the state or private agents when an individual wants what, for any reason, wants to form an association with others or has already done so. As a political right, it is an indispensable element for the proper functioning of democracy, since political interests can be effectively defended only in a collective framework with others.

Freedom of association is generally defined as the right to form associations with others to achieve common interests. The former European Commission for Human Rights defined freedom of association as "freedom of association is a public capacity available to citizens to enter without undue interference by the state in associations in order to achieve different objectives." The European Court of Human Rights has stated in its jurisprudence that article 11 is not intended to protect just a gathering of people interested in "the company of each other," and that in order to have the gathered assembly, a kind of organizational structure is required, even if it is an informal structure.

Freedom of association under article 22 of the International Covenant on Civil and Political Rights means the right to form an association with persons who agree with him in opinion or to join an already existing association.



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 Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

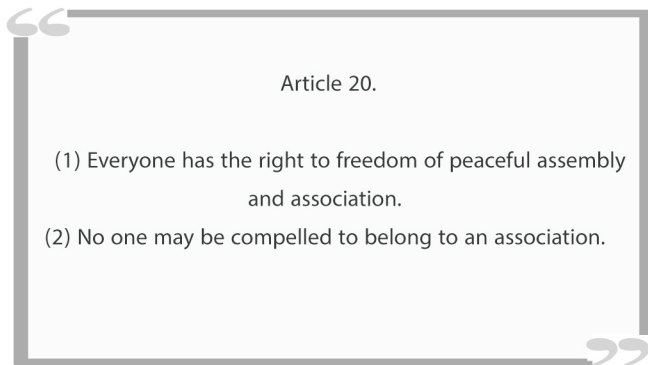


Article 22 International Covenant on Civil and Political Rights

At the same time, the article also includes the collective right of an existing association to carry out activities for the common interests of its members. States parties can therefore not prohibit associations or interfere in their composition or activities.

Besides individual and collective dimensions of freedom of association, it has a positive and negative aspect, namely, the right to form associations and the right not to associate with others. Article 22 affirms the right to freedom of association, which means that the composition and accession of the association must be voluntary. Thus, the compulsory membership of the Assembly and the so-called closed door agreements are contrary to the idea of freedom of association.

It also means freedom to choose which organizations that one would like to belong to it.



article 20 of the Universal Declaration of Human Rights

When a country has one organization to promote human rights but a person does not agree with its own methods and objectives, that person's freedom of association has not been achieved because he simply was not hated to join that organization. Conversely, article 22, paragraph 1, also guarantees the right to form a second human rights organization with other persons who agree with it. Therefore, the situation in which the authorities do not permit the establishment of a new organization on the grounds that an existing organization is operating in the same field is fully consistent with this right, and must be justified on the basis of one of the grounds contained in article 22, paragraph 2, of the International Covenant on Civil and Political Rights.

The limits of permissible restrictions on the right to form association:

The Special Rapporteur on the situation of human rights defenders ¹³ identified the limits of permissible restrictions on the right to form association and decided that the right to form an association was not an absolute right but was subject to restrictions as other articles of the Covenant and regional human rights instruments. Article 22, paragraph 2, details the conditions of such restrictions to be permitted. For any restriction on the right of association to be valid, it must meet the following conditions:

- (A) It must be provided for by law;
- (B) It may be imposed only for one of the purposes in paragraph 2
- (C) It must be necessary in a democratic society to achieve these objectives.

Such restrictions may be imposed in the interest 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.

The conditions for applying restrictions on the right to form associations can be summarized as follows:

Procedure provided by law : No restriction on the right to form association is permissible unless all these conditions are met. The phrase "as provided by law" makes it clear that restrictions on the right to form association are valid only if they are imposed by law (through a law enacted by Parliament or a similar customary rule of common law) The restriction shall not be permissible if it is made by a government decree or similar administrative orders. It would seem reasonable to assume that the intervention is "as provided by law" only if it is based on any law, rule, decree, order or decision

¹³ A/64/226

duly rendered by a judicial body. On the contrary, the actions of government officials in excess of the authority are not satisfied with the requirement that they be issued "according to the law", at least if they are incorrect as a result. It should be necessary in a democratic society. Moreover, the restrictions must be "necessary in a democratic society", indicating that the existence and functioning of a number of associations, including those that work peacefully to disseminate ideas that do not fit the vision of the government or the majority of the population, It represents one of the foundations of a democratic society.

Therefore, The existence of any reasonable and objective justification for imposing a restriction on freedom of association is therefore not sufficient, depending only on national security or the democratic system, and that less interventionist measures have not been sufficient to achieve that objective.

The legitimate basis for intervention where the only basis on which the freedom to form an association can be invoked and which can be justified in accordance with the law is if that intervention is aimed at promoting "legitimate objectives", which should be in the interest of national security or public safety; To protect public health or morals; or to protect the rights and freedoms of others.

The legitimate basis for intervention where the only basis on which the freedom to form an association can be invoked and which can be justified in accordance with the law is if that intervention is aimed at promoting "legitimate objectives", Which requires to be in the interest of national security or public safety, public order, protection of public health or morals; or protection of the rights and freedoms of others.

.Restrictions may be applied only in accordance with article 22 of the International Covenant on Civil and Political Rights, and the restrictions should not be interpreted and applied accept in accordance with article 4 of the International Covenant on Civil and Political Rights.

Finally, civil society organizations are the mode of contract between the individual and the state, which is able to improve the personality of the individual as the basic rule in building society, by raising awareness and dissemination of knowledge and public culture, and then raising citizens to a culture of democracy and consensus in a framework of constructive dialogue and free Individual and collective efforts to bring about further social and economic development, mobilizing individual and collective efforts to bring about greater social and economic development together, And to work by all legitimate means to ensure transparency, establish the value of inviolability of public funds, influence public policies, deepen the concept of social solidarity, assist the Government through experience and voluntary projects to better perform public services,, ¹⁴

And to encourage the well distribution of resources and rationalization, and to rationalize public expenditure, and highlight the role of role models and all those, broadcast credibility, and determine responsibility in all its forms, and justice is achieveand the forces of the community are in harmony with each other and unite to advance them to the heights of progress.

¹⁴ Judgment No. 4468 of 6 judicial year on 3/6/2000 - Administrative Court of Justice - Egypt

Rights related to the right to form association:

The right of citizens to form civil associations is a branch of freedom of assembly, and this right must be voluntary, free, and not interfered with the administrative authority. and then dissolve this freedom to primary rule granted by some states a constitutional value in itself, to ensure that any interested person has the right to join the Assembly, which he considers to be better able to express his interests and objectives, and to choose one or more of these associations in case of multiple to be a member thereof, and this right is only an integral part of his personal freedom, and cannot be infringed by organizing them.

The right to meet, whether it is a genuine right or the assumption that freedom of expression includes it as a guarantor of its most important channels, through which it achieves its goals is more freely related to the presentation and circulation of views whenever the people support a certain position or direction of an association containing them, employ their experiences and put their hopes and presents As well as their difficulties, and deal with the dialogue what disturbs them, to be this organized gathering window overlooking what is happening in them, and a vivid picture of a form of collective thinking. The right to establish associations, whether economically, culturally, socially or otherwise, was merely an optional act, aimed at peaceful means to form a framework in which to express their positions and orientations.

Therefore, the right to meet interferes with the freedom of expression, as a component of personal liberty, which cannot be restricted without following the objective and procedural means required by the Constitution or guaranteed by law.

A written requirement is required if no provision is made in the Constitution, The rights enumerated by the guarantees and verified for their effectiveness, Previously on the existence of the constitutions themselves, linked to civilization at various stages of development, inherent in the human soul called for by nature, which is above this rights that should not be marginalized or abortion.

Indeed, freedom of expression itself loses its value if the legislator denies the right to be evicted in the organized meeting, thereby blocking the exchange of views in a wider circle so as to prevent their interaction and correcting each other, disrupting the flow of views related to decision-making and hampers the flow of human personality which can not The development of which can only be achieved in a form of meeting. Also, the destruction of freedom of assembly undermines the foundations on which a system of government cannot be based on the will of the people.

Therefore, And within the tolerant boundaries of the system Democracy and values that are acceptable to call for it, Therefore, the legislative authority should not impose restrictions on the freedom of assembly to regulate it, unless it carries the seriousness of the interests it has directed towards its report. It also has a bond of its weight and necessity.

Freedom of association is an important pillar for the establishment of pluralistic and tolerant societies, because they serve the purpose of allowing the expression of cultural, religious and cultural beliefs and practices, including the important role of expressing the views of different minorities or viewpoints. Accordingly, the importance of this right lies in its unique and important role in the democratic system, because it serves the purpose of ensuring opinions in matters that affect public space by expressing them collectively.

In other words, freedom of association reflects a real and direct form of political, social and cultural contribution to the expression, promotion or defense of common values, opinions or beliefs, thus promoting dialogue among different stakeholders, facilitating co-existence among rival groups, Develop prosperous and healthy democracies where governments are open and accountable. Freedom of assembly is therefore an important form of direct democracy.

The right to association should be considered in a full package of rights that are fully integrated, and it is a right in the sphere of civil and political rights, which is summarized in the following rights:

- * The right to peaceful assembly,
- * The right to freedom of opinion and expression,
- * The right to freedom and personal safety,
- * The right to political participation,
- * The right to information
- * The right to an effective remedy and accountability against human rights violations,
- * Equality and non-discrimination.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 4 International Covenant on Civil and Political Rights

The challenges of Syrian civil society: a triangular dilemma (Syria, Kurdish, Turkish)

The organization and establishment of civil society organizations and non-governmental organizations in Syria is governed by a 1958 law. Under this law, it is almost impossible to register an independent civil organization. This law witnessed a breakthrough during Bashar al-Assad's assumption of power in Syria. The Syrian regime is alert to the seriousness of this situation, so the movement has been stoned, its members arrested and its organizations dissolved and banned.

Under this law, many organizations were established for children, youth and women, but they were the exclusive preserve of the Baath Socialist Party. In late 2015 a draft law was prepared to regulate the civil work in Syria and was submitted to the People's Assembly in the hope of assisting relief and economic development organizations to provide assistance and support to the victims of the Syrian conflict. However, the law was withdrawn in early 2016 and the file was closed.

This situation is not absent in the rest of the Syrian regions in the Syrian opposition areas. There are no laws regulating this issue, especially since the Islamic courts that administer the legislation do not include a basis for civil work and democracy and human rights issues which in their opinion are considered a Western heresy. Civil organizations are subject to military control and military faction trends, many of whom have been abducted and their headquarters closed.

In areas under the control of democratic self-management areas of civil society organizations live fared better if compared to the former two regions.

The emergence of civil society organizations in this region for decades is a result of its historical Kurdish presence, in parallel with the dual actions that the Syrian regime carried out in the Syrian regions in general before the outbreak of the Syrian popular protest movement, the citizens of this region suffered a situation of double persecution once they were part of the general Syrian situation and once they were in conflict with the Syrian regime which prevented the enjoyment of their cultural rights and deprived them of expression about their identity, use their language and review their history.

Which called on these citizens to work through civil society organizations in the political frameworks in secret to revive their language and transfer their history and peaceful civil work to promote democracy in Syria and resolving the issue of the Syrian Kurds within this trend did not know the Kurdish community of violence in their struggles over those decades, The main focus is on peaceful civil action. The Kurdish language associations, the Kurdish culture, the rights and others, which focused on the continuity of the Kurds and their history, have proliferated.

With the dramatic changes that took place in Syria after the year 2011 and the control of the Syrian Kurds over their areas, the status of clandestine civil society has changed to the public and the number of organizations has increased significantly in 2015 to more than 150 local organizations and different orientations, interests and competencies. Has suffered major pressures both internationally and locally after 2015, Turkey, which has the largest number of Syrian refugees, is considered the international and domestic humanitarian and civilian stronghold of the Syrians within Turkey and Syria. As a result of the military conflict between Turkey and the Kurds, Turkey has been accused of the self-governing authority of the Democratic Union Party (PYD) Part of the PKK, a terrorist group in Turkey.

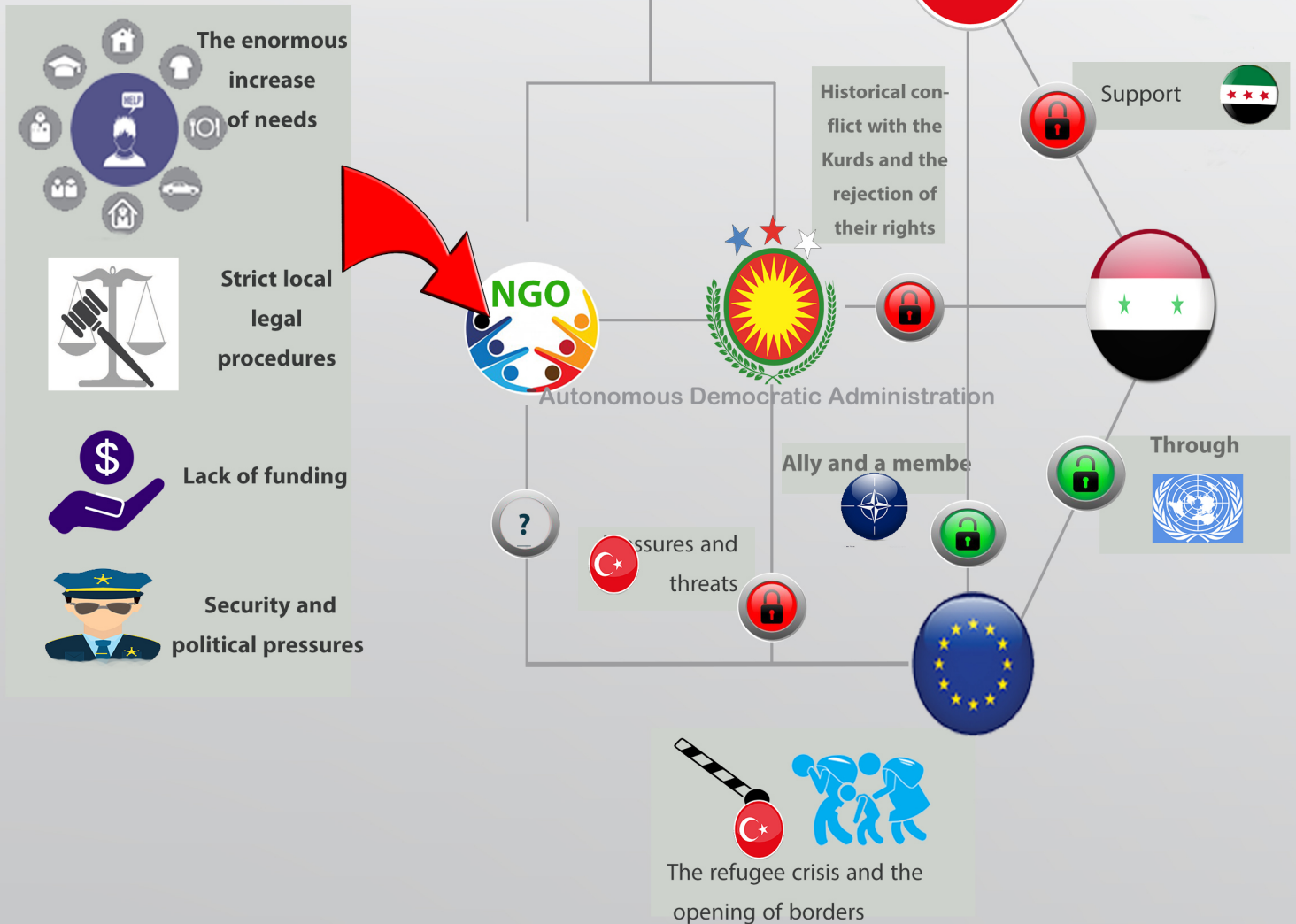
The Turkish authorities prevented all organizations on their territory from providing all forms of support and funding to the organizations working in the area of control of the self-democratic administration.

This was done concurrently with the European consensus with this trend. Turkey regards as a strategic ally of the Europeans. This has prevented the Syrian regime from any international organizations operating in its areas of control to deal in any way with the authority of democratic self-management and the decline of civil work largely after these pressures. Despite the presence of approximately one million Syrian refugees from areas of military conflict between the opposition and the regime to the region, the organizations and the (self-management) were unable to cover the large humanitarian needs. Adding to this a number of difficulties, particularly the decline in the control of the Daesh organization Neighboring Kurdish areas, whose citizens suffered greatly.

They faced great magnitude in the effects of violent extremism and terrorism on them, especially the categories of women, adolescents and youth. Although civil society organizations emphasized these needs and conveyed them to the international community, neither Turkey nor its European allies On the idea of preventing the support of civil work in the region and exceeded the exclusion of the region and refugees in the Kurdistan region of Iraq from the plan to support Brussels.

This is in addition to difficulties and obstacles related to the nature of the laws and control of the Autonomous Democratic Administration, specifically, measures undertaken by the administration towards civil society organisations with respect to preventing these organisations from expressing political opinions or criticizing the administration and its actions, in addition to that the heavy burden of getting approval for any activity or events in the region, which will discuss in reviewing the law in this paper

Armed conflict with the Kurds
 Fear of establishing a Syrian Kurdish entity
 Will encourage the Kurds in Turkey and use it to
 launch attacks against it according to the Turkish
 version
 Turkey regards civil action organizations as
 pro-PKK



The reality of civil society organizations in areas of Autonomous Democratic Administration a triangular dilemma (Syria, Kurdish, Turkish)

Restricting the right to freedom of association and the absence of proper legislative drafting processes

Law of organizations, associations and civil society institutions

(Issued by Decree No. 3 of 2017)

Initial observations:

There are a number of preliminary observations on the law:

First, about the author of the law, as it was issued on the basis of the provisions of the social contract in the province of Al-Jazira, it was also referred to the issuance of the continuous flow of international organizations and the increase of local associations and civil society institutions, the promulgation of the law was supposed to be a legal framework for regulating the right to form civil associations. That's confirmed given the first article dealing with definitions was concerned defining foreign organizations before defining local civil associations, confirming the impression that the law was enacted to counter the influx of foreign organizations rather than to facilitate the right of associations.

Second, the law has mixed civil society organizations with civil local associations, as the civil society is a broader concept which includes in addition to local associations all other forms of organizations such as labor and vocational unions, clubs, universities, the press, and other non-governmental organizations.

Thirdly, the law should be understood by people and by those who addressed by its provisions and could be used and applied by actors in those organizations, associations, and also by bureaucrats. and it should be interpreted by the

court, also it should be written in a clear language, which means the clarity of ideas in the legal sciences, and the clarity of interests and legal centers, which is called the formulation and consistency of legal texts.

As this document initially attempts to express the concerns of civil society organizations and associations regarding this law and its provisions, after all the legal texts are ultimately human works that could be mistaken. The document is based on the charter of the social contract and is guided by international and regional standards for the exercise of the right to organize and the freedom to form local associations and joining them.

The contradiction of the law with the Charter of the Social Contract

The charter of the social contract has devoted the international human rights law as it considered the international conventions regarding human rights as a basic and complementary part of this contract, thus giving it a legal and equal status to the social contract and higher than the domestic law.

According to article 21, the administration ensures human rights and its high values in accordance with international conventions, as freedom is considered the most valuable asset of individuals and groups. Article 22 of the charter states that the administration adopts the legitimacy of human rights, the international covenant on civil, political, cultural, social and economic rights, and considers it as an integral part of this charter.

In addition, the social contract also enshrines the right to organize: This contract guarantees the right to form and join parties, associations, unions and civil society organizations and joining them in accordance with Article 32.

Taking into consideration that the Decree regarding civil society organizations has violated some of the key principles of the charter of the social contract, the international legal standards of human rights and regional human rights conventions, related to the freedom to form associations, free choice of activities and the freedom of internal administration.

It's understood that the charter of the social contract is a constitution, for the system of government in the Autonomous Administration territories,

and therefore the articles of the law and the regulations governing it, may not contradict with the "Constitution" the charter of the social contract. In confirming this meaning,

the Supreme Constitutional Court of Egypt referred to one of its well-known judgments, as the constitution " is the supreme law that establishes the rules and foundations of the system of government, and defines the public authorities and draw their functions, and sets limits and restrictions governing their activity, and determines freedoms and public rights, and arranges the basic guarantees for its protection.

The constitution has a special nature which confers upon it the status of sovereignty and equality, as the guarantor of freedom and its habitat, the pillar of constitutional life and the basis of its regime.

The right to its rules to top the legal structure of the state, and to take precedence over the rules of the public order, as the highest governing body, the executive powers, and without any distinction or discrimination in the area of compliance with them, between the three legislative, executive and judicial branches of public authority.

These powers are all the powers of an institution established by the constitution, all of which are equal in front of the constitution, and stand on the same footing with each other on the basis of their constitutional function, cooperating in accordance with the limits established for that purpose, subject to the provisions of the constitution, which alone has the highest word, but originally committed to the principles of democratic governance, is to submit to the principle of the rule of the constitution

The restrictions on registration and licensing "Extended bureaucracy":

The articles 4 and 5 of the law has included a general restriction on the freedom to form associations, to force establishing them by the registration system through sterile and lengthy bureaucratic procedures submitted to the registration department of organizations and associations in the Labor and Social Affairs Authority.

The burdensome, lengthy, arbitrary and costly registration conditions may greatly hinder the activities of human rights organizations, as well as the required documents that are cumbersome and constantly changing, by which the associations cannot meet, in addition to the exaggeration of the registration office in monitoring the registration process and the discretionary powers vested over them.

As there're two systems applying on civil society organizations which acquire a corporate personality, known as "notice" and "registration" systems, where many countries in the Middle East and North Africa rely on the "registration" system.

However, despite the fact that many of the applications of those organizations have met and approved by all the registration requirements, those requests are often denied, in some cases, the refusal is based on unspecified security reasons by an administrative point of view and without the possibility of appealing the decision to judicial bodies.

Considering that these countries prohibit the activities of non-registered organizations, and sometimes impose severe penalties in such cases, therefore, civil society activists have no alternative but to work illegally, so that could expose them and their organizations to constant danger.¹⁵ and their organizations to constant danger.

As the special rapporteur on the situation of human rights defenders stressed in her report of 4 August 2009 that "basically there are two types of regulations applicable to civil society organizations willing to obtain legal personality: "notification" and "registration" systems.

In more liberal systems, it's often referred to as a "declaration" or "notification" system, non-governmental organizations are automatically granted legal personality once the authorities have received a notification from founders of an organization, other countries require official registration of organizations so that they can carry out activities, although the requirement of registrations doesn't violate the right of freedom to form association, the special rapporteur agrees with the special representative's view that the registration shouldn't be mandatory and that non-governmental organizations should be allowed to exist and engage in group activities without any needs to register in case they desire so. On the other hand, the non-governmental organizations have the right to be registered as legal entities and to have access to related benefits.

As the special rapporteur on the right of free and peaceful gathering and the right to form organizations, "Myna Kiai" the "notification procedure" is the best compliance with international human rights law from the "prior authorization¹⁶ procedure", which requires the consent of the authorities to establish an association as a legal entity. According to the notification procedure, legal associations are automatically granted as soon as the founders notify the authorities of the establishment of an organization. In most countries, such a notice is made in the form of a written statement containing a number of elements of information clearly defined by law, but this is not a precondition for the existence of an association, but rather a statement of the administration's registration by which the association is established, this procedure is in force in some countries such as Uruguay, Portugal, Djibouti, Senegal, Switzerland, Côte d'Ivoire, and Morocco.¹⁷

¹⁵16 <http://www.amnestymena.org/ar/magazine/Issue17/specialrapourter.aspx?articleID=1055>

¹⁷A/HRC/20/27 paragraph 58

The special rapporteur believes that the establishment of branches of organizations, foreign organizations, trade unions or networks of associations, including at the international level, should be subject to the same notification procedure.

Under the pre-notification and authorization systems, registries must be required to act immediately, and laws should set short time limits for responding to data and requests, as the special rapporteur reiterates a decision by the European Court states that "significant delays in the registration procedure, if attributed to the Ministry of Justice, represents an interference with the exercise of the founders of the organizations of their right to form organizations".

During this period, it should be assumed that the organizations operate legally (eg in Uruguay). Delinquency should result in a response within a short and clear time limit to the presumption that the associations operate legitimately (eg in Austria).¹⁸

Restricting terms for founding members:

Article 6, paragraph 4, has contained a restriction on the freedom to establish and form civil associations, where the conditions of registration and licensing stipulated in terms of founding members that "not be a member of an organization, association or other institution similar to the objectives of the organization for which the application was submitted."

Where the requirement contravenes the international standards of restrictions that may be imposed on the right to organize, according to the international law, restrictions aren't permissible on the right to organize, in accordance with article 22 of the International Covenant on civil and political rights may only be prescribed by law and are necessary in a democratic society for the maintenance of national security, public safety, public order, protection of public health or to protect the rights and freedoms of others.

As this article doesn't prevent subjugation of military and police staff to legal restrictions on practicing this right, as according to this officer the requirement not to be among the founders a member of an organization, association or other institutions similar to the objectives of the organization or association seeking incorporation is unnecessary and not related to the maintenance of national security, public safety, public order, protection of public health or protection of the rights and freedoms of others, it also represents a restriction on the freedom of persons to engage in the activity of more than one organization, whether working in multiple areas or even in one area of activity.

The third article, fifth paragraph, includes regarding the working standards of the organizations, "staying away from political, national, sectarian and ethnic strife," which is elastic, as the administration can consider any activity as sectarian or ethnic, and under the absence of legal and judicial rules governing this provision, the practical reality becomes a sword on the officials of the organization, which it could be resolved at any time.

The excessive ambiguity in the law also makes it easy for abuse and discretionary interpretation by the staff of the associations' registration service,

¹⁸Previous reference . a paragraph 60

Tightening the objectives of organizations:

The first article, the last paragraph included the definitions of civil society institutions, defining them as civil organizations providing services that improve the level of awareness of citizens, socially, healthily, professionally, psychologically, artistically, mathematically or culturally, as the definition is flawed, specific objectives of the work of civil society organizations, raising awareness of human rights, raising awareness of protection, awareness of political participation, monitoring of elections and other effective and targeted activities of civil society institutions. The gravity of this provision is that any organization that exercises an activity other than "psychological, artistic, sports or cultural" is beyond the scope of the organization's work and entails the dissolution of this organization, in accordance with article XIII of the law.

As this text represents a limitation on the types of activities carried out by the organization, and the application of the text will be subject to the discretionary interpretation of the registration office of associations and may be used to limit the activities of organizations that criticize the Autonomous Democratic Administration policies, the appreciable interpretation of the law allows the registry office of organizations to take judicial action against human rights organizations for minor offenses or to dissolve them without adequate remedies in the absence of judicial oversight.

License withdrawals

Chapter four has set the rules for withdrawal of licensing, where licenses are withdrawn at the request of the office of humanitarian organizations affairs to the Labor and Social Affairs Authority after studying and investigating four cases that are contrary to the content of this law.

Violation of the internal rules of the organization, association or institution, and the delusional existence of an organization, association or institution, the issuance of the license earns the civil society personal legal entity as it is a legal entity with an independent character from members of the civil society.

The first case: the withdrawal of the license was very general and was contrary to the content of the law, without establishing a clear and disciplined standard for this situation, which opens the door to the office of humanitarian organizations affairs, and the social affairs and labor to interpret the content of the violation of the law, In the interpretation of the violation of the law, since the mandate of application and interpretation of the law is a jurisdiction, and therefore it is necessary to re-create the formulation of this case to be the withdrawal of the license by a judicial authority (court) at the request of the administrative body.

The second case; a violation of the rules of procedure of the organization or association, and since this text take away the authority of the members of the General Assembly to correct the actions of management regarding violation of the rules of procedure, as can members of the Assembly to withdraw confidence from the members of the Board of Directors instead of withdrawing the license it involves the punishment of members of the Assembly regardless of the actions of the association or its legal representative, and the more appropriate and correct is that the administrative body alerted the association or its legal representative to the type of offense and asked to correct or reconcile the situation or act contrary to the rules of procedure of the Assembly, to withdraw the license from the association or organization which forms as a (civilian execution) to withdraw the license and subsequent from the abolition of the legal personality of the Assembly.

The third case: due to public security violations, since this situation is very general, un-measurable and lacks precise legal standards, as there can be many interpretations in the public security violation statement, since any activity of associations or organizations may be construed to constitute a breach of public security, in which this situation will open the door wide, either restricting or prohibiting the activities of local organizations and withdrawing their license.

The fourth case: the delusional existence of an organization or an association may be subject to difficulties in the course of work due to objective or subjective circumstances as a result of exceptional circumstances or lack of human or financial resources, and what are the criteria for measuring delusional existence.

In addition to that, the law did not require that the decision to withdraw the license be reasoned, as Article (14) of the law places the burden of recourse to the judiciary to challenge the withdrawal decision on non-governmental organizations. It was advisable for the administrative body to submit a request to the judiciary for the report to withdraw the license. The text of chapter IV drew the attention of the special rapporteur to the protection of human rights defenders in similar cases, "in many cases, activities by informal groups are permitted only if those groups have been officially registered as Legal entities.

registered as Legal entities. In many countries over the past five years have increasingly been aimed at narrowing down civil society groups, and some governments are increasingly using NGO framework laws to promote this impact. One of the most disturbing trends is the criminalization of the insistence of certain governments on the registration of all groups,

however small or informal, reflects their intention to control and neutralize those activities that criticize government policies, and to criminalize existing and functioning organizations.

Appeal against the decision of refusing the license

Article 10 of the law states that if a decision is issued to refuse the license, the applicant has the right to appeal it to the people's courts in the province within a period of fifteen days from the date of being notified of the decision in writing form, where this formulation creates a problem in case the administrative authority receives the license application file and does not notify the concerned parties of the written response. The provisions of the law did not include addressing the lack or the legislative vacuum to deal with this issue, (a negative decision) by rejecting a request for a license of an organization or an association, and that the law establishes a reasonable period during which the administrative body shall respond.

Follow up the activities of organizations and associations

Article 11 provides a general and vague provision, as it states, "after obtaining the license, the office of organizations affairs shall monitor the activities of those associations and civil society institutions." What is meant by follow-up activities of these associations and civil society organizations? In some comparative legislation, for example, organizations submit periodic or annual reports, these reports include the activities and efforts of civil society organizations, a statement of amounts and financial balances and their disbursements, details of the meetings and institutional developments that led to the inauguration of the boards of directors and management.

However, the article is very general, which could be raised by this public nature of controversy and disagreements about the nature and limits of this follow-up by the office of organizations affairs and does this follow-up require the extraction of prior permits for activities and programs carried out by these associations and civil organizations?

Restrictions on the freedom of movement of associations and civil society organizations

The fifth chapter of Article 15 regulates the rights and duties of associations and organizations and has established three regulations as follows:

The right to possess transferable funds:

It was stated that "any association or organization in accordance with the provisions of this law shall have the right to possess transferable funds for the purpose of obtaining its objectives, subject to the authorization of the office of humanitarian organizations' affairs." The term transferable funds is problematic, as comparative civil laws define the money transferred in the sense of the offense, a fixed space in which it cannot be transferred without damage is a real estate, and everything else is movable, and accordingly any organization, association that wishes to buy or own equipment, offices, and stationery must obtain the permission of office of humanitarian organizations' affairs. office of humanitarian organizations' affairs. It is a tough, arbitrary, unjustified and disproportionate legal provision with the practical nature of the activities of organizations and associations that may need daily purchases of funds transferred. This legal requirement is overstated and unacceptable and does not exist in any legal system in the world.

As this term also undermines the work of organizations because of "human rights organizations' obtaining finance and their ability to seek, receive and use funds is an inherent element of the right of freedom to form associations, and it should be doing its tasks without any impediments, including restrictions on funding".

This term also conflicts the text of Article 13 of the Declaration of Human Rights Defenders that: "Everyone has the right, individually and in association with others, to seek, receive and utilize resources, the express purpose of which is the promotion and protection of human rights and fundamental freedoms, according to article 3 of this Declaration". In accordance with the provisions of this Declaration, States are obliged to allow individuals and organizations to seek, receive and utilize funding. However, one or more of these three stages are often reduced in that funding cycle.

The possession of non-transferable funds:

The second paragraph of Article 15 has stipulated that "No association or civil organization should have the right to own or dispose of transferable funds without the approval of the president of the Executive Council of the province," as the legislator considered that civil organizations and associations have no legal capacity or that these associations and organizations suffer from a lack of eligibility and treated as of minor child and the non-adult, provided that the acquisitions and disposal exclusive consent of the presidency of the Executive Council of the province.

It's noteworthy that the law ignores the nature of the work of organizations and associations that may need to buy or dispose of property, or the freedom to own any source, whether by buying or giving or by hand or any reason of ownership of the property.

It's surprising that in case of dissolution of an organization or association in accordance with Article (20), the inspector who collects the funds and the contents of those organizations and associations can dispose of them, but without distinction between funds transferred and fixed according to the rules of procedure, but the board does not have this right according to the previous two paragraphs.

The coordination, handling, and integration with the competent authorities:

The third and final paragraph of Article (15) of the law stipulated that "the relationship of associations and civil society organizations should be based on the coordination, cooperation, and complementarity of the public interests and in accordance with the administrative procedures of the office of humanitarian organizations' affairs," it regards the organizations and associations as simply as governmental and executive agencies of the office of organizations affairs, and make the office a central and comprehensive body in all matters relating to coordination, cooperation and integration with the competent bodies without naming or identifying these competent authorities, and the philosophy behind this article reflects the lack of real understanding of the concepts of civil society and its roles, and it also reflects that the administrative authority considers that organizations and associations as a competitor rather than a social partner, working independently, and this kind of independence is what gives it the freedom of movement and development, and the contribution to the development of society.

Although the fifth chapter of the law (Article 15) is entitled as the rights and duties of organizations and associations, it doesn't carry any rights, but a set of obligations and physical and legal obstacles, which will lead through the practice and

application of this law to block the freedom of movement and work of civil society organizations, and not a legal framework that unleashes the existing capacities of society and for the sake of public interest.

The best practices to promote the freedom of peaceful gathering and the right to form organizations:

- 1- To recognize the crucial role of the right of free peaceful gathering, and the right to form organizations in the emergence and existence of effective democratic systems because they are a channel that allows dialogue, pluralism, tolerance, and openness and guarantees the respect for dissenting opinions or beliefs of a minority.
- 2- To ensure that no person is criminalized for exercising the right of free peaceful gathering, and the right to form organizations, or to be subjected to threats, acts of violence, harassment, persecution, intimidation or reprisals.
- 3- To ensure that the law provides restrictions that impose the right to a free peaceful gathering, and the right to form organizations, those restrictions should be necessary for democratic societies and are compatible with the desired objective and not prejudice the principles of pluralism, tolerance, and openness. Any restrictions should be subject to independent, impartial and prompt judicial review.
- 4- To ensure the full observance of the right to live, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.
- 5- To grant protection to individuals exercising their right to a free and peaceful gathering, and their right to form organizations, by the right of freedom of expression.
- 6- To ensure that adequate training is provided to administrative and law enforcement personnel in respect of the right of free and peaceful gathering, and the right to form organizations.

The conclusion

The civil society organizations are aware of the concerns of some sectors, which are making a growing tendency to restrict the movement of associations and organizations at the level of the freedom of establishment and formation, or the level of freedom of activities. The organizations are willing that the Autonomous Administration recognizes that there are real and serious obstacles to the development of the civil society.

It's necessary to unite the efforts of civil society by all of its aspects to launch a campaign to amend the law and raise awareness of the seriousness of its application in its current form.

The emphasis on the discrepancy of the law with the Charter of the Social Contract of the Autonomous Administration in Articles 20 and 23, which provide constitutional protection of human rights conventions and the need to strengthen its protection and enforcement in the local situation.

It's important to note the harmful practices of some regional and international organizations and bodies dealing with the Syrian civil society, in a way that increases political, sectarian and regional polarization, in a way that undermines the establishment of an independent and effective civil society.

The reconsideration of the law of organizations to ensure internal censorship, and strengthen the powers of public associations and basic membership, and to ensure the democracy of the administration by imposing a maximum limit on the membership of the board of directors, with the strengthening mechanisms of censorship and transparency, self and internal accountability.

The need to distinguish between the local organizations and the foreign organizations, to allow the latter to engage in activities by obtaining a work permit, and not to register for a specific period of three to five years.

The Law of associations and civil society organizations (issued by Decree No. 3 of 2017), contains a serious violation of the principles of the Charter of the Social Contract, and the international human rights standards, as it also doesn't contribute to the advancement of civil action, and it doesn't constitute an acceptable and modern legal framework for regulating the right of free organizing.

Recommendations

The promulgation and enforcing the law that regulates organisations, associations, and civil society institutions – issued by Decree No. 3 of 2017, ratified by the Legislative Assembly and the co-governor of Jariza Canton – constitutes a serious reality to the organisation working in areas under Autonomous Democratic Administration of Northern and Eastern Syria (ADANES). This has imposed a more oppressive regime on civil society organisations and will place countless obstacles to the work of civil society and its concrete contribution in areas of development and human rights. Moreover, this will raise concerns of individuals and organisations wishing to exercise their legitimate exercise of the right to freedom of association, which will have a profound impact on the work of civil society organisations.

Recommendations addressed to the Legislative Assembly and the co-governor of Jariza Canton:

1. Amending the articles of the law regulating organisations, associations and civil society institutions – issued by Decree No. 3 of 2015 – and its implementing regulation to ensure that it promotes and protects the rights to freedom of associations and prevents the authorities of ADANES from interfering in its affairs, funding and management.
2. Should be informed and guided by international human rights instruments, its interpretations, and international best practice in formulating and drafting the law and its implementing regulation. Reports by United Nations human rights rapporteurs (Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Representative on human rights defenders, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) should also be used in drafting the law.
3. Guarantee the right of individuals to establish civil society organizations through notice without having to officially register, and to ensure their rights to receive internal and

external funding to carry out their activities and achieve their objectives without having to obtain a permission. Notifying the authorities of such activities (establishing organisation/ assemblies, applying for local and international funds) should be sufficient, subject to the rules of accountability and transparency.

4. Ensure that the law prevents any attempt by the authorities of ADANES to deny registration of any organisation, or restrictions on its activities, or dissolution of any organisation. Moreover, the law should emphasise that it is the responsibility of the authorities to prove that any restriction – that doesn't comply with international human rights – is the only decision possible and absolutely necessary in that particular case and it is to achieve a legitimate objective. In addition, when assessing the legitimacy of the restriction, each case should be considered separately in accordance with international human rights law.

5. The law should clearly state that ADANES decisions are subjected to the control of an independent and impartial judiciary, to which organisations can turn to challenge decisions by the administration and to seek legal remedy within

remedy within an appropriate duration of time.

6. The law should oblige the ADANES authorities – when issuing a decision to dissolve, suspend or denial of a registration – to give a detailed and reasoned explanation for its decision, and the grounds for the decision should be based on full compliance with international human rights, otherwise the decision would be declared null and void.

7. The law should clearly specify legal date for the issuance of the decisions of ADANES, dates to appeals those decision, and these dates should be within appropriate and reasonable time limit.

8. The law should clearly specify the particular body – within ADANES– responsible for organisations' affairs, instead of the current situation where there are several bodies such as "Humanitarian Organisations Office", "Labour and Social Affairs Commission", "Executive Council of the Canton", in addition to "Organisations Registry". The law should include – in definition section – the name of the body/ authority responsible with dealing with the organisations.

9. The law should clearly specify the grounds for revocation of licences, and adopting a narrow interpretation of certain concepts such as "undermining public security" and "public interest". The law should clearly determine which cases constitute a breach of public security, in a manner that does not undermine the work of organisation on the ground of "undermining public security".

10. The law should take into account placing disciplined restrictions on the members of the board of the directors of the association or organization, when a decision to dissolve the association is made. Moreover, the law should grant the

members of the general assembly a right to debate the decision on dissolution of the association and to appeal that decision before the judiciary. The current law provides members of the board of director's mechanisms to dissolve the association that could be abused in a way that could lead to the destruction of the association because of personal or political reasons.

11.. Involve civil society organisations and the public in the law-making process through public hearings and panel discussions that ensure active participation of a variety of stakeholders. Ensure that the international human rights instruments have been studied and understood, and utilizing civil society organizations and its efforts in disseminating and consolidating a culture of human rights and inputs from other experienced entities.

Recommendations to the Autonomous Democratic Administration of Northern and Eastern Syria:

1. Cooperation with civil society organizations to freely operate in the society, refrain from making hostile statements against civil society, disseminating misconceptions about civil society, and considering civil society as an enemy or a competitor of ADANES.

2. Reconsider and cancel all decisions that either revoked the licence of or dissolved an organisation.

3. Capacity building of staff in ADANES agencies that are relevant to and deal with civil society organisations, so that its work and awareness are compatible with international human rights standards.

Recommendations to the judiciary:

The judiciary should consider – when developing a judicial decision – the following: international human rights instruments, international best practice, precedents, and international and regional jurisprudence that guarantee the rights of individuals to freedom of association.

Recommendations to civil society organizations:

Consider formation of council of civil society organisations, tasked with coordinating and capacity building to support freedom of civil society organisations and promote the right to freedom of associations.

1.Active communication with United Nations mechanisms on human rights, in particular, 'Special Procedures Human Rights Council'.

a.Special Rapporteur on the rights to freedom of peaceful assembly and of association – Mr. Maina Kiai¹⁹

b.Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression – Mr. David Kaye²⁰

c.Special Rapporteur on the situation of human rights defenders - Mr. Michel Forst²¹

2.Organise mobilization and advocacy campaigns to abolish the current law and to introduce a new bill that guarantee the rights to freedom of association.

3.Provide legal and social protection for volunteer human right defenders, and ensure a fair contract for the employees of the associations.

4.Prepare a team of lawyers, represents a legal protection and assistance umbrella for members of associations, to provide legal assistance to members of civil society organisations and associations, to protect them from legal and judicial persecution, to provide legal advice during the stage of establishing the association and during its field work, to initiate the proceedings before the judicial bodies in the disputes between associations and the authorities.

¹⁹. <https://www.ohchr.org/AR/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>

²⁰. <https://www.ohchr.org/AR/Issues/FreedomOpinion/Pages/OpinionIndex.aspx>

²¹<https://www.ohchr.org/AR/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>

Global Standards Of the right to association

Article 8

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;

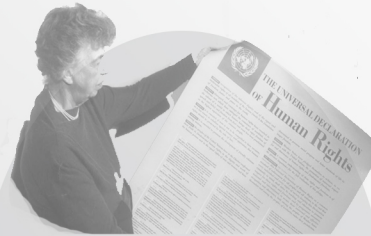
(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(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;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.



Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 16

Declaration on Human Rights Defenders

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out

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 Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

American Convention on Human Rights

San José

22/11/1969

Article 16

Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Rome

4/11/1950

The European Convention on Human Rights

Article 11

1. Everyone has a right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Regional standards

Of the right to association

African Charter on Human and Peoples' Rights

Nairobi

1981

Article 10

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

Tunis

2004

Arab Charter on Human Rights

Article 35

1. Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.

3. Every State party to the present Charter guarantees the right to strike within the limits laid down by the laws in force.

Associations law:

one step forwardtoo many steps backward



Associations law

one step forward
too many steps backward

2018