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CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association
and the Special Rapporteur on the situation of human rights defenders.**

REFERENCE: AL Assembly & Association (2010-1) G/SO 214 (107-9)
BHR 1/2013

19 April 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/21 and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a new draft law on associations which if adopted would violate international norms and standards related to the right to freedom of association and could seriously compromise the work of civil society organizations, including human rights organizations.**

According to the information received:

On 7 January 2013, a draft law on Civil Associations and Organizations was referred by the Government to the Parliament. It is reported that several provisions of this draft law are contrary to international norms and standards related to the right to freedom of association, in particular:

Article 2 of the draft law reportedly prohibits the formation of an association which is "based on sectarian basis", "violates public order and morals", "carries out political activities", or "aims to generate profit" or "aims to achieve aims that contradict the constitution or Bahraini legislation". It is alleged that these restrictions are vague, could be subject to arbitrary interpretation and intimidate human rights defenders preventing them from forming associations, and from operating freely. In light of the fact that several human rights defenders have in recent months been accused of "conducting political activities" or of "fuelling sectarian hatred", it is alleged that these provisions could lead to increased

stigmatization and criminalisation of human rights defenders in the Kingdom of Bahrain.

Article 7 of the draft law prohibits individuals from participating in more than one organization working in the same field, unless a prior permission from the relevant minister has been granted. This provision will reportedly have a detrimental effect on individuals' ability to form and join associations freely.

It is also reported that the draft law provides for a prior approval procedure to set up an association. This allegation is of particular concern as, under the current draft law, individuals are liable to criminal sanctions in case they operate in unregistered associations (article 87). Article 8 provides that the Minister of Social Development has the power to reject a registration application in case the Minister considers "the society does not need [the association's] services", or if "the application violates the provisions of this law or aims to revive an association that was previously dissolved". It is alleged that the aforementioned grounds for rejection do not correspond to the legitimate grounds provided by article 22 (2) of the International Covenant on Civil and Political Rights and may be subject to arbitrary interpretation. It also provides considerable discretionary power to those who would be enforcing the law. Furthermore, article 73 of the draft law, which provides that only one trade union in a given sector will be allowed, allegedly neglects one of the key components of freedom of association; namely that individuals can freely associate for any legal purpose.

Article 13 of the draft law authorizes the authorities to access the records and documentation of an association. The same article provides the authorities with the power to visit an association's headquarters for any purpose. Article 14 allows the Ministry of Justice to investigate criminal cases that may have taken place within the premises of an association, without the need for permission from the prosecution office. These provisions allegedly provide for extensive discretion to the authorities to monitor and influence the internal affairs of an association and unduly restrict the right to freedom of association.

Furthermore, prior ministerial approval will be required when an association intends: to affiliate with a foreign organization (article 16); release publications (article 18); organize fundraising events or receive domestic and foreign funding (article 17); open or close a bank account (article 50); donate funds to foreign organizations (article 52); invest funds or to perform any financial transactions (article 55); and invite foreigners to attend conferences, workshops or activities in the Kingdom of Bahrain (article 88). It is further reported that the Minister of Social Development will have the power to: hire a manager or a temporary board to run the board of an association in case a quorum is not reached (article 20); attend general assemblies of an association (article 27); inquire about decisions of general assemblies (article 40); cancel the election of executive board members (article 41); and suspend the board or any of its members (article 82). These

provisions allegedly gravely interfere with the internal affairs of associations and violate international norms and standards related to freedom of association.

Moreover, article 71 provides for the creation of a “middle organization” (unofficial translation) to supervise, under the auspices of the relevant ministry, the work of other associations working on similar matters with the aim to advise associations on their activities or their funding situation. It is alleged that this body, whose composition may lack independence from the Government, provides for undue oversight over associations.

In relation to the suspension and dissolution of associations, an organization can reportedly be suspended or dissolved if it: “uses its funds in a wrong manner”; “is unable to achieve its objectives”; “carries out activities based on sectarian nature”; “gathers or sends funds in violation of the law” or “affiliates to a foreign organization without the approval of the authorities”. It is alleged that the reasons for the suspension and dissolution of associations are vague and may be subject to arbitrary interpretation and restrictive implementation. Moreover, article 22 of the draft law provides the authorities with the right “to merge associations aiming to achieve the same objectives”, which will allegedly introduce a new form of *de facto* dissolution, in violation of international law and standards.

Article 87 of the draft law also provides that representatives of associations can be subject to severe prison sentences for minor reasons, including in case they: allow non-members to participate in the association’s general assembly meetings; invite a foreigner to attend any activities of the organization without the approval of the authorities; or receive funding in violation of the law. It is alleged that the draft law does not strike an adequate balance between the severity of the penalties and the offences, and therefore unduly restrict the right to freedom of association.

Grave concern is expressed that most provisions of the draft law on civil associations and organizations do not comply with international law and standards pertaining to freedom of association. Grave concern is further expressed that the draft law, if adopted without further changes, will seriously compromise the role played by independent civil society organizations, including human rights organizations, and lead to increased stigmatization of such organizations within Bahraini society.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to article 22 of the International Covenant on Civil and Political Rights, which provides that “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”.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade

unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We also wish to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

We would also like to emphasize that article 13 of the Declaration stipulates that 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 freedom, through peaceful means, in accordance with article 3 of the declaration.

We wish to refer your Excellency’s Government to Human Rights Council resolution 22/6. Notably, operative paragraphs 8 and 9 provide guidance to States on how to ensure that laws on associations create a conducive environment for the effective functioning of human rights organizations. We urge your Excellency’s Government to take these elements into account during the elaboration of the law in question.

Since it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Please provide full details on the aforementioned draft law and explain how its provisions comply with your Government’s obligations under international human rights law.

3. Please indicate whether any consultation has been undertaken in the development of the draft law, including with civil society actors.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the right to freedom of association is respected.

Please accept, Excellency, the assurances of our highest consideration.

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders