

## **Will Representatives legislate to restrain freedom of societies?**

### **New bill to restrict formation and practice of national societies and human right organizations**

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#### **Introduction:**

The National Societies Draft Law (NSDL) that was passed lately by the Services Parliamentary Committee, was carefully studied by BCHR with deep concern. Compared with the active 1989 Law, this new NSDL includes positive articles, yet same essential restrictions and shortages are still present. Thus, BCHR demands both of Counseling and Parliamentary chambers to abolish the current law and withhold passing any law that restrains freedoms of societies, and to replace them with alternative legislations that would support the formation and activities of societies.

What distinguishes NSDL over the 1989 law is the prohibition of societies' closure or dissolution without judicial warrants, and termination of the Ministry of Social Developments' role in temporarily closure of any society. It also allowed societies to seek domestic financial support. It dropped the beforehand consent of the Minister for charity activities that are conducted for funding. The NSDL stated that in case of no response to the application request within 45 days, approval is granted automatically to the society. It, as well, wouldn't abandon societies from interfering in politics, unlike the active legislation<sup>1</sup>.

A major deficiency is the interdiction of society formation and group activities, unless within the heavily restricting and conditional legislation itself, keeping the civil society organizations under the direct mercy of the executive power, whether in founding,

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<sup>1</sup> The text of the proposed law was published by Al-Ayyam newspaper, 15 January 2006.

practicing and financing or closure and dissolution. This legislation has also adhered to existing act punishments, worst of all is either 3 months imprisonment or a fine up to BD1000 for any activity that is carried out under the name of the society without an official permission, as this explicitly contradicts with basic rights of forming societies and considered a violation to the international conventions that Kingdom of Bahrain is a member to.

Countries that are advanced in terms of freedom and human rights won't lay out rulings that would limit the freedom of society formation or punish for practicing it. As every group has the right to establish its society and practice its activity without the need for permission, though some countries set procedures and standards as a condition to obtain motivation and support from the state, with safeguards to prevent executive power from misuse that for domination over the non-governmental-organizations or discriminating amongst them. Societies in some of those countries willingly attempt to register in order to obtain the official attribute to perform or control financial transactions, or to take advantage of tax exemption legislations.

### **Sectors and factions embodied by the Society's legislation:**

The significance of NSDL is that it rules the action of important sectors of the civil society organizations which are the professional, charitable, Islamic, women, social, foreigners, regional and international and its qualitative unions, territorial qualitative unions, and public welfare societies (article 1).

### **Human right societies:**

NSDL does not cover human right organizations but they seems to fall in public welfare societies categorization which article (1) defines as: "Any society aim at public interest achievement, the Minister would issue a decree to characterize it as public welfare, where similarly comes the societies' abolishment of the characterization as public welfare".

Thus, human right organizations, which are to monitor and observe the executive power, cannot attain the public welfare feature without a decree by the executive power itself, represented by the Minister. And if is granted, it would find itself, by the power of law, under the Ministry's dominance as will be explained thereafter in details. And the Minister reserves the right to abolish its public welfare characterization where it turns non-welfare and non-legitimate.

Human right organizations are on the verge of opportunity not to fall into this legislation trap that is neither mentioning nor understanding their role. They should work on creating their own status that will dissent them from the executive power supremacy and enable their real role of observation and surveillance.

### **More restrictions on founders number and age**

Article (4) of the legislation stipulated the least number of a society founders as 30, with minimum 21 years of age for each. Herewith, the new NSDL puts more restrictions than the present one that requires no less than 10 founders with minimum age of 18. This article deprives the right of organization for any group less than 30 people. It also deprives the youth below 21 to participate in forming national societies of any kind. The legislation has excluded the youth societies from the circle of the national societies in order to keep them under a law sponsorship of another governmental firm.

### **Internal codes are decided by legislation, in lieu of societies:**

Article (6) includes in-depth details on how societies' internal codes should be formed to acquire practicing permission. Hence, article (13) stipulates that internal codes be amended with Ministry's approval. Then, articles (21) to (36) under "Society's institutions" describe particulars of structures and internal codes, whereas these are details that should be left to society members and not be imposed by law. All this could have been briefed as it came in article (6): "As a guide to societies' internal code preparation, a model order from the Minister would be attached to the executive code of this statute". While this legislation impresses all these tiny details on the societies, yet it disregards more significant details that we shall examine hereunder as we present the articles of this legislation.

### **Restrictions on objective setting and formation, and hindrance of registration**

Article (7) lays down baggy expressions that restrict the society in molding its objectives as "non-touching of the general order, affirmation of social peace and that it should not be of a sectarian and/or racial trait". Various explanations to these expressions open the door wide for restrictions on societies in shaping their goals and on citizens ability to establish societies or set objectives to protect the rights of different groups in the community. Worthy for this article to have been clear and guiding accompanied by a independent legislation that prevents discrimination in the country.

When applying for registration, article (8) dictates conditions that leaves enough room for refusal or procrastination, for instance "support document of society's location occupation".. or "any other requirements determined by the executive code". It is unclear whether having a location for a society is a condition to accept or refuse its application. If so, then this is another restriction on citizens' basic right to form societies.

Article (10) reserves Ministry's right to decline society's application if found contradictory "to sovereignty of the charter and law order, or if goals are found to be inconsistent to order or public decencies". This way, the Ministry can use its own

interpretation to these vague expressions to decline applications. Should the society decide to appeal for grievance to the Supreme Civil Court (as per article 11), it could take up to 4 months in whole (i.e. 45 days to register, 30 days for to complain before the Minister, and 60 days for the Criminal Court). As a result, founders would go through a series of complex legal and juridical measures with no guarantee to succeed, whereas any activity being carried out by them during this period would result to either penalties of imprisonment or fine.

Whilst it is basic right to release the freedom of society creation and activity practice as long as it is peaceful and societies should only announce or notify authorities about their existence, and if there is any legal claim against the new society a judicial case should be filed against the society by authorities, and not vice versa.

### **Legislation leaves societies under the Minister's mercy and mood:**

Article (14) states “societies are not to accept funds from abroad without prior consents of the Minister or whoever empowered by him” and “societies should disclose the nature, type and value of this fund in the audited financial report as well as the annual report that is being raised to the general assembly”.

Without specific criterions, NSDL has constrained the acceptance of financial supports funded from abroad, and it has granted the Ministry full charge on those funds according to its exclusive mood in which it has reinforced the Ministry's domination on the societies. This article text states that disclosure and mechanism of the external supports are mandatory, which is enough by itself as a constraint and a method of surveillance on the external finance to the societies.

Article (16) stipulates that societies undergo Ministry's control which includes examining societies' activities and verifying if they fall within its internal codes. This absolute text leaves the civil society organizations under the mercy of the Ministry and the behavior of its employees without specifying limitations or mechanisms.

Article (22) gives the right to the Ministry to call for unusual meetings of the general assembly. As per articles (24 & 39) the such meetings the power to speculate internal codes of the society, merge, transfer or dissolve it, or even dismiss board members. This means the Ministry is powered to overcome the elected board members and interfere in internal mechanisms of the society.

Article (25) states that society must inform the Ministry about every general assembly held at least 15 days ahead with a copy of the invitation letter along with meeting agendas. Article also grants the Ministry the right to send its representative to the meeting with full right to voice his opinion and discuss with them any topic that the Ministry may considers as “public interest”.

Article (29) orders the society to report to the Ministry about the results of the general assembly and decisions taken within 15 days from the meeting. Article (31) states that the 'competent administrative authority' is authorized to demand for a board meeting if necessary.

Article (34) grants the Minister the right to abandon the elections according to his own understanding: "If understood that the board members have been elected by violating the articles of this legislation or the internal code of the society". Thus, instead of giving the right to the Ministry or any other body to impugn the elections before judiciary, this law gives the Minister the right to cancel the elections and leaves the elected board to go to court as this same article stipulates.

Article (35) grants the Minister the authority to appoint a temporary board for the society for a one-time-renewable period of 6 months, if "board members cannot conduct their meetings properly because of being incomplete in numbers, or failed to reach the quorum three consecutive times, or if the general assembly was conducted for 2 consecutive years without an acceptable reason to the Ministry". This article is a dedication to the custody culture which civil society organizations should bow for the compulsory fatherhood of the executive administration.

Article (36) grants the Minister the authority to halt the implementation of any decision made by the society's guardians if found to be "violating law, internal code or general decencies" then the society can impugn the Minister's decision before the Civil Supreme Court. Once again, instead of the Minister turning to the judiciary, he rather interrupts the society's decisions based on his own explanation to those hazy expressions then leaving it up to the society to go to the court!

Article (38) stipulates the the Ministry's approval for a society to be able to; associate, participate or join another society, institution, union, national or international organization. While it should be sufficient enough to just notify the Ministry, similar to association with national bodies, where the Ministry can refer to the judiciary in case of violation.

### **Concluding remarks:**

Passing such legislation would harm the reputation of both chambers of parliament, and would expose it to criticism by international organizations and committees in charge of the implementation of conventions to which that Kingdom of Bahrain is a state member. Moreover, should this legislation be imposed on human right organizations, it will double the undesired results and bad reputation of the legislation as well as the party that has issued it. With such laws the civil society organizations will remain helpless to play their role, as real partners, in large-scale development for both; the State and the society.

Using the law to prevent the creation or activities of societies, is one of those dictatorship and constraint era's waste. There is no choice but to release the freedom of society. If

there should be a law, it should only be to organize, facilitate and support societies' activities, not to constrain and prevent them.