

Enabling Environment for
Civil Society
**in the
Arab Region**



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P.O.Box: 4792/14 | Mazraa: 1105-2070 | Beirut, Lebanon
Tel: +961 1 319366 | Fax: +961 1 815636

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Assessment of the Enabling Environment for the Civil Society Organizations in the Arab Region

Dr. Yousry Moustafa

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► Introduction: Environment of the Civil Society between Restriction and Enablement

The civil society issue in the Arab region raises several theoretical and practical questions. Theoretically, the region is still trying to identify the civil society in terms of its composition, roles, relations and future in light of the speedy political, social and technological changes. The theoretical questions and concerns are linked to several practical issues relating to the capacities of the society organizations and the conditions thereof affecting their operation, and in general the nature of the environment, particularly the political and legal environment of civil organizations and entities. Anyhow, it shall be taken into consideration that the terms used herein refer to the reality and a great variety of phenomenon, for instance the term “civil society” is the main subject of this report and refers to multiple sectors and entities different in terms of roles, organizational structure, relationship with the State and the local and international community. In this frame, it must also be noted that the term “environment” refers to a variety of political, social, legal and cultural environments with impacts differing depending on the geographic location, civil society sector and period of time. Although the states of the Arab region resemble each other in terms of the position of the authorities vis-à-vis the society organizations, which contributed in creating inconvenient environments in terms of the democracy indicators and human rights, but demonstrate in the meanwhile a great diversity between and inside them. In these various and numerous environments, the civil organizations were capable of maintaining their presence and ability to coexist. In some contexts, the restrictions surpass the capacity of the organizations and thus the surrounding environment becomes restricted and sometimes aggressive and in other contexts these restrictions can be destructive to the capacities and abilities of the civil society.

In this frame, the enabling environment is defined as “interlinked conditions (legal, organizational, financial, information, political and cultural conditions) that affect the capacity of development actors such as the capacity of the civil society organizations to become involved in a sustainable and effective manner in the development operations, including the internal circumstances of these organizations and the external circumstances related to the practices of the governments and supporting parties”. In light of the various and numerous compositions, roles, capacities and orientations of the society organizations in one geographic scope, the environment impacts differ in terms of the nature of motives or restrictions imposed on the civil society organizations and the ability of the latter to benefit or to coexist or to adapt with the surrounding environment.

In accordance with this definition, the enabling process is linked to positive and incentive conditions for the political, legal, financial and information work of the society organizations. In addition thereto, we cannot overlook the indicators relating to the capacities of the civil society organizations, as per their internal conditions, to benefit as much as possible from the surrounding environment, to adapt with the changes and latest developments and to face the challenges and the difficulties. On another note, the restricting environment is where restrictions and factors are put in place to weaken the organizations in terms of their capacity to carry out their roles effectively and to maintain their existence and in terms of respecting and maintaining the rights of the organizations’ members and workers. It is noted that certain environments are implementing restrictions and threats surpassing the adaption and resistance capacities of the organizations and exposing the leaders of these organizations to risks and sometimes severe abuses, particularly if specific organizations or sectors were targeted like the situation is for human rights organizations in some states. Thus, the surrounding environment is not neutral, as it can either be an enabling environment providing positive conditions thereto or a restricting environment providing hindering and restraining conditions thereto. In light of the various orientations, operation circumstance and relations network of the civil society organizations, the impact of the surrounding environment cannot be of the same nature and degree in all organizations, as there are some organizations that are more affected than others by the surrounding environment whether positively or negatively.

It is well known in the Arab region that the diversified political, legislative, social and cultural environment still lacks modernity and democracy values in general. Most of the Arab states are witnessing tensions, conflicts and wars hindering the establishment of citizenship values and human rights, which are deemed as basic conditions for positive inputs in the political and civil societies. It is also noted that the environments where the civil society organizations were established are not considered as convenient due to several reasons related to oppressive authorities, conflicts, wars or occupation, as is the case for Palestine. Major capacities and efforts are being deployed by the civil society in order to maintain their presence in inconvenient and even aggressive environments, particularly in what concerns the legal organizations that are always in confrontation with the authorities. The issue of supporting and financing civil society organizations is one of the most sensitive issues in terms of the availability thereof and the use of foreign financing as a tool to weaken or to attack local organizations and to jeopardize the reputation of the leaders thereof.

Despite all the aforementioned, each environment is different from the other in terms of the rates of opportunities and challenges. Some environments seem to lack strong civil society organizations. The political changes have a great impact on the dynamics of the environments surrounding the civil society. The positive impacts of the fall of dictatorial regimes in some countries resulted in the outbreak of new civil society organizations or the liberation of existing civil society organizations from the tyrannical restrictions, as is the case for Iraq and Syria, as well as Tunisia but unfortunately is not for Egypt where the restricting environment continued to exist and even became stricter after the overthrow of Mubarak. In Lebanon, the country offers free spaces although the situation did not witness major changes but also suffers from its own dilemmas due to the nature of the political authority as there are continuous confrontations between the civil and religious communities. Palestine is always subjected to the restrictions of the occupation and still suffers from the division in the political authority.

For the purpose of this project, several factors were put in place to assess the nature of the environment of the civil society organizations in the Arab countries subject of the study. These factors involve two main components as they are closely interlinked: the political component governing the civil society organizations, whether in relation to the political environment in general or the nature of the relation between the civil society organizations and the governmental entities and institutions in particular and the legislative component which is in general affiliated to the political component and which will be based on a number of basic rights such as the right to peaceful assembly and the right to access information. One more factor can be added to the aforementioned two main ones which is related to the resources and financing.

It must be noted that despite the isolation of the Arab countries but they are still highly impacted by the international community. Following the Arab Spring, the regional influences aggravated between the Arab countries. With the exception of the important and growing role of social media, the remaining negative influences are extremely severe. The region became a fertile environment for the conflicts of big countries as well as for weapon trafficking and trade. These conditions and developments play a vital role in forming the environments of the civil society in the region. It is enough to say that the “war against terrorism” in the region has a negative and dramatic impact on the operation of civil society organizations, whether due to the restrictions and legitimization of law and exceptional procedures limiting the civil and political freedom or due to the restrictions imposed on the support resources of the development and human rights.

This report is entitled “Assessment of the Enabling Environment for the Civil Society Organizations in the Middle East” and will be published in the frame of a project that will be implemented in cooperation between non-governmental Arab organizations network and the Norwegian People’s Aid in order to widen the civil space and to develop the capacities of the civil society organizations for them to participate in discussions relating to development and human rights at the national, regional and international levels. The project also included supporting activities and preparation of analytical studies of the civil society environment in 6 countries: Syria, Lebanon, Palestine, Iraq, Egypt and Tunisia. These studies aimed at providing a vision on the features and characteristics of the civil society in specific countries through a number of basic factors indicating the extent of suitability of these environments with the operation of the civil society organizations, in order to determine whether they are supportive, obstructive or neutral. The factors also include a number of basic rights, such as the right to form organizations, the right to develop resources, the right to peaceful assembly and the right to access information.

The regional studies explain more about the details, features and changes of the civil society organizations in each country. Thus based on the results of the regional studies, this regional report presents the main features of these environments as well as the resemblances and discrepancies between them. The report also focuses on the political and legal environments deemed to have the greatest impact on the existence and the effectiveness of civil society organizations, whether in terms of the historical dimensions with impacts still influencing the present or in terms of the quick changes witnessed in the Arab countries during the last years starting with the Iraq occupation and ending with the implications of the so-called Arab Spring. Despite the numerous meanings of the term “civil society”, the report focuses on the legal and development sectors of the civil society, as these are the most influenced sectors by the surrounding environment and the most targeted by the authorities in the Arab region.

In general, the reader will notification the numerous characteristics of the civil society environments in the countries subject of the study, as follows: first -despite the common grounds shared between the countries of the region, the environments of different societies are characterized by diversity and disparities; second – the political factor is the predominant factor upon which the environment legal frames governing the civil society are formed; third – the political and legal environments are not only ruled by internal influences at the national level as there are also external regional and international influences to be taken into consideration; fourth – there are major events that greatly impact the composition and the nature of the civil society organizations, whether those that led to the fall of political regimes or those that led to conflicts and wars.

Although the regional studies provide specific recommendations in order to surpass the restricting environments and to build enabling environments, this regional reports presents a number of general recommendations aiming at promoting the group exerted efforts regionally and internationally to create suitable environments for the operation of civil society organizations. In reality, the creation of such an environment is not a goal in itself but more of a mean to enhance and to strengthen the efficiency of the civil society organizations as this is the social and political condition required to achieve the ambitions of the people in the region aspiring to live in freedom and social justice. In addition thereto, the recommendations aim at concerting the efforts to protect the defenders of human rights in the region exposed to threats and serious violations in the Arab countries.

► First – Political Environment

The aforementioned term “civil society” refers to numerous entities and orientations and thus the interaction and response forms to the conditions and changes of the reality differ depending on the nature of the work and the directions of the organization. It must be noted that a challenge to a rights defense organization may not be a challenge to a relief or charity organization. In general, the main challenge facing rights and development organizations is that the reality to be fixed or changed is the environment imposing restrictions on the society and as such the reasons behind the existence of the legal entity are the challenges hindering the existence or the operation of this same entity. Often, the political context is not easily separated from the legal context and their relations with the required resources for the operation of these organizations. The laws reflect the nature of the political systems, particularly in what concerns the rights and freedoms as this is a complex system which factors cannot be easily addressed individually. However for the purpose of this analysis, each environment governing the operation of the civil society organizations will be addressed under a separate title, while highlighting the connection and interaction between them. Thus, the title “political environment” will focus on describing the general nature and changes of this environment and the impact thereof on the civil society organizations, along with the external influences relating to the international situation and the impacts thereof as well on the region as a whole and particularly in terms of the so-called “war against terrorism”. The report also discusses the other basic rights factors of political nature in the legislative environment section such as laws, procedures and practices relating to the implementation of the law.

The political environment issue in the Arab societies is considered an organizational issue relating to the nature of the government in these countries defined with numerous descriptions in the political publications, including the generating state, religious state and paternal state. These descriptions reflect analytical perceptions of the nature of the authority and the relation between the government and the community. In conclusion, the government patterns in the Arab region lack democracy in the context of the law sovereignty and citizenship principles. These communities lack the principle of separation between powers and as such the modern and traditional forms of political environment become the predominant factor determining the legal, social and cultural environments. Although this is the general rule in the Arab countries, however the situation differs from one country to the other depending on the characteristics of the authority and the nature of the balance of powers between the government and the community, thus the discussion will involve political environments rather than one political environment. The regional studies reveal the same facts regarding the enabling environment for the civil society in Arab countries, as there are specific aspects that make one environment better or worse than the other. In addition to the nature of the authority in each country, the political stability issue under the weight of the current changes is considered one of the recent factors determining the political environment in the region. The indicators of disorder and instability are new in these communities previously characterized by political stagnation and inactivity. The region witnessed major changes with the new millennium starting with the occupation of Iraq and followed by the Arab Spring in many countries still ongoing until this moment, particularly in Syria, Libya and Yemen. In light of all these changes, the civil society witnessed major positive and negative changes and the impacts thereof affected the entire structure of the civil society, particularly the youth community freely expressing the different opinions in the virtual world which was not possible for previous generations. Anyhow, the current situation defined as a “transitory” situation clearly refers to instability in general without being able to know whether the impacts thereof will be positive or negative in the future.

When analyzing the current conditions, the comparison between the political environments in different countries may be subjected to estimations relating to stability and instability, democracy and repression while taking into consideration that the term stability does not only refer to political stability only as the economic, social and cultural conditions are main determinants of the future of the countries in the region.

1- Tunisia:

Although Egypt and Tunisia seemed alike in the beginning of the Arab Spring, but the political environment in both countries took completely different paths. The current circumstances show that the Tunisian experience just like the Lebanese experience is considered the best in terms of the results compared to other Arab Spring countries, and particularly Egypt which was always compared to Tunisia when under the control of the previous regimes. Tunisia made many positive steps towards the achievement of democracy or at least the avoidance of disadvantages of sharp polarization, relapse and waste of acquisitions made at the political level. Although it is difficult to say that the Tunisian civil society surpassed the risks and threats but it does have a political and legislative positive environment, not only compared to the situation under the governance of Bin Ali but also compared to the situation of the civil society in the other Arab countries. The revolution realized a quantum leap in the relation between the government and the civil society. After the closure and hostility, the Tunisian society is witnessing a continuous communication and interaction between state institutions and civil society organizations.

The moment of overthrow of Bin Ali opened up new horizons for the Tunisian civil society. It is worth noting that the presence of empowered forces in the civil society such as the Tunisian General Labor Union and the Tunisian League for Human Rights contributed in turning Tunisia's political course into a positive one in the Arab Spring. These are the entities that resisted the tyranny of Bin Ali regime and remained stable during the great popular movement aiming at overthrowing the regime. The analytical paper of Tunisia confirmed the same: "when the "revolution" started in Tunisia, it was clear that the opposition parties found themselves confused and taken by the quick pace of the events and were not obviously ready for the transfer of power. Thus the Tunisian General Labor Union called all parties and organizations including the Tunisian League for Human Rights to meet and to discuss how to manage the new situation and to provide a safe transfer of power. The local civil society found itself invited to participate along with the political parties in managing the phase of transition to democracy", stated the writer of the paper, Professor Salaheddine Al-Jorshe.

The political and civil forces were very keen on investing in the political environment in order to set constitutional and legal frames guarantying the rights and the freedoms. The civil society organizations prioritized the review of legislations regarding the operation of civil society organizations and the investment in the political condition in order to issue a decree ensuring the suitable legal environment for the civil society, and that is decree no 88 for the year 2011 providing all necessary guarantees for the establishment and operation of civil society organizations. In addition thereto, a ministry was established and was assigned to manage the relation with constitutional entities, the civil society and the human rights entities. Professor Salaheddine Al-Jorshe considered that the decree and the ministry both reflect a major and radical change in the operation of organizations and their relation with the political authority, as well as reveal a real progress in the civil field since the number of organizations doubled recently and was estimated at 18465 organizations in the beginning of 2016 "which is more than half the number of organizations established from October 2011 until January 2012".

There is no doubt that the civil impulse upon the Tunisian revolution as well as the essential role of big civil society organizations including Tunisian General Labor Union and the Tunisian League for Human Rights intensified the impact of the civil society on the political course in a critical moment¹. Despite all the aforementioned, the organizations of the civil society clearly express their concerns in terms of the developments of the political conditions particularly in light of the war and terrorism, as well as the fears of some authority departments from the expansion of the civil society in Tunisia. In light of the civil society organizations boom in Tunisia, tensions arose due to the interference between the organizations space and the political and religious space, especially in what concerns the charities perceived to have suspicious cooperation with political, religious and even jihadist forces. The Tunisian government decided to close dozens of organizations and to refer many other organizations to the courts of law. Thus, the current concerns mainly involve the promulgation of a new law for civil organizations replacing the currently enforced law, and whether this law will resort to using the pretext of law against terrorism in an attempt to shrink the gains made after the revolution.

¹ Reference should be made in this context to the report of the Royal Swedish Academy of Sciences after announcing that the Tunisian National Dialogue Quartet won the Peace Nobel Prize for the year 2015. The report referred to the role of the quartet in enhancing the transition to democracy, the avoidance of violence and the acknowledgment of pluralism in Tunisia and then the establishment of a constitutional system that guarantees the basic rights and freedoms. The dialogue quartet confirmed that the civil society organizations can play an essential role in the transition to democracy in any country.

2- Egypt:

Unlike the Tunisian experience, the consequences of the Arab Spring in Egypt were disappointing and severely dramatic, as the restrictions imposed on the civil society increased and the situation deteriorated after directly targeting many defenders of human rights under the pretext of foreign financing that will be tackled at a later stage. Thus, the civil society conditions in Egypt severely declined to become the worse in the Arab region. Politically, the civil society environment in Egypt is often compared to the previous situation in Egypt and the current situation in the Arab region. Although the civil society conditions in Egypt in the Mubarak era were not good but still better than the civil society conditions in Tunisia under Bin Ali's regime. Still, Egypt ended up imposing more restrictions and turned down the limited gains of the civil society.

Although the civil society organizations witnessed an increase in the numbers and a diversity of operation fields particularly the legal and development fields, the perception of the civil society by the government remained the same for decades. The Egyptian paper prepared by Dr. Majde Abdulhamid explains the roots and the progress of the problem in Egypt. The Egyptian state perceives the civil society based on the "affiliation" principle as "the state always aimed at establishing a subordination relation with the civil society rather than a real partnership based on equality and respect of positions and roles. Since the beginning on the fifties in the last century, after the revolution of July 1952, the state agreed with the people and the entire civil society to provide the basic needs of the people including the accommodation, clothes, education and healthcare and in return the public departments will be nationalized and the civil society will be able to independently participate in planning the policies of the state and making decision related to the daily life". The Egyptian paper describes the strategy of the state in order to impose its authority on the society, as follows:

- a) Ending and weakening the political opposition;
- b) Forcing the social institutions to serve the interests of the State;
- c) Annuling the financials of the civil society organizations including professional and labor unions, political parties, political and social associations, NGOs, education institutions and media.

The model of local community development organization established during the Nasserism phase controlled the state's perception of the nature and role of civil society, as a space including entities that are a soft extension of the state bodies in the local communities. The state had to accept the presence and the establishment of these new entities in the beginning of the eighties and during the nineties in light of the international and local changes, however it insisted on keeping the legal frames governing the civil society as they are and imposed more security restrictions. Practically, the state failed to control all the sectors of the civil society, particularly the legal component thereof which went through many fights to create independent spaces within the frame of defending the public rights and freedoms. The Egyptian experiment showed that a big part of the struggles and capacities of the civil society sectors was deployed to maintain their presence in a political and (cultural) environment free of hostility and aggression. The Arab Spring was an extension of these struggles but the balance of political powers was not in favor of the civil society organizations and the civil forces in general. Thus, the reaction was harsh and violent, whether through the pursuit of human rights defenders, narrowing the work spaces and resources development and restricting the operation of international entities. Lately, a new law was promulgated relating to the civil society deemed to be worse than all previous laws. The current political environment in Egypt is not only characterized by the restriction and devastation of enablement factors, but also by uncertainty of the future of civil spaces on the short term, especially under the weight of the decline of the democracy, the economic and the social indicators.

3- Lebanon:

The history of the civil society in Lebanon, just like many other Arab countries, goes back to the 19th decade. It started in the form of charities and services entities of religious affiliation, which is a main phenomenon in the social and cultural structures in Lebanon. The legal frame regularizing the operation of civil society organizations in this country is the oldest in the Arab region. A public law was promulgated in the beginning of the 20th decade (1909/08/03) characterized with openness and guarantying the foundation and establishment right based on the notification system, known as the "notification" principle. This legal frame only concerns civil organizations and does not cover the other civil society components subjected to restrictive legal conditions, which will be addressed later on in the legal environment chapter.

When presenting the political environment in Lebanon, we cannot ignore the denominational reality and the external influences, particularly from the side of Syria. Lebanon underwent a civil war and is also the country hosting the highest number of refugees due to occupation and war. Despite the devastating impacts of the Lebanese civil war that lasted for around 16 years from April 1975 until October 1990, the burdens of the civil society organizations during and after the war only strengthened them in the Lebanese community. A Lebanese study prepared by Professor Zahra Bazzi shows that the absence of the Lebanese government allowed the civil society organizations to play social and relief roles as well as to become involved in the reconstruction operations. However, there are negative impacts on the civil society environment related to the consequences of the war, as one of the most threatening periods for the independence of Lebanese civil society was under the Syrian guardianship over Lebanon, where civil society has suffered from the political restrictions that the country experienced during this period.

With the end of the Syrian guardianship over Lebanon, the Lebanese civil society started to recover. Once the original legislation characterized with openness was enforced again, the Lebanese civil society environment became the best in the Arab region compared to other countries. The legal environment contributed in making Lebanon a suitable space for the activities and the events of the Lebanese civil society in the region, including the registration of regional and international organizations in the Lebanese territories. Although the current feedback on the freedom of the Lebanese civil society is positive in general, however it does not mean that it is an environment free of problems and restrictions. The Lebanese study states that there are major challenges facing the civil organizations for many reasons including the refusal of state bodies to enable the role of civil society organizations in main fields, starting with political repairs. There is a structural dilemma in the Lebanese political system which is the sectarian nature of the regime, the spread of corruption and the lack of transparency.

The Lebanese civil society is characterized by its diversity and the high number of organizations and movements prioritizing the citizenship and anti-sectarianism issues. In the last few years, Lebanon witnessed a civil movement expressing the aspirations of the youth in terms of surpassing the sectarian system and building a state of citizenship. The Lebanese civil society reflects particular developments compared to other Arab countries by tackling sensitive cultural issues and personal and sexual rights, as well as it provides good practices in impacting policies.

4- Iraq:

The civil work in Iraq remained restricted under the control of dictatorship that used all the oppression methods and thus paralyzed the civil and political work for decades. The civil spaces were not common before the fall of Saddam Hussein regime which is the most important change in the region prior to the Arab Spring that impacted the political situation in the entire region and allowed international and regional interferences in Iraq creating conflicting and contradictory effects. Furthermore, the recovery of the civil life in Iraq took place in turbulent conditions due to war, polarization and sectarian and political violence witnessed and still witnessed by Iraq. In addition to these repercussions, Iraq witnessed a qualitative experience in Kurdistan Region, Iraq. It is a self-governing territory that has become an open space for many local and international civil society organizations for them to proceed with civil activities for the first time in Iraq. In this sense, the environment of civil society in Iraq is a special case.

In this frame, the study prepared by Mr. Jamal Al-Jawahiri on civil society in Iraq refers to two civil society phases in Iraq separated by 2003. The previous situation was very restrictive, where the authority at the time controlled all social and political organizations and entities, which started to assist the authority at the community level, otherwise, there were only charities of a religious nature that were far from everything related to the authority in anyhow, not to mention the issues of rights and freedoms and the participation in making public policies of the state. After 2003, the prospects for independent civil work opened up away from the intervention of the government or political parties aspiring to come to power or came to power in later periods. There is no doubt that the post-Saddam Iraq witnessed the emergence of many civil society organizations. International support has contributed to the establishment of these organizations knowing the positive and negative aspects thereof. Some organizations have emerged to meet actual needs and others have been established as a result of the availability of foreign support. Thus, the birth of civil society in Iraq, like Syria, has been subject to several internal and external conditions with negative and positive impacts thereon.

As for the political environment of the civil society in Iraq, two phenomenon must be highlighted in the study: first – the presence of a space for interaction and cooperation between the civil society organizations and international entities and organizations, including the United Nations organizations, in order to create a suitable environment for the operation of civil society organizations; second – the presence of a space for cooperation and coordination between the civil society and public authorities as well as the Council of Ministers and the judicial authorities. The study also mentioned other positive and negative aspects of the cooperation between the civil society and public authorities. The positive aspect is the participation of representatives of the civil society in drafting and setting public policies, such as the population policy, the protection of childhood, the strategy to limit violence against women and the national plan pertaining to the implementation of the Security Council resolution no 1325 relating to the situation of women during conflicts. In addition thereto, the members of the civil society can apply for the membership in the selection committee of the Independent Commission for Human Rights and have voting rights just like the representatives of the Parliament, the government or the Judicial Council. The negative aspect is that many forms of cooperation and coordination are not in conformity with the clear institutional standards and frame and instead are based on mainly personal initiatives and lack the institutional nature. Thus, it was deemed necessary to form a committee to draft a coordination policy with the public authorities with the support of the United Nations Office for Project Services (UNOPS). Despite some difficulties pertaining to the response of the government and local authorities to enable this policy but it is still considered a positive initiative in the current circumstances.

In reality, this type of cooperation between the civil society organizations and international and national entities is only one side of the overall image. The post-war Iraq has been witnessing interferences and polarizations making it an open space for numerous political environments affected by internal and external factors. If there is a political environment with coherent features, it is the one relating to the civil society environment in Kurdistan region of Iraq. The paper classified it as the best environment due to the relatively greater freedom given to local and international organizations, along with a more effective policy of cooperation and coordination between official bodies and civil society organizations. As a result of the deterioration of the security situation and the state of political and sectarian polarization in this country, the Kurdistan region has been the most attractive area for the operation of regional and international organizations.

5- Syria:

The establishment and development of civil society in Syria agree with the general context in the region in terms of the early apparition of civil charities by the end of 19th century as well as the legal restrictions imposed in the sixties of the last century. The restrictions not only continued to be imposed in Syria and Iraq but became more aggressive under the political regimes oppressing the civil and the political capacities of the community. “Since the sixties, the political regime has been attempting to exert control over the civil society. Thus, civil activities were not allowed unless fully supervised by the party leading the state and the community. For this purpose, the state created a governmental alternative for the civil society through semi-official popular organizations adopting the doctrine and the goals of the governing party and tackling all the aspects of the civil life of laborers, farmers, traders, manufacturers, students and scientists. In the meantime, the civil activity witnessed a decline and became limited to a small number of organizations, clubs, cultural salons that do not hold licenses and as such are subjected to accountability and threats. The civil society role shrank severely due to the political oppression, the consolidation of the security bodies and the absence of the rule of law. The situation of the civil society severely deteriorated in the eighties following the armed conflict against the authority and the numerous violations of public rights and freedoms. The partial economic openness in the nineties failed to expand the margin of freedoms and civil society spaces, as the number of registered organizations declined from 596 in 1962 (4.9 million person) to reach 513 in 16.4) 2000 million person)”, as per the study prepared by the Syrian Center for Policy Research (also known as SCPR).

If we acknowledge that the nineties was the period of recovery of social organizations globally, the situation in Syria reveals violent resistance by the authorities to prevent this new wave of access to the Syrian political arena. Although the study of Syria indicates that by the end of this decade, Syria witnessed a relative increase in the number of charities, and the emergence of initiatives and forums operating in other fields related to public freedoms referred to as the Damascus Spring. However, the situation was not sustained as the security bodies were alerted to besiege these new trends. The Arab Spring is a milestone in the history of Syria, and that also applies to the civil society in Syria.

Nevertheless, the problem is that the emergence of a new wave of civil movement, which has indeed occurred since 2011, coincided with unfavorable developments to establish a free, independent and effective civil space under the weight of violence, polarization and disorder that invaded the country. It is no longer just a matter of restrictions imposed on civil society organizations, but an issue of the loss of identity of large sectors within the civil movement and the fall of some within the cycle of violence and political and sectarian polarization. Even the accessible spaces were subjected to the policies of the political regime, as the study of Syria confirmed the following: «In the war, the political regime continued to suppress public spaces within its areas of control, but allowed the establishment of civil organizations to support the displaced persons, to provide educational services in addition to some basic needs, and to support the victims of civilian and military fighting, under the supervision of the state, but without authorizing any defensive, advocacy, developmental or cultural role, unless it serves its fighting position, while taking advantage of regional and international support at all levels”.

Despite the differences in the current situations in Syria and Iraq, there are many similarities between the Iraqi and the Syrian situation, in terms of the history and nature of political tyranny, as well as the instability, violence and polarization, in addition to the impact of regional and international interventions, including the positive and negative effects of support patterns for civil society. Perhaps the difference in the current situation is that the establishment of civil society organizations in Syria happened at a quick pace during the conflicts. Hence, the polarization processes are very active and thus sharper than the Iraqi situation. The future scenarios are still open to multiple possibilities that may not only impact the internal situation in Syria, but may also have regional impacts, especially in neighboring countries.

6- Palestine:

The Palestinian civil society has a special status as well, given the conditions of the occupation. It has played many roles at the social and political levels. Civil organizations have undertaken to defend the rights of the Palestinian people internally and in international forums. Given the specificity of the Palestinian reality, the environment of civil society is not only determined by the relationship with the state, but also by a political field involving multiple parties, as well as by the requirements of the occupation resistance and its impacts surpassing the political dimension to reach the economic and living dimensions. In light of these situations, the tasks assigned to the Palestinian civil society organizations are numerous. The history of NGOs and charities has been associated with the struggle of the Palestinian people in resisting the occupation and contributing to the organization and management of society. This sector has suffered from the abusiveness of the security occupation forces that have always intervened in the work of organizations. There was no Palestinian law regulating the work of organizations in the absence of the state, but the Jordanian law No. 33 of 1966 was organizing charities in the West Bank, while the NGOs in the Gaza Strip were subject to the Ottoman Law on Associations of 1907. In any case, the occupation authority was the one really controlling the work of associations. After the establishment of the Palestinian Authority by virtue of the Oslo Agreement 1994, Law No. 1 of 2000 came into force becoming the Palestinian law regulating the work of NGOs.

In this context, the Oslo Agreement is a fundamental turning point in the path of Palestinian civil society according to the study prepared by researcher Ayman Abdulmajid who stated the following: «the features of the Palestinian civil society were formed in different legislative and legal visions in parallel with the formation of the Palestinian Authority. The discussion moved from the vital role of the society under occupation, highlighting the steadfastness and protection of the land and the enhancement of the participation of people in the political and the social life to a different perspective following the Oslo Agreement, where the different parties see that the nature of the relationship between the Palestinian Authority and civil society organizations is based on a legislative, legal and political courses that was formed within hidden or identified features between two different experiences, summarized by some experts, as follows: the representatives of civil society organizations do not have a clear view of the relationship between the Palestinian Authority and the civil society institutions. The reasons for this tension are associated with several factors, the most important thereof is the difference in the experiences between the Palestinian leaders who lived outside the Palestine, and the leaders who have lived in the occupied territories (the West Bank and the Gaza Strip).

In the context of the occupation and duplicity of authority and two decades after the establishment of the Palestinian Authority, the paper refers to the formation of many Palestinian NGOs in response to the changes of the work environment and the requirements of the new reality, some of which were linked to the objectives of some parties (as did Fatah and Hamas), and others were the result of dealing with the trends of international financiers. The paper points out to the impacts of the new political environment after Oslo on the interests and orientations of the Palestinian civil society organizations, which turned the attention from confronting the occupation to establishing a political regime for the Palestinian Authority under establishment bound by political agreements with the occupation authority.

Conclusion:

The results of the regional studies show that the historical contexts of the emergence of the society in most Arab countries resemble to a certain point. The charities were the first sign of the emergence of the civil sector in these countries by the end of the 19th century and the beginning of the 20th century. However, the political context in each country directed the path and the development of this sector. The environment of civil societies definitely varies according to the regime of each country, as well as the impact of external, regional and international determinants. Although the restriction is the general characteristic, the dictatorial regimes as is the case in Iraq and Syria led to the closeness of the civil and political life in general. This is not the situation in other countries. In Egypt for instance, the period of Nasserism and the restrictions thereof on the political and the civil life constitute the background through which it is possible to identify the state's approach in dealing with the civil society. In Tunisia, the Bin Ali regime imposed strict restrictions on the right to form associations. In Lebanon, the civil society organizations only witnessed restrictions under the Syrian guardianship over Lebanon. Palestine is a special case in view of the role of the civil society in compensating the absence of the state and resisting the occupation. The civil society environment was affected by the major events witnessed by the countries subject of the study starting with the civil war in Lebanon and ending with the Arab Spring in Tunisia, Egypt and Syria passing by the fall of Saddam Hussein's regime in Iraq and the Oslo Agreement in Palestine. We may say that the political environments in most countries subject of the study clearly vary, as the situation in Tunisia, Lebanon and the Kurdistan region of Iraq is better than that of other countries, and hence they are not only supportive of the work of local organizations but also attract many international organizations and bodies and may be an escape for the civil society organizations suffering from restrictions in their countries. The situation in other countries is still fluctuating between bad and worse for several reasons, either due to the political instability or the violence, or the systematic political exclusion. It should be noted that these situations do not only mean imposing restrictions on civil society organizations but also destroying their structure and attracting some of them into the political or violence circles.

► Second – Legal Environment

The legal environment is determined based on the nature of the political regime. In the democratic regimes respecting the principle of separation of powers, the legal environment enjoys its relative independency from political pressures and interventions. On the opposite in the dictatorial regimes, the legal environment is subjected to the pressures and constraints of the political environment, and hence it loses its independency and becomes a restriction and political oppression tool. In general, the legal environments in Arab countries abide by the political conditions, while taking into consideration the different perceptions regarding the nature and independency level of the legislative and judicial authorities, as well as the exceptional measures. Although most of the Arab countries have constitutions guarantying rights and freedoms but the laws in general are drafted in a way emptying the constitutions from the content thereof due to the politicization of the law. The most dangerous aspect is not the politicization of the law but rather the politicization of the justice system, as even the rights and freedoms authorized by the laws are controlled by non-constitutional or even legal security and administrative interventions. Often, the legal environment is restricting the fragile due to the political or security oppression. The position of the politics between the constitution and the law and between the law and its implementation is the main determinant of the extent of consistency of the justice system. The legal environment of the civil society in the Arab region can be assessed based on this equation. The below is a review of the legal environment of civil society through a set of basic rights: freedom of association, the right to resources development, right to peaceful assembly and the right to access information.

1- Freedom of Association:

The freedom of association is the cornerstone of the legal environment. As much as the political and legal regimes attempt to implement this right in principle, the chances of the existence and effectiveness of civil society organizations are greater. The restriction of this right means wasting the rest of the rights for an appropriate legal environment. The right to form associations is enabled either through registration by notification, or by authorization and approval of the authorities. The issue is always related to administrative procedures and legal conditions by virtue of which the registration is done or the license is obtained. Constitutionally, the right to establish associations is guaranteed in almost all countries. Legally, this right is subject to conditions, restrictions and constraints that vary from one country to the other. In this sense, we may say that Lebanon is the only country to guarantee this right from the beginning of the last century. Otherwise, the restrictions on the right to register associations covered all the countries subject of the study. Positive developments only occurred in two countries, which are Tunisia after the Arab Spring and Iraq after the fall of Saddam Hussein's regime. The restrictions of the situation in Palestine are continuous and ongoing and the recent developments in Egypt place more restrictions on civil society organizations.

Thus according to the previous classification, Lebanon, Tunisia and Iraq are the leading countries in guaranteeing the freedom of association. The freedom of association in Lebanon is expressly stipulated in Article 13 of the Constitution and is regulated by a public law promulgated at the beginning of the 20th century (1909/8/3), which respects the freedom of association according to the principle of notification, meaning that the association is established without the need for a license and its founders only need to inform the concerned department after the establishment thereof. The Lebanese law guarantees the freedom of associations to manage their affairs while notifying the administrative authorities of any amendment or change in the articles of association or the administrative body. However, in view of the civil society with its various and diverse components, the guarantee of this right remains deficient. According to the Lebanese study, the law excludes certain categories from the civil society organizations and places them under the licensing authority to be subjected to special laws: foreign associations, youth and sports associations, unions of laborers and employers, cooperative societies and mutual funds.

In Tunisia, legal developments clearly reflect the positive side of the transition to democracy, at least up until the present moment. The Tunisian Constitution came to lay down sound foundations for rights and freedoms in Tunisia. Although the organization of the civil society, as well as political parties, is done by virtue of a decree rather than a law, this decree is in line with the provisions of the Constitution. «Decree No. 2011/88 issued before the Constituent Assembly elections is a real revolution in the course of associations in Tunisia.

The Tunisian civil society organized large-scale movements in order to provide a constitutional support for this decree when drafting the new constitution issued in 2014. In view of the supremacy of the Constitution over the rest of the national legislations, it provided major and fundamental rights to the civil society and turned it into an active partner in the process of transiting to democracy and building the Second Republic. The new constitution guaranteed the freedom of association and called for its protection. Thus, the establishment thereof only required informing the concerned department of the same after being forced in the past to obtain a prior license, which was giving the Ministry of Interior the full powers to recognize civil society organizations or to refuse their existence and activity, and gave it full freedom to declare the immobilization or the dissolution thereof”, stated Professor Al-Jorshe. This legal framework contributed to the expansion of the civil society space and the establishment of many new organizations. The more positive the situation gets, the more concerned becomes the authorities, according to the Tunisian study, which attributes these concerns to two main issues:

First - The experience of civil society organizations after the revolution revealed a paradox confirmed by the many reports and studies completed at this stage, including a report by Al-Kawakibi Center, which stated that «freedom of association was not accompanied with a freedom in the department supervising registration, and the absence of legislations led to administrative decisions restricting the freedom of association”.

Second - Associations linked to violent organizations attributed to the so-called Salafist Jihadist obtained legal authorization immediately after the revolution, which raised the concerns of the authorities and public opinion. This environment reflected the need to review the legal mechanisms that would prevent the exploitation of freedom of association in order to destabilize the national security of the country.

Thus, despite the ability of Tunisia to overcome the disadvantages of Bin Ali regime, there are many indications of instability in the political and economic environment, which raises many concerns. In this sense, the concerns of civil society supporters from the promulgation of a law diminishing the current gains remain legitimate, especially since Tunisia is still within the circle of debate regarding the so-called war on terrorism with its political and security dimensions that may affect the legislative and legal environment.

It must be noted that Iraq may be the closest country to Tunisia and Lebanon in terms of the legal environment that provides guarantees for the freedom of association, but the fundamental difference is related to the political context in Iraq, which also affected the structure and directions of civil society organizations. The Iraq study points out that the restrictions on the freedom of association are not as serious as those observed in countries that have preceded Iraq in the civil action and the emergence of many institutions and entities (as is the case in Egypt and Palestine). However, violence and sectarian polarization pose a threat to the stability of the legal environment.

As for Egypt, Palestine and Syria, the indicators are negative with differences in the nature and causes of the restrictions. In Egypt, it is possible to talk about the deterioration in the legal environment as a direct result of the tension and decline in the political field. In Palestine, we can talk about the lack of improvement of this environment. In Syria, it is possible to talk about the disorder and instability of legal frameworks. The developments in Egypt indicate a sharp decline in the index of the freedom of association in general and the right to form an organization in particular. This situation was legally confirmed by the promulgation of the new Associations Law (Law No. 70 of the year 2017). This law contains the suspicion of unconstitutionality in the opinion of most human rights organizations, including the National Council for Human Rights in Egypt. It is obviously contradicting with the text of Article 75 of the Egyptian Constitution of 2014, which provides that: «citizens have the right to form civil associations and institutions on a democratic basis that will have a legal personality upon sending the notification and that can practice their activities freely. The administrative bodies shall not be entitled to interfere in their affairs, to dissolve them or to dissolve its boards of directors or councils of trustees except by virtue a court order. It shall be strictly prohibited to establish or to keep civil associations with a secret system or activity or of a military or paramilitary nature, all as regulated by law”.

According to the well-known legislative traditions in Egypt, the new law (No. 70 of 2017) is in contradiction with the provisions of the constitution and strengthens the political position inherited since the sixties of the last century towards civil society organizations, meaning the domination of government bodies over civil society, especially by controlling the establishment of associations, restricting their freedom to identify areas of work, and imposing strict restrictions on the procedures of receiving support and developing resources. The new law may agree with the Constitution that the establishment of associations is done by notification, but it did not specify the procedures of the notification process, and referred this matter to the executive summary which has not yet been issued. The experts and human rights defenders consider that the referral of this important matter to the executive summary, like other legislations in Egypt, means imposing administrative restrictions for further control over the establishment of associations. The implementation of a legal provision that subjects the members of the boards of directors of NGOs to the law of illegal gain constitutes a threat and prevents citizens from establishing or even participating in associations.

As for the legal framework organizing the civil society in Palestine, it was previously mentioned that the features of this framework were formed after Oslo Agreement. According to the study on Palestine, there were clear changes in the legal environment of the civil society organizations operation, the most important of which were the legislations and the laws regularizing the work of NGOs and the provisions of the amended Fundamental Law of 2003 regarding the freedom of association. Article 26 thereof provided that the Palestinians shall have the right to participate in the political life, as individuals and groups, and shall enjoy the following rights in particular: 1. To form and to join political parties in accordance with the law; 2. To form unions, associations, federations, clubs and popular institutions in accordance with the law; 3. To vote and to nominate in the elections to select representatives of Palestinian nationalities elected by public ballot in accordance with the law; «4. To occupy public offices and posts on the basis of equal opportunity; 5. To hold private meetings without police presence and public meetings, convoys and gatherings within the limits of the law”. Law No. 1 of 2000 on the formation of NGOs and charities is the organizing framework for the work of civil society organizations in Palestine, by virtue of which the conditions and mechanisms for forming and re-registering civil associations have been established. While some consider the law to be advanced, there are many deficiencies observed in terms of the dominance of the administrative and the security authorities over the civil institutions, including:

- The reference for registration and supervision was entrusted with the Ministry of Interior, which affects the environment and operation of civil society institutions, particularly due to the powers given to the Minister of Interior in terms of dissolving organizations if found to be violating its articles of association, while the Minister should have only be given the right to refer the matter to the court of law requesting it to dissolve the organization, since an organization may only be dissolved by virtue of a judicial resolution.

- Article 29 of the draft executive summary determined the term for the board of directors of the association to be three years, while the law did not specify any term for the board of directors and left it up to the articles of association thereof.

- Article 1 and 2 of the draft executive summary determined the operation fields for organizations, meaning that they shall not be entitled to operate in any other field other than the ones specified in this summary, unless approved by the minister.

Thus, a number of decrees, resolutions and instructions were issued by the Palestinian authority pertaining to the restriction of this right, including Presidential Decree No. 16 of 2007 pertaining to giving the Minister of Interior the power to review all licenses of associations, the Resolution of the Council of Minister No. 8 relating to the associations exercising illegal activities and the Resolution No. 2 of 2007 binding the civil organizations and institutions registration department to write to the security bodies with regard to the associations applying for registration and the associations subjected to security checks. The government of Hamas in Gaza Strip bound all associations applying for registration to obtain a good conduct license and clean police record before registering it but this condition was annulled at a later stage.

These practices contributed to restricting the movement of civil society organizations and adopting the political dimension in the state's interaction with the civil society institutions as well as overlooking the rights provided by the law. The study on Palestine observes the types of practices deemed to be violations of the right to establish and to manage civil society associations and entities, whether in the West Bank or the Gaza Strip. Practices and violations were detected, including closing institutions under various pretexts, controlling others' properties, refusing to give a license to some of them, or direct interventions by security forces in the work of these institutions, including trade unions, as happened with the branch of the Palestinian General Federation of Trade Unions (PGFTU) in the Gaza Strip, where Hamas security forces took over the property of the Union. According to the annual reports of the Palestinian Authority for Citizens' Rights - the Board of Grievances – it is confirmed that NGOs and civil society organizations faced many challenges such as closing headquarters, confiscating money, preventing the registration of some associations and dissolving others. Dozens of associations were dissolved, mostly in the Gaza Strip. It is clear that the registration of NGOs was hindered under security pretexts. It is obvious that the registration of civil organizations in the West Bank is subject to a security decision based on the circulation of the Minister of Interior relating to the security screening procedure for registration applicants by virtue of the Law of Associations No. (1) of 2000, and its Executive Summary No. 9 of 2003. The Hamas government exercised the same practices in Gaza Strip in terms of rejecting registration, dissolving associations, controlling headquarters and announcing the need to obtain a good conduct license at the highest point of political division in 2007.

The legal environment regularizing the right to establish associations in Syria remains the most ambiguous not only from the side of the authority but also due to the dramatic developments in the country. It is not surprising that the great movement of Syrian civil society entities does not apply to the legal analyzes of other Arab countries. Many of these entities are not governed by legal frameworks. Most of them are not registered in the administrative sense. The dispersal of power makes it difficult to talk about a coherent legal framework. Most of the restrictions are of a political nature and not a legal one. However, some legal aspects will be mentioned in the context of the other determinants of the legal environment in Syria.

Conclusion:

The right to establish associations is guaranteed in the constitutions of the countries subject of the study. However, from a legal point of view, there is a wide disparity between legislations that are in conformity or in contradiction with the provisions of the Constitution. While Lebanon, Tunisia and Iraq occupy a relatively advanced position, the other three countries - Egypt, Palestine and Syria - do not guarantee this right in different ways and for different reasons. Lebanon is the only country to guarantee this right by virtue of an old law dating back to the beginning of the last century. However, the freedom of association is guaranteed only for NGOs, while other sectors of the civil society such as unions are governed by other restrictive legislations. For Tunisia, the positive changes came after the fall of the Bin Ali regime and the promulgation of a decree guaranteeing the freedom to establish civil society organizations. However, the developments in the political situation in Tunisia are accompanied by fears of replacing the decree with a law that reduces the gains by using the war on terrorism as a pretext thereto. In Iraq as well, the openness and the freedom of association were achieved after a long period of oppression of political and civil forces. The Kurdistan Region of Iraq is the best space for the establishment and operation of civil society organizations. In Egypt, the promulgation of a new law for associations reinforces the restrictions imposed on the right to establish and to manage civil society organizations. This law, while consistent with the Egyptian authorities' approach in dealing with the civil society organizations for decades, it is more restrictive than previous laws. In Palestine, the authority given to the Ministry of Interior to grant licenses for the establishment of associations in the hands constitutes a restriction of this right, in addition to other political interventions, such as the conditions imposed by the Hamas movement for the establishment of associations. Finally, as noted above, the situation in Syria is very delicate due to the armed conflict and the disintegration of the state structure, where civil society organizations are subjected to political rather than legal conditions.

2- Support and Development of Resources:

The issue of supporting and developing the resources of civil society organizations can be seen from two interrelated perspectives; the legal perspective, meaning the legal framework regularizing the receipt of grants and the development of resources; and the political perspective where support is the subject of a political conflict aimed at delegitimizing civil society organizations known by “foreign financing” issues. In practice, there is a close relationship between the legal and political positions. In environments that allow civil society organizations to develop their resources, legal frameworks and administrative procedures are often less severe than those that adopt an aggressive approach with the civil society organizations by imposing restrictions and standards on them including the aspect of development of resources. However, political positions often conflict with what is legally permissible. The issue of «foreign financing» has been and remains a main issue mentioned in the speeches of the forces that are against civil society organizations, especially the organizations concerned with rights and freedoms.

The Tunisian experience reflects the various dimensions related to the dilemmas of funding, starting with the restrictions imposed under Bin Ali’s regime, then the opening up following the overthrow of the regime, the concerns related to the lack of transparency and the use of support for civil society organizations for partisan and political purposes, in addition to the problems of public funding for civil society organizations and the administrative obstacles in receiving the needed support. Tunisia was one of the firmest countries towards the support given to civil society organizations, especially those working in the field of human rights, the subsequent transformations following the overthrow of the regime appeared to be very positive. According to the Tunisian study, «the Tunisian legislator allowed associations to freely choose their financiers.» Article 35 of the Decree on Associations guarantees the right of associations to receive aid or donations from countries with which Tunisia has diplomatic relations, in addition to procedural facilities allowing the applicants for grants to directly receive them, provided to notify the General Clerk of the Government. However, the study indicates that openness to international support was not accompanied by facilities to obtain public support, as «this type of funding continues to be subject to complex administrative difficulties that have become most in need of revision and simplification, which explains why public funding remains limited, for reasons other than the ones of the era preceding the revolution, as the public funding was conditioned to political alliance. Today, the current economic crisis in Tunisia has negatively affected the amount of funding allocated for civil society organizations, especially for newly formed societies”.

However, the main problem raised in this regard concerns the security concerns of the entry of funds for political purposes, or the use of the same for partisan purposes. There is debate over legislative gaps under which funds can be transferred through NGOs that have purposes other than civil action. In fact, this issue is being raised in all countries and even at the international level. The level of concerns regarding the misuse of funds dictates the level of concerns from imposing further restrictions on the work of civil society organizations. However under the escalation of the security and political clashes with terrorist groups, the issue of funding associations has become particularly suspicious, especially when the funding is provided by foreign source, whether Arab or Western.

The situation in Lebanon is clearer as there are no legal restrictions on receiving support from international or foreign bodies. The law also allows civil society organizations to manage their local resources through their members or through income-generating activities, in addition to the government support for development, service or relief activities. This situation is in line with the general position from civil society organizations. However, unlike the determinant of freedom of association, the issue of support has its specificity and its dilemmas involving several factors. According to the Lebanese study, three main problems are identified: the first problem is related to the governmental support for civil society organizations, which is characterized by violations in terms of nepotism, corruption and bias towards sectors or organizations at the expense of others; the second concerns the restrictions imposed on financial transactions, opening bank accounts in a counter-terrorism context and money laundering, which negatively impact several civil society organizations, especially the small and recently established ones; the third problem related to the reliance on foreign financing, which is a matter of relationship between civil society organizations and donor agencies rather than the state, which also negatively impact the orientation and sustainability of the activities of these organizations.

The study of civil society in Lebanon shows the extent of impact of international funding and assistance policies on the environment of civil society. «The Syrian war and the influx of Syrian asylum seekers to Lebanon should be taken into consideration when studying the civil society. In light of the increasing need to provide different services to Syrian refugees, the efforts of the majority of civil society organizations became focused on the relief work since 2012 in order to support the Syrian refugees living in north Lebanon, the Bekaa and the poor areas in Beirut and Mount Lebanon, due to the urgent need for this support and the focus of financiers on this subject. However, this situation negatively impacted the development course of the Lebanese civil society organizations that were no longer exercising their usual activities. The change in the priorities of the donors affected the number of projects directly supporting the local community. Hence, the role of organizations in monitoring, accounting and influencing public policy making declined, with most of them turning to the relief work, while some organizations that maintained their regular activities suffered from a lack of funding».

The situation in Iraq is considered to be positive with regard to the legal framework governing the right to benefit from local and foreign support. The NGOs with the support of international entities strived over the past six years (2010-2004) to develop a fair and secure law for organizations to ensure their independence and freedom away from government intervention. However they suffered from draft laws that hinder the work of organizations and limit their freedom, particularly due to the issue of foreign and even internal financing requiring many efforts. The result was the promulgation of a positive legislation (NGO Law No. 12 of 2010). As for the funding, Article 13 of the law provides for three sources of funding: membership fees, donations, grants, internal and external gifts and the income of activities and projects of the organization. In addition thereto, the organization participating in tenders announced by the public authorities is entitled to receive materials and services required in the tender within the scope of the organization's competency”.

However, the adoption of this law is controversial in terms of the concerns from the misuse or exploitation of funds allocated to civil society organizations, especially in light of situations where prevail political and sectarian conflicts, in addition to the traditional fears of the authority from the foreign financing and the threat of national sovereignty, as well as the ideological concerns by conservative religious parties in terms of impacting the privacy and local values. If the main fear is that funds will be used for unallocated purposes, the study on Iraq indicated that civil society organizations argued that «the money laundering and counterterrorism department in the Central Bank of Iraq monitors all bank transfers that enter Iraqi banks, noting that this department maintains continuous communication and coordination with all the central banks in the world, and also has representatives of the Ministry of the Interior and the Iraqi Security And Intelligence Services. Thus, it is the party that has most of the information and knowledge and observation of the suspicious funds”. The study adds that a suggestion was made by organizations to add the following article to the law: “(Article 16): First - The organization conducts its financial transactions by receiving and disbursing financial resources through public or private banks through a bank account; Second - The bank account of the organizations shall not be frozen unless by virtue of the judicial order; the second clause also stipulated that the administrative authority shall not pressure the work of organizations or stop its funding by freezing their bank accounts”.

The study on Palestine tackled the question of funding based on the specificity of the Palestinian situation and the relationship with the international community, including the consideration of increasing or decreasing the funding for being a political issue. «External financing was directly related to the narrowness of the Palestinian space without attempting to understand or change it. Although it was pushed towards developmental aspects, but it failed to free itself from politics and the positive and negative fluctuations thereof, according to the political agenda (mainly linked to the settlement process). The international funding of different resources remained subjected to political attractions. The era of Oslo and the peace investment program witnessed a high influx in financing to build economic peace between Palestinians and Israelis. During the second Intifada and the siege of Arafat, the foreign funding witnessed a decrease as a result of a new political phase, which is the second intifada and the reoccupation of the cities classified as «A». At this stage, the focus is kept on repair and institutional structuring programs. This phase was followed by the legislative elections and the victory of Hamas movement to witness a sharp decline in funding as a result of the international positions from the election results and the democracy supporting it. The situation worsened during the stage of political division and the separation of the West Bank from Gaza Strip, which led to the besiege of Gaza and an increase in the flow of funding allocated to the government of the West Bank, under the pretext of building state institutions.

Then, the Palestinian authority was accused of not responding to the efforts to re-negotiations of 2011, which led to a decline in funding and tightening the capacities of the authority institutions in the West Bank. Thus, a funding map was set consistent with the political situation and the supposed peace status under the occupation».

The study points out to another dilemma in Palestine, which may have implications on the legal environment. The dilemma is related to the conflict over funding between state institutions and civil society organizations, whether it is a competition for funds or a disagreement over priorities. This conflict is elaborated in the study regarding the report issued by the Administrative and Financial Control Authority affiliated to the Palestinian Authority on NGOs, which set recommendations acknowledging the importance of strict amendments to the work of NGOs, whether by increasing the interference of governmental institutions in the supervisory and administrative work within NGOs, or implementing amendments to Law No. 1 of 2000 relating to Civil Society Organizations, which provide for measures of deterrent penalties and enhance the role of government in NGOs.

The Egyptian case is considered a model for the use of financing as a tool to delegitimize civil society organizations. This type of conflict has been ongoing since the emergence of human rights NGOs in the eighties. Although these organizations were allegedly targeted under the pretext of being affiliated to foreign countries, the support for civil society did not stop but rather increased significantly during the nineties even under legal restrictions requiring the approval of administrative and security authorities on the grants. When facing the administrative and the security difficulties to obtain approvals on grants, a legal alternative was used by establishing organizations as civil companies, which was not free from political obstructions. Now, the situation has become more difficult and dangerous, due to the intensity of «security intervention in obtaining approvals on projects for NGOs in Egypt - currently, the security authorities are semi-publically controlling the projects approval file - outside the context of the law in an explicit challenge thereto». At the current stage and due to the gravity of the situation, most of the entities that have become civil companies have been closed.

In light of the Law of Associations, the restrictions on receiving support became more difficult and dangerous. This law allows the authorities to control the civil area and to prevent funding from associations unapproved by the authorities. Pursuant to this law (article 27), the power to approve applications for funding has been granted to a new entity, called the “National Organization for the Regulation of the Work of Foreign NGOs”, including representatives of the Ministries of Defense, Foreign Affairs, Interior, Justice, International Cooperation and Social Solidarity along with representatives of the public intelligence, administrative control and the Central Bank. Moreover, the conditions provided for in the previous laws, which considered the non-response of the competent authority (Ministry of Solidarity) to the funding request for a certain period of time is considered as an approval. The new law considers the non-response a rejection! This does not mean permitting local funding, as receiving local donations or funds without permission is punishable by imprisonment.

* The study of Egypt elaborates one of the most dangerous developments relating to the foreign financing, issue no 173: “the stage following the revolution of 25 January 2011 rose up the issue of foreign financing of civil organizations. In 2011, the Egyptian judicial system accused 43 activists within the civil society in Egypt, the USA, Germany, Norway, Lebanon and Palestine of establishing NGOs without a license and benefiting from foreign financing also without an authorization. The lawsuit was divided into two parts in 2013; the first part concerned the foreign organizations and was referred to the court of law and deliberated by the Cairo Criminal Court that rendered a judgment in this regard on 4 June 2013 sentencing the accused persons to prison for period varying between one year suspended from execution and 5 years for absentees, as well dissolving American international organizations and German Konrad Adenauer. The second part of the lawsuit concerned the local organizations and is still under investigation. Five years later and specifically in March 2016, the investigation judge reopened case no 173 of 2011 known as the case of foreign financing to civil society organizations, and that after receiving new information about the case, as per the justification given at that time. On 16 March 2016, the investigation judge summoned the human rights defenders as well as the workers at these organizations and imposed a series of abusive procedures including the confiscation of the personal and institutional funds of a number of legal activists and travel bans which were largely discussed later on, noting that the case is still opened until the present date. Recently, Al-Nadeem Center that works on torture, forced disappearances and rehabilitation of violence victims was closed.

There is no doubt that the situation in Syria before 2011 was among the worst in the Arab region as unfair restrictions on civil society organizations echoed in the field of resource development. As the Syrian study notes that “the rule was questioning the objectives of associations as being linked to internal or external political parties. The exception is the associations close to the political system, which are entitled to funding from all sources, including foreign embassies». The study adds that «after the outbreak of the movement, the role of the civil society radically changed, as the needs have grown with the large absence of the state and the private sector to address the needs of all segments of society as a result of destruction and siege and widespread violations, in an attempt to fill the role of the state and the private sector in terms of regularizing and providing goods and services in local markets, in addition to its human and defensive liabilities. The flow of external funding and the emphasis on working directly with the civil society due to the weakness of the legitimacy of the political regime, which was accompanied by fragile administrative and regulatory capacities, and pressure by the donors with their political agendas and contradicting local forces all aiming at employing the resources for their battles, in addition to the sharp political polarization and the expansion of the economies of violence, led to the emergence of distorted models of organizations that were only concerned with polarization, violence, corruption and poor functioning. Despite all the aforementioned, an important part of the civil sector kept operating in unfavorable conditions to face the deprivation and suffering of human beings and the community.

Conclusion:

The determinants of the freedom of resource development and support are closely related to the general political situation. The less severe the political environment is in terms of the pressures imposed on the institutions of society, the greater the chances of institutions are in developing their resources. Yet, the issue of support and resource development has many other aspects. First, the countries that impose restrictions on funding and support are aiming at closing the doors in front of the community organizations, not only by controlling resources, but also by offending civil society organizations and accusing them of betrayal in favor of foreign countries, which is evident in the case of Egypt; Second, the direct impact of the war on terrorism on the funding of civil society organizations, subjected to the pressures and precautionary measures taken by most countries to monitor the movement of funds; Third, although the outbreak in the number of civil society organizations is positive, it also raises concerns about the possible attempts of political and religious forces to employ civil associations as civilian tools and then to use support for political purposes such as electoral campaigns or to employ them for other violent purposes. These concerns arise in societies that witnessed openness after the fall of the dictatorial regimes of Tunisia and Iraq; Fourth, when the law allows civil society organizations to proceed with income-generating activities or to receive government support, it is considered an effective addition to the resources of the civil society, as is the case in Lebanon; Fifth, civil society organizations are affected by sudden changes in donor priorities and assistance policy, which is evident through the support policies directed to the civil society in Palestine. This can also be easily perceived following the Syrian crisis, where the greatest part of the support was transferred to humanitarian operations and relief organizations, at the expense of support allocated for development and human rights, which is the case for Lebanon as a country hosting Syrian refugees. The Lebanese study indicates another aspect of funding problems, which is a general aspect concerning the relationship between the civil society and supporting bodies in terms of the strategic or temporary nature and efficiency of support from the perspective of appropriateness and sustainability.

3- Right to Peaceful Assembly:

The right to peaceful assembly is one of the most sensitive indicators of the legal and political environment. It is the right concerning social and political sectors wider than the civil society organizations. This right is often denied or faced with violence by the state. Although many constitutions guarantee this right, it is common that the legal frameworks regularizing it do not provide the necessary guarantees for its implementation, but rather contradict with the provisions of the constitutions in most cases. Even within legally permissible limits in some countries, this right is most likely to be violated in practice.

Although the Tunisian experience, beyond the Arab Spring, offers positive indicators in the area of democratic freedoms and practices, the right to peaceful assembly and demonstration remains questionable. On one hand, the Tunisian Constitution guarantees the right to peaceful assembly, but the legal framework regularizing this right is from the old legal inheritance with many restrictions. The Tunisian study describes this situation as follows: «Although the right to peaceful assembly has been included in the 2014 Constitution, the gap still exists between this provision and the law regulating this right, as law No. 4 dated on 24 January 1969 is still implemented although it is in contradiction with this right and the provisions of the new Constitution, which affirmed in Chapter 37 thereof that «the freedom of peaceful assembly and demonstration is guaranteed». This was supported by Decree No. 88 of 2011 on the organization of associations, confirming in chapter 5 thereof the right of associations to hold meetings, demonstrations, conferences, workshops and all other civil activities. Thus, the activities of the association including the freedom of association and peaceful assembly, and as a result thereof the State was obliged to take the necessary measures to protect each and every person from any violence, threat, revenge, discrimination, law, pressure, or any other arbitrary action.

In addition to this law which enables the security administration to intervene in order to prevent peaceful demonstrations, it is known that the Tunisian authorities have resorted to activating the state of emergency in the face of terrorist threats. Thus, Order No. 50 of 1978 dated on 26 January 1978 was implemented, whereby «persons and vehicles are forbidden from wandering, as well as any strike or obstruction of work is prohibited, even if decided before the declaration of a state of emergency, and the freeze of the residency of any person attempting to hinder the activities of the public authority. The state of emergency enables the public authority to annul meetings that may disturb the security and to monitor the press, all kinds of publications, radio broadcasts, cinematic movies and theatrical performances, as well as to prevent all forms of meetings.

The study refers to the initiative of the Ministry of Interior, within the frame of comprehensive reform of the security system, pertaining to a new draft law on the right to peaceful assembly and demonstration. This right must be regulated as per international standards and sets the necessary measures for the practice thereof on the basis of the rules of international conventions in relation to civil and political human rights, which has been referred from the Prime Ministry to the Parliament since May 2013 but has not been prioritized for ratification.

In Lebanon, there is an old Ottoman law issued in 1911 known as the «Public Meetings Law» which regulates the right to peaceful assembly and demonstration as long as the assembly is unarmed. The law does not require a license to hold a meeting or assembly but rather only a notification without which the organizers of the meeting or assembly will be subjected to a legal penalty. The law criminalizes riot actions. A provision of the law gives the right to the Council of Ministers to prevent any meeting violating public security, morals or public interest, and thus administrative authorities shall be entitled to impose restrictions on this right. The Lebanese study proves that in practice the security forces handle matters in some cases with a clear violation to the freedom of peaceful assembly. The intervention of the security services is for the purpose of dispersing the demonstrators and not maintaining peace. For instance, the incident that took place in late July 2015 when confronting the political and social movement organized to denounce the poor management of the waste file under the slogan «Tol3et Rihetkoum». Violations were detected, including the use of excessive violence to disperse demonstrators, violations during detention and investigations of the arrested demonstrators.

In Iraq, the Constitution did not deviate from the acknowledged norm, which is the recognition of public rights and freedoms without prejudice to public order and morals, including ensuring the right to freedom of expression through all means, freedom of the press, printing, advertisement, publication and freedom of peaceful assembly and demonstration. As is common in these cases, the Constitution refers the regularization of these rights to the law and thus the Constitution. Iraq is witnessing a debate on a draft law in this regard which has not yet been issued because of the resistance of local organizations and the pressures of the state bodies struggling to prevent the issuance thereof as it diminishes the right to freedom of opinion, expression and demonstration. The civil society campaigns supported by intellectual and media groups are still striving to stop the issuance of this law. In general, the objections of the civil society organizations to the draft law are due to many reasons, including the following:

- The draft law gave this freedom or right only to the legal person and not the natural person, such as organizations and institutions that must request to hold a demonstration or assembly in open public spaces, meaning public roads and squares, as the right to organize meetings and events in halls is guaranteed by the Law of Organizations No 12 of 2010.
- The license or prior permission given by a government department or competent administrative authority rather than a notification is requested by organizations to amend this draft law.
- The draft law prohibited this right between 10 o'clock in the evening and 7 o'clock in the morning.
- The draft law does not penalize the governmental party or person prohibiting this right, while the organizers of the demonstration or assembly are held liable for all the damages of public places, which is basically one of the tasks of the security forces, that shall penalize any person damaging the public properties rather than the persons or the committee in charge of the demonstration.

In Egypt, the right to peaceful demonstration and assembly was not permitted legally at all. The laws regulating this right were constantly criticized by human rights organizations considering them as outdated laws from the British occupation of Egypt. Unfortunately, the law enforced after the revolution regularizing the peaceful assembly known as Law No. 107 of 2013 imposed more penalties and resulted in the imprisonment and the issuance of sentences against peaceful demonstrators that reached the sentence of hard labor for life. The aim of promulgating this law was a political one. According to the study of Egypt, we must take note of the verdict of the Constitutional Court of December 1916 ruling the unconstitutionality of this law, which is a historical ruling and victory for the freedom of expression and the right to peaceful assembly, and also the unconstitutionality of the decision to entrust the approval authority with the Ministry of Interior and instead the ruling gave it to the judicial system. Thus, the demonstration became permissible provided to send a notification to the concerned department. In the event where the government, represented by the Ministry of the Interior, wished to refuse or postpone or to change the location of the demonstration for the public interest, it shall refer the issue to the court of law. Hence, the demonstration became permissible provided to send a notification in this matter at least 24 hours before the assigned date. The government may only be entitled to prevent a demonstration after obtaining a judicial order in this regard.

However, we must indicate the difficulties of implementation thereof due to the dominance of the political environment over the legal environment, making the political factor the main determinant for the realization of this right or not. Arrests and detention operations are still being carried out at a large scale on demonstration charges.

In Palestine, a legal framework is regulating the right to peaceful assembly and demonstration. The Public Meetings Law No. 12 of 1998, which recognizes this right, provided to notify the competent authorities and binds the authorities to protect rightful claimants. Article 4 of the law stated that the aim of the notification is for the competent authorities to take the necessary measures in order to ensure that traffic is not disrupted. The amended Palestinian Fundamental Law of 2005 stated in Article 26 thereof that the Palestinians have the right to participate in political life individually and in groups and shall enjoy the following rights as stated in Article 5 thereof: «to hold private meetings without the presence of police officers, to hold public meetings, convoys and gatherings within the limits of the law». Article (32) of the Fundamental Law states that: «Any attack on any of the personal freedoms or the privacy of the personal life of the person and other public rights and freedoms guaranteed by the Fundamental Law or other laws shall be considered as a violation noting that the criminal and civil actions resulting thereof shall not be eliminated with time, the State of Palestine shall ensure fair compensation for those who have suffered from damages”.

However, the actual reality contradicts with the provisions of the law. The study of Palestine states that according to the annual report of the Independent Commission for Citizens' Rights (Board of Grievances), there are practices that have contributed in violating the amended Fundamental Law and the Public Meetings Law concerning the right to peaceful assembly. In 2015, a number of violations and abuses were detected that have led to the violation of this right. It has continued to prevent the organization of some peaceful assemblies such as sit-ins, marches and public meetings were still prohibited, in addition to preventing journalists from covering them. As well as, restrictions were put in place by the Ministry of Interior and governors totally preventing the organizations of such assemblies”.

The Syrian situation reflects all the disadvantages of the loss of the right to peaceful assembly and demonstration, whether due to the general environment of fear and terrorism experienced by the people of this country not only exercised by the state but also by armed militias outside the jurisdiction of the state. In light of the violence and chaos of the Syrian situation, there is no real impact of the constitutional text or the law. While a legislative decree was issued to regulate the right to peaceful assembly following the outbreak of mass movement in 2011 which is Decree No. 54 of 2011, which in Article 3 thereof provides for the right of «citizens, political parties, popular associations, professional unions and licensed civil society organizations to organize demonstrations in accordance with the principles of the Constitution and provisions of the Laws enforced in the Syrian Arab Republic and in such a way that does not obstruct the functioning of public facilities on a regular basis». However, when we look at the procedural details related to the implementation of this right, it turns out that the law is only a political tool for the denial of rights. The Syrian study states that “the state has the right to end the demonstration when it violates the conditions of demonstration, such as riots or going out of permit. Thus, each demonstration shall have an organizing committee and a calling party that shall submit a certified request by the Notary Public including all the details regarding the date, the time and the gathering point, departure point, track, goals, , slogans and cheers of the demonstration. The Ministry of Interior concerned with granting the license shall be entitled to amend any detail in coordination with the demonstration committee, under the pretext of maintaining the safety and security of the citizens and demonstrators. The demonstration may be accepted or rejected within a week with an explanation thereto, noting that a non-response is an implicit approval”. Hence, it is logical to freeze this right, especially since the demonstrations that accompanied the movement at the time were confronted with violence, arrest and killings outside the frame of the law. The places outside the regime's control that are subjected to armed militias shall also abide by the restrictions imposed on the right to assemble and demonstrate after that the armed groups gained control over them.

Conclusion:

In light of the aforementioned, the right to peaceful assembly and demonstration is considered one of the most sensitive rights exposed to political impacts. While the constitutions guarantee this right, the legal restrictions still exist at varying degrees, starting with criminalization and prohibition and ending with using a different approach such as peace and public morals, to allow administrative and security bodies to interfere and to obstruct this right. In practice, all indicators prove that restrictions are placed either legally or illegally. In addition thereto, the violation of the right to peaceful assembly and demonstration is usually linked to other violations as well, such as resorting to violence to disperse the peaceful demonstrators, or taking harsh measures during the detention and the investigation. The Syrian case refers to exceptional situations, as this right is not only violated by the state but also by armed militias in their areas of control.

4- Right to access information:

In the recent years, we witnessed an increase of the demands for rights to access and to exchange information, particularly in light of the major progress in the field of technology and information. The arguments on the implementation of this right revealed its political, economic and social dimensions. The general and wide meaning of democracy requires the enablement of transparency and accountability mechanisms, which cannot be achieved without guarantees to the right of accessing and exchanging information. In general, the Arab countries do not guarantee this right, even those that took positive legislative steps still lack the institutional frameworks and mechanisms for the implementation thereof.

The developments related to the right to access information in Tunisia are very positive. This right was completely lost under the Bin Ali regime, but now the constitutional and legal frameworks after the revolution provide the necessary conditions for the enforcement and protection of this right. The civil society organizations and democratic forces in Tunisia have succeeded in pushing for the issuance of a new legislation in 2016 which is the Fundamental Law on the right to access to information. It is a unique law in the Arab world, which aims in its first clause at «ensuring the right of every natural or legal person to access and to obtain information, to promote the principles of transparency and accountability, particularly regarding the management of the public facility, to enhance the trust in the entities subjected to this law, as well as to support the participation of the public in the development of public policies and to follow-up on the implementation and the assessment thereof and to support scientific research”. Despite the recency of this legislation and the experience in general, it is an important step towards transparency, fighting corruption and supporting freedom of the press and the mind. In fact, the civil society in Tunisia is active in areas related to the right to access information and transparency issues, which creates social vitality in this regard.

Recently, the Lebanese parliament acknowledged on 2013/01/19 the right to access information and bound departments to adopt transparency and to present all available information. This is considered a positive progress at the legal level. The Lebanese study points out to specific exceptions included in the texts of law diminishing the guarantees of implementation of this law, starting with making an exception for the information related to financial and economic interests of the state and the safety of the national currency, which is perceived by the study based on incorrect balance between the social interests and denial of access to information that must be accessible by virtue of international conventions. Regardless of the legal position, the actual issues reveal themselves in the practical implementations. There is no clear mechanism for the enablement of the law, not mentioning the obstacles of bureaucracy and corruption which are the main challenges facing the implementation the right to access information.

In the Iraqi situation, this issue is new for Iraqi society, and even for many human rights activists, after a long period of so-called functional discipline, and commitment to the confidentiality of the Iraqi state's information, which are closer to militarization than to the civilian side. The modern Iraqi constitution of 2005 does not have a clear reference to the right of access to information, some see it included in the freedom of opinion and peaceful assembly and demonstration, and it can also be included within the law of freedom of expression. However, a civil activity carried out by the Civil Center for Legal Reform Studies, which is a local NGO, and other organizations, in an attempt to draft such a law based on other experiences, including the **Right to Access Information Act in Kurdistan Region of Iraq No. 11 of 2013**, which is considered a positive law according to the standards of the region, which forced in some of its paragraphs the institutions of the region to announce all the policies, projects, programs and services implemented by the institutions of the region. Every citizen has the right to access information except for that relating to the security of the region. The employee or the person in charge shall be penalized if he decides to keep this information from an applicant. However, there are many obstacles facing the implementation of this law under the pretext of the current security situation, the fight against terrorism and the security secrets that may be beneficial to the terrorism or supporting bodies in foreign countries. The initiative of the local organizations to prepare the draft law very important, fearing the government's tendency to draft a restriction on access to information, especially in light of the current security deterioration and increase in the demand by some civil groups currently active, prohibiting them from enjoying this right to detect cases of corruption, conflicts of interest and favoritism spread in the majority of the state bodies. However, these initiatives are still in the very beginning, noting that if adopted by a parliamentary committee or the government, they shall become the original draft if fully read in the parliament as a first reading, in addition to any amendment duly made to its text.

In Egypt, the past year witnessed a widespread debate over the promulgation of a law on information exchange. Several draft laws have been introduced by several parties, but no positive steps have been taken in this direction. On the contrary, the Egyptian authorities are still expanding the procedures that violate the right to access and exchange information, in particular prohibiting publication and blocking websites. In addition to this, we have the new restrictions of the new Associations Law, which criminalizes and prohibits NGOs in Article 14 thereof from “conducting and publishing surveys and their results, carrying out field researches or presenting their results before presenting them to the Authority to ensure their safety and neutrality».

In Palestine, the right to access and to exchange information is still not regularized by a law. However, as the study indicates, there is a draft law that has not yet been approved, aiming at: first - enabling the citizen and resident in Palestine to exercise the right to access information in public institution as per the provisions of this law; Second – Spreading the spirit of transparency and accountability in the Palestinian public institutions and encouraging openness to the people. The study indicates the role of Aman Coalition for Accountability and Integrity that keeps referring in its statements and seminars to the importance of passing this law because the absence of this law contributes to the absence of accountability and the absence of the citizen's right to access and to obtain information about the work of public sector institutions.

Definitely, the right to access information in Syria has been facing difficulties. The authorities did not recognize the right of the society to know information under political pretexts, as well as the marginalized the civil society and the political forces. However, according to the study on Syria, there has been a relative expansion in data dissemination by some government institutions in the last decade, but many important data and information remain inaccessible, including the role of security forces in decision-making in public institutions, contracts and transactions which are beneficial for the executors thereof. The situation deteriorated sharply during the crisis, as the release of any kind of data or information and even the economic and development statistics fully ceased. In general, there is no law limiting the exchange or the retrieval of information, but it is up to the will of the Authority, which has consistently followed practices that hinder the access and the exchange of information, including blocking of hundreds of internet sites. This is compounded by the armed conflict, which undoubtedly creates an unfavorable environment for the realization of the right to access and to exchange information.

Conclusion:

In this sense, the debate pertaining to the right to access information is relatively recent. Despite the issuance of legislations guarantying this right in many countries, they are not complete and coherent as needed and lack the required mechanisms to enable them in the institutional and technical senses. The greatest dilemmas remain in the practice, due to the resistance of bureaucracy and the spread of corruption in many of these countries. The attacks of some countries against the free and independent press aggravate by blocking website and accusing them of adopting false news. Anyhow, the right to access information is closely related to the democracy values in terms of the transparency and accountability principles.

▶ Third – Conclusion and Recommendations

The regional papers reveal that the conditions of operation of the civil society in the Arab Region do not reflect one case of similar characteristics, but rather numerous environments with different features, starting with opening free spaces for the civil society down to closeness and threats. If the situation in Lebanon and Tunisia is deemed to be the best, then the situations in other countries largely give negative indicators. In Egypt the civil society organizations are going through their worse phases due to the oppression of the authority and the serious decline on the political and legal levels following the promulgation of the Law of Associations imposing unprecedented restrictions. In Syria the armed conflict and the numerous control areas impose exceptional situations making it hard to talk about stable environments with clear features. In Palestine, the occupation and the division of authority as well as the legal restrictions form a threat to the civil society organizations. In general, the results of the regional studies indicate that the political environment is the one controlling the entire situation at the national levels. The legal environment is formed based on the nature and the requirements of the political situation. The openness of the political aspect dictates the flexibility of the legal framework and the response to the requirements of the civil society organizations. The most serious restrictions and violations in the civil society are related to the political situation, where the law is nothing but a tool controlled by the authorities denying constitutional rights acknowledged in the most of the countries. It should also be noted that the scenarios of war on terrorism are a real threats to the civil society environments, even in the countries that achieved remarkable progress in the field of rights and freedoms such as Lebanon and Tunisia. In addition to the restrictions imposed on financial transactions, the war strategies on terrorism are a continuous threat to the protection of rights and freedoms in general.

The regional studies offer several recommendations for reforms at the political and legal levels. In the context of this report, we may conclude the following general recommendations.

The relationship between the democracy and the right to form associations is a strong one.

1. The enhancement of efforts for political reforms is an integral part of the work to repair the legal environments thereof and the civil society organizations.
2. The necessity to support and to encourage political and social discussions relating to the enablement environment of the society in order to create political and social movements supporting the civil society in the region.
3. The necessity to reconsider the efforts of the civil society regionally, starting with the issues relating to the operation environments, common solidarity and free spaces for the exchange of ideas and suggestions with supporting regional parties.
4. The Syrian case requires the solidarity of the international, regional and national civil forces in order to reach solutions required to end the armed conflict and to face its serious repercussions at the legal, developmental and humanitarian levels.
5. The need to work on presenting practical suggestions to face the restrictions imposed on the civil society under the pretext of war and terrorism and the desire of the authorities to prevent the entry of funds for unallocated purposes. These suggestions are based on mechanisms for the achievement of control, transparency and accountability without wasting the right of the civil society organizations to work freely and independently.
6. The importance of working with administrative bodies in charge of implementing laws regulating the civil society, as some regional studies showed that the lack of awareness of employees in these bodies regarding the role of the civil society organizations imposes many obstacles in the registration and operation of these organizations.
7. The civil society organizations must work in accordance with procedural values guarantying transparency and accountability to promote its credibility and social role.

8. In light of the fact that the local civil society is an integral part of humanitarian and universal values and orientations, it is important to promote work with international entities in order to play an efficient role in reforming local environments and providing the necessary support thereto.

9. The need to realize the diversity of the actors in the civil society, particularly the youth and to benefit from the consequences of the Arab Spring, in order to create new spaces for integration.

10. It is extremely important to develop more efficient mechanisms in order to provide protection in the civil society of countries subjected to violations due to the oppression of authorities and armed conflicts.

11. The need to support dialogue efforts between local civil society organizations and international entities, in order to achieve the aspired goals of assistance and support and to enhance the capacities and sustainability of civil society organizations.

The current civil society activity environment

in Egypt

Dr. Magdi Abdel Hamid

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► The concept of civil society: history, definition and characteristics

The concept of civil society is once again a hot topic discussed by social and of political sciences experts since the mid-1980s, amid one of the phases of the so-called Democracy's Third Wave. This concept was excluded from the academic discourse for five decades at least, after the death of Italian thinker Antonio Gramsci, who was the last intellectual to accord it substantial importance.

The concept of civil society was used to refer to the transformations that took place in Eastern Europe within the scope of Democracy's Third Wave. The key players in these transformations were social organizations and institutions that remained outside the control of the state and the ruling party, or those that defied the ruling party. This was the case in Poland, where the Solidarity trade union spearheaded the protest movements that resulted, after a long struggle, in the formation of the first non-communist government in Eastern Europe, in the wake of the victory of the Solidarity trade union candidates in the parliamentary elections in the fall of 1989.

While the concept of civil society has reappeared on the occasion of these developments in Eastern Europe, its common use to describe the events in other regions of the world is due to the common traits between all of those regions. The fall of the authoritarian regimes in some countries of South Asia and in Latin America was the result of a vast mobilization of social organizations not controlled by the state, as was the case in the Philippines, for example, before the fall of former President Fernando Marcos in 1986 or in Bangladesh or Brazil. Moreover, this concept was also invoked by specialists studying political regimes in advanced capitalist countries to reflect the emergence of new political actors described as New Social Movements, such as the anti-nuclear arms movements, environmentalists and the neoliberal capitalism counter-culture. In general, we can say that the circumstances in which the concept of civil society has re-emerged are the same conditions that contributed to shaping the new global situation.

The concept of civil society has a long and distinguished history in political theory and practice in the West. Civil society, in principle, is an interlaced fabric of relationships among its members on the one hand, and between them and the state on the other. These are relationship based on mutual interests and benefits, contracts and compromises, understanding and diversity, rights, duties and responsibilities, and accountability of the state whenever necessary. Procedurally speaking, it is necessary for this fabric of relations to be materialized in multiple voluntary social, economic, cultural and human rights organizations, collectively constituting the fundamental base underpinning the legitimacy of the state on the one hand, and a means of accountability where necessary, on the other. Civil society is a society independent, to a large extent, from the direct supervision of the state. It is characterized by independence, spontaneous organization, and the spirit of the individual and collective initiative, volunteer work, and enthusiasm to serve the public interest and defend the rights of vulnerable groups. Although it promotes the status of the individual, civil society is not an individualist society. On the contrary, it is a society of solidarity across a wide network of institutions. In this context, the Italian thinker Antonio Gramsci saw civil society as the sphere of conflict within the political, trade union, and intellectual institutions of capitalist society, through which the bourgeois class exercises its cultural hegemony or which produces the signs of anti-working class hegemony.

Contemporary Arab thought defines civil society as a group of institutions, activities, and events, which occupy an intermediary position between the family, as the basic pillar of the social structure and value-related order in society, on the one hand, and the state and its official institutions and organs, on the other hand. Civil society represents a pattern of social, political and cultural organization—outside the state's authority to various extents. These organizations represent, at various levels, means of expression and opposition of society towards any ruling authority. It is therefore, the overall structures, organizations, and institutions representing the pillar of symbolic, social, political and economic life, which is not directly subject to the domination of the authority and where an individual can achieve himself/herself, form solidarity relations, and preserve his sanctities and creations. In this regard, it has been admitted through academic and field studies and through historical follow-up of civil society origins and evolution that is a "free voluntary group of organizations that fill the public space between the family and the state, i.e. between kinship groups and the institutions of the state, where membership is not a choice." These free voluntary organizations are established to achieve the interests of their members or to provide services to citizens or to practice a variety of humanitarian activities, and their existence and activity are subject to the values and standards of respect and compromise, tolerance, participation, and peaceful management of diversity and differences.

► Civil society within this meaning has six basic elements:

- Voluntary or free-will act
- Presence in the form of organizations
- Acceptance of diversity and differences with others
- Not seeking to gain power
- Not resorting to violence
- Serving the public interest

Under this definition, the civil society organizations sphere shall include any societal organized entity based on regular membership depending on the general purpose, profession, or volunteer work, and where membership does not rely on kinship, blood ties, and primary loyalties such as familial, tribal, and sectarian ties. Therefore, the most important components of civil society are: trade unions, syndicates, social movements, cooperatives, community associations, universities academic boards clubs, sports clubs, social and youth centers, students' associations, chambers of trade and of industry, businessmen groups, advocacy and development non-governmental organizations, such as centers of human and women's rights, development and environment centers, free press outlets, news and publishing agencies, research and studies centers and cultural associations.

Our study will focus on local civil society organizations and non-governmental organizations

The constitutions of the majority of Arab countries (having written constitutions) have provided for the right of association and the right to protest and peaceful assembly for lawful purposes in line with international human rights conventions and treaties. Nevertheless, the way with which these countries deal with civil society organizations—especially human rights organizations—in terms of the legislations governing these rights is blatantly contradictory to international conventions and written constitutions. According to these legislations, the rule is to “ban” the formation of associations, and the exception is to “allow” such formation but subject to restrictions and strict procedures set forth by the law in light of the broad powers conferred to the [state] Administration. Moreover, the state had determined the scope of work of associations; this means that the activities that may be carried out by an association were limited to the government's perceptions of such activities.

Regarding the Egyptian case, after reviewing the human development reports issued either by the United Nations or the successive Egyptian governments, it appears that they talk about the principle of ‘partnership’ between civil society and the state. But in practice, the reality is otherwise, whether at the level of laws and regulations or in terms of procedural practices before and after the revolution of January 2011,²⁵. Human rights organizations played a prominent role in uncovering human rights violations before the revolution of January 2011,²⁵, and in raising public awareness of human rights issues. Moreover, the human rights movement – along with a series of other factors – contributed to mobilizing millions of citizens to take part in the revolution of January 2011,²⁵, demanding freedom and social justice and human dignity. However, it could be argued that the attitude of successive governments, since the revolution of January 2011 and so forth, has been ‘hostile’ to civil society organizations and in particular to those concerned with human rights issues, whether at the legal or legislative structure or in terms of procedures and practices.

► Human rights and advocacy associations...challenges and the problems

I- Relationship with the state: independent/subordinated partners?

Authoritarian governments undermine the foundations of society by imposing restrictions on citizens' right to organize. They spread the culture of distrust and suspicion among political forces, as well as among the society's cultural and intellectual movements, and sometimes among the citizens themselves. These governments also mobilize a large segment of loyal civil society forces, whether parties, trade unions, or NGOs, so as to ensure their dominance and to confront independent civil society organizations. Interestingly, in this context, especially in developing countries, the state usually plays a negative role by blocking the establishment of civil society, based on a reliable arsenal of laws and regulations that impede or obstruct free personal initiative of individuals.

This is the case of many developing countries, and this is related to the state's illegal interference in the affairs of the society more than to the size of its legal role in regulating relations within the community, as is the case in developed countries. For example, there are societies — in the Scandinavian countries, for example — where the state plays a major role in helping voluntary organizations to work together with the government in the provision of social welfare. It should be noted here that the state and civil society in authoritarian regimes are in a state of dispute. Modern developmental experiences show that sometimes the state and civil society may be in a state of integration. Examples include many countries from Latin America to Asia, where the state converges with civil society to achieve development in a relation of partnership and integration. Based on the foregoing, it appears clearly that the state and civil society are not always rivals, but that this rivalry is a characteristic of authoritarian environments, since in developed societies, the state and civil society have a complementary relationship. In the developing countries, seeking to achieve development, the state and civil society will inevitably meet halfway.

The main determinant of the shape of the relationship between the state and civil society is the state itself. If the state's policy is based on an institutionalized system and a democratic form, civil society organizations would support and help the state, and act as a means of connection between the state and the society. However, if the state has a dictatorial totalitarian regime that confiscates the right of individuals and prevents society from fulfilling its role, while trying to impose one intellectual orientation, civil society will act as a democratic opposition camp, which is entitled to use all peaceful means to obtain its rights. Therefore, the state, through its practices, defines its relationship with civil society institutions. However, it is not necessary for civil society to be an opposition bloc against the government and its policies. The more the state is inclined toward tyranny the more civil society organizations go in the opposite direction. It should be noted that the absence of civil society organizations will weaken the state and undermine its legitimacy. This means that the more powerful the civil society is the more the powerful is the state and capable of fighting internal and external threats and vice-versa.

In Egypt, the state has sought to build a relationship with civil society that is always limited in the context of subordination and not a genuine partnership based on equality and respect for positions and roles. Since the beginning of the 1950s, in the wake of the July 1952 military movement, the state made an offer to the people and civil society at large, whereby the State would ensure the people's basic needs in terms of housing, clothing, education, and health care in return for nationalizing any civil society activity, such as the independent participation of civil society in planning and drawing up state policies and its participation in decisions concerning the management of the people's daily lives. This would turn the entire civil society into a subordinate of the state that executes its objectives and a tool to suppress citizens whenever the need arises.

The civil society accepted the offer, out of obedience and not willingly, especially in light of the despotic regime ruling at the time. At the same time, the state offered a lot of services to citizens, and thus gained popularity, allowing it to practice its repression freely. With time, the social role of the state faded, while oppression and tyranny became more entrenched. The role of civil society subordinated to the state was enhanced and independent civil society was legally and illegally alienated and suppressed. The situation remained unchanged until just before the 25 January 2011 revolution, when the state tried to adapt, even if just in the form, to international conventions and covenants on human rights charters. Indeed, it sought to develop and create new relationships with civil society and independent non-governmental organizations but based on the same old foundations, which means a pro-forma partnership relationship, which in reality is just a subordination partnership. When the state found itself unable to persuade independent civil society into accepting this formula, it created a new pro-state civil society that it can present to the international community as an entity that represents human rights and development groups, other than the one this community has been accustomed to deal with. Therefore, the state would have achieved all of its objectives rather than only one of them, as it succeeded in undermining and suffocating independent civil society while saving face in front of the local and international public opinion. It also obtained a percentage of the funds initially allocated to civil society organizations by international donors and was able to compete with independent civil society organizations in this respect.

- **The role of civil society in the revolution of 25 January 2011:**

Independent civil society played a major role in the events that paved the way for the January 25 Revolution, during this revolution and in the post-revolution period. Civil society organizations, in light of a complete absence of political parties at the time, were able to stand up against the repression and terrorism practiced by Mubarak's police-state and to uncover its shameful practices to the local and the global public opinion. Civil society organizations addressed the violations of human rights at all levels, they mobilized the citizens and provided them with the necessary peaceful struggle democratic tools to face of the oppression, violence, and terrorism of the regime. Civil society also contributed to the management and enrichment of the democratic dialogue in society. During the revolution, civil society was a key and strong supporter of the revolutionary youth forces and provided all assistance and logistical facilities, in particular for the forces staging sit-ins in Tahrir square and across Egypt.

- **The human rights movement after the revolution of 25 January 2011:**

The sharp attack on civil society organizations launched since the revolution of January 2011 ,25 has yet to stop. The situation hit rock bottom in 2011, when associations and non-governmental organizations faced several attacks in light of the continued deliberate government and administrative pressure and various security and judicial prosecutions. The media was also used in smear campaigns against civil society. At the end of 2011, several Egyptian and international organizations were prosecuted and their headquarters were raided. This was coupled with a smear campaign targeting NGOs, particularly those working in the field of human rights. This smear campaign also targeted some political figures and human rights activists.

The strategy pursued by the ruling regimes ever since 2011 aimed to impose its control over society had three objectives. The first aimed to eliminate, weaken, and strangle political opposition. The second aimed to subjugate social institutions, especially larger ones, to serve the interests of the state, by whitewashing the state through their programs, especially during the SCAF regime. The third aimed to destroy the physical foundations of modern civil society institutions, such as trade unions, political parties, political and social organizations, non-governmental organizations, educational institutions, and the media.

At the time, the main goal of the state was to strangle rights and advocacy organizations that issued constant public criticisms, domestically and internationally, and conducted several activities that expose the state's oppressive and semi-fascistic behavior, which emerged following the temporary lapse in the revolution. It included the repression of popular movements and the leaders and symbols of the January 25 revolution.

The state prepared to get rid of those groups and rights activists once and for all and used several methods. It starts with slander in the state owned media, attacks using dubious legal provisions – and sometimes extra-legally, gradual and total banning of support to these groups, blocking the issuing of any new and fair NGO law based on clear Constitutional provisions, banning several leaders of the rights movement from leaving the country, confiscating their funds and those of their organizations, and, finally, entangling all rights activists and groups in a whirlpool of investigations and prosecutions under false pretenses.

- **The Brotherhood's regime fights civil society through civil community:**

After its advent to power in 2012, the Muslim Brotherhood regime understood the role and importance of civil society and its ability to fight the state's corruption and terrorism and destabilize its authoritarian structure. Indeed, the Muslim Brotherhood were in the opposition ranks against Mubarak regime and benefited greatly from the support of human rights organizations, which had long defended the right of Muslim Brotherhood to exist and condemned all violations they have suffered, whether inside or outside the prisons. After the departure of Mubarak and their ascension to power, the Muslim Brotherhood kept the same repressive tools of the authoritarian regime. Indeed, the Muslim Brotherhood, and the President of the Republic — who was affiliated to it — saw in the presence of a modern civil society, especially rights organizations, a major threat to their rule and their state. Therefore, in order to prevent the daily clash with civil society, whose diverse organizations are capable confronting them over their human rights record, and taking into account the role of civil society in overthrowing Mubarak's and his clique, the Muslim Brotherhood decided to get rid of civil society once and for all.

They did so by recognizing only the civil community — including its related religious, charitable and relief groups as well as local public service associations and some associations which play a shy developmental role — as the sole existing community that is important in the daily lives of Egyptian citizens. The Muslim Brotherhood classified the modernist independent civil society, which participates in the political, cultural, social and economic life of the citizens as a strong third party that wants to fight the state corruption, tyranny and repression, which should not exist or have any role in their emerging state. The civil society law they proposed reflected this view and so did their actions.

II- The legal and legislative structure problems

On the legal and legislative level, successive Egyptian governments have restricted the existence of civil activity institutions and organizations through various legislations it had developed to regulate this sector. Perhaps Law No. 32 of 1964 is one of the most restrictive legislations in this respect, and this is why it was attacked and criticized by civil society and democratic forces. When the state embarked on putting forward an alternative draft law, civil society activists, in particular human rights activists organized a series of discussions and dialogue sessions on the issue. This pushed the government to involve some of the leaders of civil society and human rights organizations in the committee tasked with drafting such law. However, by issuing Law No. 153 of 1999, the state once again showed its strong inclination to restrict civil society activity and completely disregarded the opinions of civil society activists. The draft law put forward by this committee, with a government majority, was soon abandoned, after less than a year, as result of its unconstitutionality following a judgment issued by the Supreme Constitutional Court in June 2000 ,3. The speed with which this law was passed in the parliament and the desire to avoid further debate and discussions, not only resulted in a procedural mistake that led to its unconstitutionality, but also revealed the high level of hesitation and reluctance of the state.

Law No. 84 of 2002 provided for several procedures or tools that preserve to the administrative authority its ability to supervise and intervene in determining the margin of freedom of action of NGOs. This is reflected in the different points of view between the administrative authority and the camp opposing this law regarding Article 42 thereof, conferring to the administrative authority the right to dissolve associations and Article 2 thereof, which grants the administrative court jurisdiction to examine disputes of civil society associations and institutions. Under this law, administrative authorities may supervise and intervene in the work of NGOs. This includes examining the conditions of establishment, the organization or associations' purpose, membership conditions, election of boards of directors, supervising practices, and auditing budgets, monitoring the extent of commitment to the determined scope or field of activity and the method of use or investment of funds. The successive governments have imposed legal obstacles to impede the work of civil society organizations under the pretext of controlling, supervising, and regulating. It should be noted that control, supervision, and regulation are indeed necessary, but within specific limits that should not be exceeded and would be applied by formal supervisory bodies through legally prescribed channels. However, what happened in reality was the contrary, and some NGOs faced security investigation and confrontations, and were subject to various forms of custody and supervision.

Since the revolution of January 2011 ,25, there were some attempts in cooperation between the governmental and independent human rights groups, especially with Minister Dr. Ahmad al-Borai, who had been willing to issue a modern law, which applies the minimum democratic standards and gives a space for independent civil society, but also acceptable by the various state institutions as an alternative to Law No. 84 of 2002, which all failed.

A much bleaker picture had emerged in the era of former Egyptian President Mohamed Morsi, when the establishment of associations faced a tight clampdown and highly repressive restrictions were imposed on foreign funding and the establishment of foreign organizations. This reached the point where the approval of security agencies was set as a condition in order for local NGOs to be established or to receive foreign funding (the draft NGO law in May 2013).

On September 2016 ,8, the Egyptian cabinet announced its approval of a new draft law on associations and civil society organizations, which was submitted to the Council of State for examination to be subsequently submitted to the parliament for approval. The draft law was approved by the parliament on November 2016 ,29 following swift discussion. In turn, this law contained clear violations of Egypt's constitution and ratified international covenants on the organization of the civil society activity.

In December 2016, a number of political parties and associations submitted a legal memorandum to the President of the Republic on the most prominent points of objection to the NGO law to highlight how this law contradicts the Constitution and Egypt's international commitments by virtue of the United Nations multilateral treaties and Egypt's bilateral conventions with the European Union, which represents an undeclared suspension of the constitutional text and a severe manipulation of the will of the popular majority that had approved such law. The law also represents an undeclared withdrawal from international agreements already approved by the Parliament and ratified by the President, and a repudiation of the obligations that the Egyptian government had publicly pledged to fulfill before the United Nations Human Rights Council within the scope of the Universal Periodic Review of its disgraceful record in terms of respect for human rights two years ago.

The -13page legal memorandum shed light on the most prominent objections to the law and its expected repercussions on civil society's human rights and development activity, as well as its impact on economic development and investment. The memorandum requested the President not to promulgate the law and use his constitutional prerogatives to refer it back to the Parliament for reexamination and deliberation. The president did not send the draft law to the parliament for reconsideration, despite the lapse of the -30day legal period prescribed by the Constitution.

In addition to the above, in September 2014, President Sisi, introduced an amendment to Article 78 of the Penal Code to set harsh punishments for failing to comply with the impossible provisions of the foreign financing law, to read as follows: "Anyone who asks for himself, or for others, or accepts, or takes – even through an intermediary – from a foreign state, or those who work for its interests, or a legal person, or a local or an international organization, or any other entity that is not affiliated with a foreign state and does not work for its interest, cash, or transferred money, or equipment, or machines, or weapons, or ammunition, or items like it or other things, or was promised of any of that, with the intention of committing acts harmful to national interest, or acts like it, or acts that breach the country's independence, or unity, or territorial integrity, or committing attacks that disrupt public security and safety, shall be punished..."

The legislative amendment added expressions such as "a natural person or legal entity, or a local or international organization, or any other entity that is not affiliated with a foreign state" and also added vague expressions to impose punishment for acts that "disrupt public security and safety," which expands the scope of acts liable for punishment. Moreover, the expression "or items like it or other things" (when listing the tools that can be used for those receiving funding to achieve their objectives) made it impossible to limit such tools or specifically determine them. Rather this expression may be interpreted to include all possible tools, including non-military equipment or weapons.

The amendment provided for a harsher punishment to include "life imprisonment and a fine of not less than 500,000 Egyptian pounds [70,000\$]," as opposed to a previous "fine of not less than 1,000 pounds [140\$] and rigorous imprisonment." For accused public employees, persons assigned with a public service, persons with a parliamentary capacity or persons who committed crimes during wartime or for purposes of terrorism, the death penalty and a fine of not less than 500,000 Egyptian pounds were added.

These punishments were set for acts that were not accurately or specifically described and this is a departure from the philosophy of criminalization, based on a specific description of the offenses, their natures and elements. The amendment also exaggerated when providing for harsh penalties up to imposing a death sentence, which is unprecedented.

Human rights organizations criticized this law upon its promulgation. This should not be ignored when discussing the enabling environment for the work of civil society.

It is worth mentioning that the Constitutional Court issued in December 2016 a ruling declaring the unconstitutionality of Law No. 107 of 2013 on the organization of the right to public meetings, processions and peaceful demonstrations known as the "protests law". The ruling was a historical decision and a victory for freedom of expression and one of its manifestations, which is the right to peaceful protest. The ruling provided for the unconstitutionality of allowing the Ministry of Interior to grant or deny permission of protests and rather empowered the judiciary to do so, which only subjected protests to the condition of prior notification.

Thus, if the government, represented by the Ministry of the Interior, wants to prevent postpone or change the venue of any protest for public interest considerations, it must resort to the judiciary to obtain a decision in this respect. Therefore, protests became permissible under the condition of notification sent at least 24 hours in advance and the government's authority to prevent them was from now subject to a court ruling.

- **The gap between the legal and constitutional structure and international commitments:**

After the January 25 revolution and the subsequent movements and events, the Constitution of 1971 was abolished and a new Constitution was promulgated in 2012. Article (51) of the new constitution reads as follows: "Article 51 - Right to establish associations: Citizens have the right to establish associations and civil institutions, subject to notification. Such institutions operate freely, and have legal personality. The authorities may not disband them or their administrative bodies without a court order, in the manner prescribed by law." This was the first constitutional text that subjected the establishment of NGOs and associations to the notification condition and that granted the judiciary the jurisdiction to dissolve these associations and **even prevented the administrative authority from dissolving them unless by virtue of a court judgment. After the revolution of June 2013 ,30 the Constitution of 2012 was amended.** Article 75 of the Constitution of 2014 read as follows: Citizens have the right to form non-governmental organizations and institutions on a democratic basis, which shall acquire legal personality upon notification. They shall be allowed to engage in activities freely. Administrative agencies shall not interfere in the affairs of such organizations, dissolve them, their board of directors, or their board of trustees except by a judicial ruling. The establishment or continuation of non-governmental organizations and institutions whose structure and activities are operated and conducted in secret, or which possess a military or quasi-military character are forbidden, as regulated by law."

On the other hand the legal structure also violates international standards of human rights and especially treaties and conventions related to freedom of association, which were ratified by the Egyptian government. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guaranteed the right to freedom of association. Article 20 of the Universal Declaration of Human Rights specified that everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association. Paragraphs 1 and 2 of Article 22 of the International Covenant on Civil and Political Rights read as follows:

"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."

Furthermore, the legal structure is contrary to the Egyptian government pledges under the United Nations Human Rights Council (UNHRC)'s first review of the human rights situation in Egypt under the new Universal Periodic Review (UPR) mechanism in 2010. In this context the Egyptian government pledged to execute a number of recommendations on freedom of association urging the Egyptian government to ensure freedom of association, amend Law No. 84 of 2002, and to develop simple, rapid, and non-discriminatory procedures related to NGOs that are not subject to the discretion of the administrative authority and that are in conformity with international human rights standards.

III- The security challenge, financing problems, and Case No. 173:

In this context it is worth mentioning the following:

- 1) The security authority interferes in terms of granting approvals for the projects of civil society organizations in Egypt - the security authorities are currently the authority controlling in an almost declared and public manner the approvals of NGOs project - and this falls outside the scope and represents a blatant violation of the law.

2) With respect to the case of foreign funding (Case 173 of 2011): During the period that followed the revolution of January 2011, a case on foreign funding for NGOs raised controversy. In 2011, the Egyptian judiciary accused 43 civil society activists from Egypt, the United States, Germany, Norway, Lebanon, and Palestine of establishing civil society organizations without a license and of obtaining foreign funding without a permit. The case was divided into two parts. In June 2013, a Cairo criminal court issued sentences against 43 foreign and Egyptian employees of foreign NGOs ranging between 5-1 years. The directors and senior staff were sentenced to 5 years mostly in absentia, and Egyptian staff who remained in-country were given 1-year suspended sentences. The court also ordered the closure of the organizations in question, the International Republican Institute, the National Democratic Institute, Freedom House, the International Center for Journalists, and the Konrad Adenauer Foundation. The second part of the case, referred to as Case No. 2011) 173), which involves a number of Egyptian NGOs, rights workers, and lawyers, was never closed. The cabinet ordered the Minister of Justice to set up a fact-finding committee to look into foreign funding received by civil society groups operating in Egypt.

After 5 years, specifically in March 2016, judge Hisham Abdul Majid re-opened the proceedings after receiving new information about the case — according to the justification invoked at the time. The investigating judge on March 16, 2016 summoned staff members of the Cairo Institute for Human Rights Studies, Nazra for Feminist Studies and the United Group. On March 22, 2016 the director of Nazra for Feminist Studies was subject to investigation. Before that, there were a series of arbitrary actions, including travel bans and the freezing of institutional and personal assets of some activists. A lot of ink was spilled on this issue as judicial and non-judicial proceedings are still haunting civil society to this date. Recently Al-Nadeem Center for Rehabilitation of Victims of Violence and Torture was shut down, which is a clear evidence that the repressive security mentality is still being adopted by the current regime, which is determined to adopt an approach based on the exclusion and destruction of civil society, rather an approach based on reaching understandings with civil society to restore balance to the community, ensure political stability, and respect for rights and freedoms.

So are Egyptian human rights organizations operating in violation of the law?

In fact, organizations operate transparently with regards to any funding they receive since they are required to submit contracts with their donors to the bank to receive incoming transfers. All transfers to these organizations have been performed through the banking sector under the control of the Central Bank authority. None of these NGOs generate profit since they depend on donations only. Added to this, the constraints imposed by Law No. 84 of 2002 on receiving external and local donations and grants, the legislator required the Ministry's prior approval on any local or foreign grant to the NGOs. Article 17 of the law specified that "The association has the right to accept contributions. It may collect contributions from natural or juridical persons and in such a manner as may be set forth by the executive regulations." In all cases, no association shall have the right to obtain money from abroad either from an Egyptian or foreign persons or a foreign body or its local representatives. Nor shall the association send any of the above mentioned, save for books, publications, technical and scientific magazines to persons or organizations abroad unless so authorized by the Minister of Social Affairs.

On the other hand, international law is clear that since freedom of association is a right, governments do not have the right to insist on registration under a particular type of legislation. The Special Rapporteur on the right to freedom of peaceful assembly and the right to freedom of association, states clearly that "the right to freedom of association protects unregistered associations on an equal footing." Egypt's constitution provides in Article 75 that "citizens have the right to form non-governmental organizations and institutions on a democratic basis, which shall acquire legal personality upon notification."

In this sense, all legal entities, whether under the NGO law or under other laws, such as civil companies, legal offices, and so on, would have become legitimate and would have had the right to civil work, based on the constitution, international law, and international agreements, conventions, and covenants ratified by the successive Egyptian governments.

► Conclusions and Recommendations:

Conclusion:

First: The diverse Egyptian rights movement played an important role in challenging human rights violations during Mubarak's regime, in addition to enriching democratic dialogue and empowering and building the capacity of various social segments and individuals in Egypt, prior to the 25 January 2011 revolution. This had a tremendous impact on preparing the way for the revolution.

Second: After the Revolution succeeded in toppling the head of the regime in Egypt, the counter-revolution returned quickly into power. All sides of the regimes (old and new) understood the importance and dangerous role played by the rights community before and during the revolution. They all agreed to punish, besiege, and even destroy rights groups, as a punishment for their role during the revolution and what they could do in the future.

Third: Since February 2011 and despite the differences and contradictions between them, successive governments have all shown animosity towards the idea of civil society – especially rights groups – with very few exceptions. They drew up and implemented plans to besiege civil society, in order to completely destroy it.

Fourth: Despite some gains in the field of rights and freedoms, especially in the 2014 Constitution, they did turn into actual legal texts and situations where civil society can work freely. On the contrary, most of the governments' suggestions, draft laws, and adopted laws have contradicted the text and spirit of the constitution and were hostile to rights and freedoms.

Fifth: As a result of the many forms of siege and repression in the past 6 years, using oppressive laws or ignoring the law altogether, the rights community has become weak and fragmented due to the severe restrictions, which have already paralyzed the movement, despite the fierce resistance shown by the community and its resilience so far.

Sixth: Civil society's legal and material conditions on the ground are gradually and rapidly deteriorating, especially with the issuing of the worst associations law in Egypt's history during the final stages of drafting this paper. It is expected that the new law would be the death knell for civil society in Egypt.

Recommendations:

Supporting and empowering civil society in Egypt to remain alive and regain its cohesion to play its role in defending rights and freedoms requires the following procedures:

First: Legal Procedures: President Abdel Fatah al-Sisi ratified the new law governing the work of civil society in Egypt (Law 70 of 2017). The new law violates the text of the 2014 Egyptian Constitution and international conventions and covenants signed by successive governments, ratified by the parliament, and considered to be part and parcel of Egyptian laws and regulations. It is necessary to wage a legal battle to repeal the law and prove its violation of constitutional and legislative texts. It could be the starting point for a comprehensive plan to challenge the attempts to completely destroy Egyptian civil society.

Second: Civil society and its various rights, development, services, and charitable components must be mobilized for the battle to repeal the new undemocratic and unconstitutional law, which does not conform to Egypt's commitments in the signature and ratification of relevant international conventions.

Third: A campaign must be organized to address the international community and explain the new law's dimensions and destructive impact on civil society in general and rights organizations in particular, in the context of international efforts to repeal the law and allow the space for an active and independent civil society.

Fourth: All efforts must be exerted to allow for legitimate channels for civil society funding, especially rights and advocacy groups in order to reinvigorate them.

Fifth: The various civil and democratic forces must stand in solidarity with civil society in its battle to repeal the new associations law, defending its right to exist independently and dropping all unfair and fabricated charges against rights activists and groups, in what is known as the foreign funding case 173 of 2011.

Brief Case on Enabling Environment in Egypt: shrinking policy space, shrinking civic space

Egyptian society witnessed drastic changes with the people's uprisings. The balance of power between the society and the state during the terms of different ruling powers from President Mubarak to Morsi and then to current President Sisi shifted enormously, directly impacting civil society. From mobilizing people in the Tahrir Square in their demands to freedom, justice and dignity; to calling for democracy and civilian power, civil society played a significant role within society in each of these power shifts.

The complexity of the power dynamics within a country is directly linked to the enabling environment, as each actor would frame a different role for civil society and engage with them in different terms. In response, civil society should respond and adapt to these changes. For the case of Egypt one should also note that during the same period, the State of Emergency was preserved and measures against threats to 'national security' or 'counter-terrorism' were restrictive for civil society; including how civil society is even defined (i.e. foreign agents) or for the actual role they can play in promoting human rights and democracy.

Nevertheless, even if the political situation changes rapidly, the role of the State to regulate its legislative framework and ensure its effective implementation stands still. This in turn requires the State to enjoy its sovereign rights to adopt domestic policies that are central to identify and address needs and necessities within its borders. The framework for enabling environment is no exception to this; thus another aspect to be considered in the case of Egypt is the impact of shrinking policy space due to the conditionalities set by the international actors. In this regard, limited disclosure of information, lack of transparency on deals signed with international actors (i.e. on aid, trade and investment particularly) and no genuine consultation with citizens worsened the situation for civil society.

The last IMF deal signed in November 2016 is a clear example of this. The deal for the 12\$ billion loan requires series of monetary and fiscal reforms that would negatively impact the poor violating their economic and social rights. Prior to its signature, apart from the planned economic reforms in follow up, the IMF-Egypt deal process was criticized, being non-transparent and non-inclusive. The IMF mission chief for Egypt Chris Jarvis took the case simple, noting that "the negotiations were "fairly transparent," saying "sometimes during the cooking process, you don't want everyone looking into the kitchen."¹ IMF policy implications found its reflections on the Egyptian government practices as well. Criticisms on the reform plan were not accepted, restricting freedom of expression particularly for comments on austerity policies implemented².



An enabling environment in Egypt is a real need. Recent NGO law makes the situation worse but international financial institutions should abide by principles of transparency, democratic ownership, mutual accountability to enhance the role civil society can play within Egypt. Their violations in these principles cause shrinking policy space which is directly linked to shrinking civic participation and closure in civic space.

¹ <http://www.madamasr.com/en/18/01/2017/news/economy/imf-releases-staff-agreement-on-egypt-loan-mission-chief-commends-economic-programs-progress/>

² <http://www.brettonwoodsproject.org/02/2017/egypts-new-imf-deal-comes-huge-price-tag-human-rights/>

The enabling environment for civil society activity

in Iraq

Jamal Jawahiri
Iraqi al-Amal Association

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► Introduction

The modern history of Iraq lacks a healthy and safe environment for the work of civil society organizations that may be described as in line with or even close to international standards. However, after 2003, the situation started to change. Iraq promulgated Non-Governmental Organizations Law No. 12 of 2010 and the Iraqi Kurdistan Region promulgated Law No. 1 of 2013.

This was seen as a very positive progress for civil society activity in Iraq, and even in the region. One may even say that these laws were adopted as a positive model during the discussion of laws governing NGOs in Tunisia and Libya.

However, the NGOs' environment still needs serious work. Political leaders, legislators and even the Iraqi government are required to have an open mentality based on tolerance and acceptance of others in this regard.

Since the founding of the Iraqi state, and to this date, the mentality prevailing among the legislative and the executive branches of power has always been based on monopolizing power and issuing legislations that protect the ruling authority and strengthen its influence.

The ruling authority seems to have forgotten or overlooked that it is possible for it to be prosecuted or held accountable under the same laws that it had promulgated to narrow the working space of civil society organizations in particular, and to limit the society's participation in the political decision-making of the state in general.

In light of the mentality entrenched by the successive governments, whereby the state or the government is the authority that legislates, implements laws and policies, employs the citizens and provides services, the majority of the society acquired a mentality of a recipient rather than a mentality of a partner.

Thus, with any political or societal instability the citizens would lose their sense of belonging to the state or the nation. Moreover, citizens who lost their sense of citizenship and their confidence in the official establishment became vulnerable to all kinds of rumors or news.

This report will try to focus on some specific aspects of the work of Iraqi civil society and its role or efforts. It should be noted here that the majority of Iraqi civil society organizations are recently established, except for those operating in Kurdistan before 2003 and which were able to take advantage of the environment suitable for their work after 1991.

The report also will focus on the rights of these organizations to receive financing from and work with the government and foreign institutions, to have access to information and to freedom of expression and peaceful protest.

► Financing

The mobilization for the promulgation of a law governing NGOs took six years (from 2004 to 2010), during which organizations launched massive campaigns. Some of these campaigns were funded by foreign entities and others had a voluntary character. Iraqi organizations were able, within this scope, to form alliances and several networks. They also held meetings with numerous Iraqi and foreign official leaders for drafting a fair and safe law on NGOs that ensures their independence and freedom away from government intervention. Iraqi organizations exerted significant efforts when discussing the several draft laws that hinder the work of NGOs and limit their freedom, especially in terms of foreign and local funding.

Government authorities were highly concerned about this funding. On the one hand, the funding of NGOs was seen as a loophole that terrorist entities can take advantage of in order to finance terrorist organizations or bodies, especially since the legislative process took place while Iraq was battling terrorism and a war that may be described as a sectarian war.

On the other hand, governmental authorities feared this funding would be tantamount to external interference in Iraqi affairs. This was a concern expressed by the majority of religious parties, since external funding was seen as contributing to the transfer of Western or foreign cultures that do not fit in with the Iraqi Muslim and Arab profile.

For its part, local funding stirred suspicions of money laundering and the use of the internal funding of NGOs to exert religious or sectarian pressure on the society. Therefore, this matter required extensive discussion and extraordinary efforts to convince Iraqi lawmakers and the Iraqi government of the freedom of financing, the freedom of action of NGOs and the freedom of holding meetings with local and foreign entities without prior authorization from the state.

Thanks to the joint action among local organizations that took the initiative, and in cooperation with some United Nations organizations, the campaigns succeeded in obtaining an advanced legislation that guarantees the right of funding of NGOs without authorization or prior approval by the concerned government administration.

Article 13 of the Law of Non-Governmental Organizations No. 12 of 2010 reads as follows:

“Article (13): NGOs’ resources consist of:

- 1) Members’ fees and dues.
- 2) Internal or external donations, grants, bequests and gifts.
- 3) The revenues from their activities and projects.”

Article 14 -2 of the same law reads as follows:

“NGOs are eligible to bid on tenders announced by public authorities, provided that the subject of the procurement process relates to the NGO’s field of expertise.”

These are express and explicit provisions conferring to NGOs the right to obtain funding without prior permission from any state authority and to participate in the tenders announced by the state if the tender subject falls within their field of competence. This somewhat helped NGOs have access to public funding from the government.

The argument invoked by the Iraqi organizations and the foreign experts who have helped the NGOs is that there is a department for combating money laundering and terrorism financing at the Central Bank of Iraq, whose mission is to monitor all bank transfers to Iraqi banks. This department has a close coordination relationship with all the central banks in the world, and includes representatives of the Iraqi Interior Ministry, security and intelligence services. Therefore this department is the most informed and up to date on this issue and controls all suspicious funds. In order to overcome this dilemma, CSOs proposed adding the following article in the law:

“Article (16):

- 1) NGOs should conduct all their financial transactions including receiving and disbursing financial resources through public or private banks via a bank account.
- 2) Only a court may authorize the freezing of the bank account of an NGO.”

The second paragraph was drafted to prevent the administrative authority from being able to pressure the work of NGOs and halt their funding by freezing their bank account.

The law was passed a day before the end of the term of the Iraqi parliament and just before the approval of the State budget, while MPs and political parties and blocs were preoccupied with preparing for the elections. One may say that it was passed in an ideal period. Everyone was busy with the budget and the start of the electoral campaign and the majority of the MPs and blocs wanted to appear as democratic in front of voters.

However, the administrative authorities have not been able so far to cope with an advanced law for non-governmental organizations in Iraq. Indeed, these authorities are trying to complicate the registration administrative procedures or the procedures for the submittal of annual reports to the Non-Governmental Organizations Department with the General Secretariat of the Council of Ministers. The authorities are also trying to pressure foreign international organizations and UN bodies in order to have a say in the funding of organizations, alleging that they seek an equitable distribution of funding and want to prevent a group of organizations from getting funding higher than that allocated to other organizations, or to establish a Fund for foreign funding where the government or the Fund would be responsible for providing grants to local organizations. This is addition to the hidden attempts by the government to amend the law, by adding a paragraph on the establishment of a fund for the financing by the government of NGOs, which shall be under the responsibility and supervision of the Non-Governmental Organizations Department. In this case, the Department would be in charge of the registration and the provision and supervision of grants. This would lead to a conflict of interest, and may be politically or governmentally exploited in favor of organizations affiliated with the government and political parties and used to crack down on independent organizations, in particular organizations concerned with rights and freedoms or those working in the field of promoting the society's involvement in drawing up the state's general policies.

Article 29 of the same law specifies that "The NGO is permitted to open branches inside Iraq and abroad." In this Article, the law granted organizations the right to work beyond a single office or one city, and allowed them to deal with foreign institutions through their offices outside Iraq or to represent the interests and needs of Iraqis outside Iraq.

The applicable Iraqi NGOs law authorizes three persons to establish an NGO, and this is a positive and easy implementation of the right of establishment. However, some interpretations of the law hindered this positive implementation. For example, Articles 5 and 6 of the Law required each organization to have an official address for its main office, to which all notifications and correspondence shall be sent. But the Non-Governmental Organizations Department interpreted this point differently. It required the organization to have a furnished office where it can hold meetings and entrusted a representative of the Non-Governmental Organizations Department to visit the office for inspection.

The Law also authorized the organization to have branches inside and outside Iraq, without going into details. Here too, the Non-Governmental Organizations Department required the organizations to officially register their offices or branches with the state departments or the governorate office.

The Law provided for the freedom of movement and work in and outside Iraq without restriction, and allowed meetings and public assemblies without prior security approval. The law exempted organizations from registration fees.

It should be noted that the majority of foreign organizations operating in Iraq before the approval of the law did not care about creating a sound legal environment for the work of the Iraqi organizations, as they only wanted to implement their programs to the detriment of permanence and continuity of the work of civil society.

In the Kurdistan region, a paragraph in the law governing NGOs authorized organizations to obtain funding from the KRG budget. Accordingly, about 15\$ million were allocated within the state budget for 2014-2013 to support local organizations working in the Kurdistan region through grants given under a mechanism of announcement of grants. A joint committee was formed by the government and NGOs representatives for the purpose of approving the financing of NGOs projects. To a reasonable extent, one may say that this process was implemented according to a participatory and transparent formula, but this does not mean it did not encounter problems. Some of the projects were funded by the committee entrusted by the NGO Department without consultation with the committee members from among civil society. In light of the shrinking budget of Kurdistan Region and the conflicts between the Region and the central government, this experiment was not repeated in the years that followed. It should be noted however that the financing mechanisms of NGO projects were also developed in a participatory manner, with the participation of some organizations, including the Iraqi al-Amal Association.

The NGOs Law in Kurdistan facilitated the registration process, eased registration requirements for local organizations, and required information about Iraqi organizations that intend to work in the Kurdistan region and registered by virtue of Law on NGOs No. 12 of 2010. The registration of foreign organizations in Kurdistan became easier and more simplified and this explains why numerous foreign organizations tend to register in Kurdistan rather than in Baghdad.

According to the law of Kurdistan Region, NGOs may assess [the performance of] state institutions and have the right of access to information, assembly, protest and strike.

So far, most foreign organizations operating in Iraq deny local organizations overhead funding and keep it to themselves, without offering local organizations any part thereof, or offer them a part of their due overhead funds except under specific conditions. This hinders the permanence and continuity of the Iraqi organizations while offering continuity to foreign organizations from the funds allocated to Iraq. Moreover, some United Nations organizations also deny local organizations this funding and offer it to foreign organizations (also under conditions). This means that the overhead funding proportion is disbursed to cover the Organization's overhead expenses at the headquarters outside Iraq.

It is worth mentioning that after a campaign by some organizations operating at the national level in various parts of Iraq, a decision was issued by the US State Department in December 2014 to add %10 [for overhead financing] out of the total budget of any project signed by a local organization with a foreign organization that obtained a US State Department grant.

Accordingly, some local Iraqi organizations obtained this amount that helped them ensure their sustainability and improve their administrative and regulatory environment. This required efforts and other campaigns targeting other donors, such as the European Union, the British Foreign and Commonwealth Office, and other governments of rich countries that provide grants to developing countries.

The majority of Iraqi organizations' self-financing approach has failed. Despite few attempts by the organizations, self-financing remains limited and insufficient to meet the needs of the organization or cover half of its expenses. One of the main reasons behind this failure is the mentality of the Iraqi organizations and the Iraqi society, seeing NGOs as charitable organizations that provide assistance to others and that it is not common for such organizations to cover their expenses by requesting the beneficiaries to pay part of the services provided to them.

On another note, donations to development issues are very limited, but there is reasonable funding to cover charitable work. This appears clearly through the high percentage of contribution from the society and some businessmen to the relief of the displaced people, especially after the emergence of the Islamic State (ISIS). This relief also included vulnerable groups in areas not controlled by ISIS. Moreover, some businessmen provided support to the work of local organizations, and this marked the beginning of trust between civil society and the private sector.

► The work of civil society organizations with public authorities

Before the invasion of Iraq in 2003, public authorities worked with civil society organizations as entities subordinated to the official institution. NGOs were seen as parts of the ruling authority, whose objective was to raise awareness or conduct popular activities on behalf of the authority or as charitable organizations of a religious character that had nothing to do with issues related to rights and freedoms or participation in the drafting of the state's general policies.

After the 2003 invasion, civil independent work became possible, away from the interference by the government or political parties aspiring to take over the rule or that came to power in subsequent periods. During this period, NGOs sought to influence the drafting of the Constitution and subsequent laws and to make breakthroughs in issues related to freedoms and rights. One may say that they succeeded, to a reasonable degree.

The Iraqi Constitution includes numerous loopholes. A part of it was drafted under the influence of a sectarian mentality or represented reactions to the previous government's policy before 2003. Yet, this constitution remains positive on many levels, including rights and freedoms. Indeed, the Constitution stressed the need to support of civil society organizations.

Some organizations focused on this aspect through a number of meetings and joint workshops with the political parties and the government. Surely, the presence of some of the United Nations organizations and other foreign institutions, including the embassies of foreign governments that existed in Iraq during this period helped pressuring the government to accept the civil society participation in drafting the Constitution or subsequent laws. There is no doubt that Iraqi organizations exerted pressure on the abovementioned foreign institutions to assume an active role in the relevant meetings or workshops held inside and outside Iraq.

In this context, NGOs had different opportunities to work with various official bodies, like the parliament or provincial councils and some ministries and independent bodies, through joint trainings or training workshops for the staff of these official institutions. Members of the legislative council and judges from various Iraqi provinces participated in such events, which witnessed a direct coordination between NGOs and official institutions.

This activity evolved to the point where NGO representatives became members of the committees drafting some general policies, such as population or child protection policies, the strategy to reduce violence against women, or the national plan to implement UN Security Council Resolution 1325 on women, peace, and security.

Moreover, the selection committee of the Independent Commission for Human Rights included representatives of civil society who have the right to vote, just like MPs or representatives of the government and the judiciary, during the voting on the new commission members.

Provincial councils, some ministries, the parliament, and, in some cases, the offices and halls of the General Secretariat of the Council of Ministers hosted different activities of Iraqi, and foreign NGOs, and United Nations bodies.

These activities and events were held thanks to these organizations' relations with the mentioned authorities. These relations had positive effect on joint activity. This means that the change of the NGO or of the minister may positively or negatively affect this work in the future. In other words, these events were not held in accordance with an adopted and public governmental or legislative policy framework.

This prompted Iraqi organizations, with the support of the United Nations Office for Project Services, to draft a cooperation policy between public authorities and the Iraqi NGOs. A committee was formed and tasked with drafting this policy, comprised of Iraqi MPs representing the majority of blocs and political parties represented and influential in the parliament in 2012, in addition to a representative of the government and five Iraqi NGOs. The committee held various meetings inside and outside Iraq, and organized a study visit to the Republic of Estonia to learn from its experience in this field.

In early 2014, the committee had completed the drafting of this policy, following discussions among a large number of representatives of Iraqi and foreign civil society and some Iraqi government institutions through workshops and meetings across all parts of Iraq. Meetings were also held with Iraqi political party leaders and with the Vice President of the Republic for the purpose of ensuring the approval of this policy by the government and the parliament.

The Iraqi government did not give much importance to this policy in light of the protests and demonstrations staged or supported by NGOs, for fear of a greater influence by these NGOs on Iraqi state policies. However, the parliament issued a decision stressing the need to involve civil society in the discussion of laws proposed by or sent to the parliament by the Council of Ministers. This decision was seen a positive start by the parliament.

Accordingly, several discussion meetings were held about the laws, inside and outside the Iraqi parliament, especially laws concerning civil society. Perhaps, if this campaign is organized again in light of the current political, social, and economic crises that the Iraqi government is battling, the policy document would be approved given the government and legislative institutions' need to a greater role for NGOs, even in terms of some projects for which the state ministries were unable to obtain financing from the state general budget in light of the austerity measures applied by the state.

The same approach was adopted in the Kurdistan Region. However in the Kurdistan Region, the policy was approved by the Kurdistan Regional Parliament and Government, and a wide range of workshops and meetings were held for the staff of Kurdistan Government for the purpose of putting this policy into force. This effort was exerted in collaboration with some of the NGOs and the Committee of Civil Society Organizations in the Kurdistan Region, which played an important role in the drafting and approval of this policy.

NGOs also tried to activate such a policy at the provincial level. They succeeded in some provinces, while in others, they still face obstacles in terms of the approval by the provincial council, especially if such a policy involves financial allocations. It should be noted that some provincial councils allowed the NGOs to hold some of their meetings and workshops in the council's official meeting halls, hosted NGOs representatives in some of their meetings, or held joint meetings.

► The right of access to information

The right of access to information means the right of the public and individuals to obtain all the information held by public authorities in any way. This has become one of the most important basic human rights. Public authorities are the people and individuals' agent entrusted with the management of public affairs. An agent is not entitled to hide anything from the principal (the people). All information must be made available to the public, as long as secrecy or the withholding of such information from individuals does not achieve a serious public interest.

There is world-wide trend — especially in countries eager to establish and entrench democracy — to recognize this right as a fundamental human right, considering access to information as essential to the democratic process, and a crucial tool to promote democracy.

The free circulation of information and the activation of the right to have access to information achieve important general political and economic objectives, including:

- 1) Ensuring the people's participation in policy-making and decision-making at all levels;
- 2) Enabling the people to supervise the performance of their elected officials and to hold them accountable in elections or in terms of popularity, even during their mandate. This ability activates popular and electoral accountability and without it, the people's participation in the elections remains an automatic non-conscious participation not based on facts and a clear vision of who they are electing.
- 3) Building a free, strong, and conscious society. According to the advisory opinion of the American Court of Human Rights issued in 1985, "a society that is not well informed is not a society that is truly free."
- 4) Ensuring a great deal of transparency to prevent the involvement of officials and political parties in corruption and theft of public funds. According to a maxim by a US Supreme Court Justice, "Sunlight is said to be the best of disinfectants."
- 5) Enhancing media freedom, strengthening its powers and expanding its tools and ability to pressure and influence and to uncover the truth.
- 6) Providing a real opportunity to build trust between the government and the people by declaring everything to the public.
- 7) Preventing those fishing in troubled water from spreading rumors and false information.
- 8) Opening the doors to a wide participation by the people in an open well-informed dialogue about the work of the government and its policies, leading to the activation of the government and urging it to work in the light of the demands of the people and their needs and priorities.
- 9) Shedding light on and allowing public criticism and discussion, which helps to avoid them, eliminate them, and hold their perpetrators accountable.

The right to access to information includes the people's right to get personal information, which are part of human dignity and which are important for individuals on the personal level in the decision-making process. This includes access to files and medical records that may assist individuals in taking the proper therapeutic and financial planning decision for themselves and their families.

Moreover, some information held by public authorities are directly related to the financial and economic aspects of individuals' life, whether in commerce, agriculture, industry and other field, such as information related to important groundwater maps when it comes to making decisions on investment in agriculture.

The right to access or obtain information appears in three aspects:

1. The public authorities' obligation to provide information to individuals or non-governmental organizations upon their request.
2. The duty to publish "basic information," even if not requested, such as information on the method of functioning of the authority or the Ministry or the concerned authority, their policies, the services they provide, how to benefit from them, the opportunities to participate in their work and activities, the procedures, requirements and mechanisms for obtaining information from them, and what information they produce or seize.
3. The duty to disseminate information on human rights violations.

This topic is new in the Iraqi society and even among many human rights activists after a long era where functional discipline and commitment to the confidentiality of the Iraqi state information prevailed. These terms are closer to the practices of a military regime than to the activities of civil society. The modern Iraqi Constitution (2005) does not include a clear indication to the right of access to information. Some see it as part of the freedom of expression, peaceful assembly, and demonstration that may be included in the law of freedom of expression.

However, the Civil Center for Studies and Legal Reform, a local non-governmental organization, and other organizations tried to propose a draft for such a law based on other experiences, such as the "Right of Access to Information Law No. 11 of 2013" that was passed by the Kurdistan region of Iraq and seen as a positive law by all regional standards. This law specified in some of its articles that the Iraqi Kurdistan Region's institutions shall announce all of their implemented policies, projects and programs and services, as every citizen has the right to obtain information, except those related to the security of the Iraqi Kurdistan Region. This law also sanctions the employee or the official person in charge who withholds information.

However, there are several impediments hindering the implementation of this law under the pretext of the current security situation, counter-terrorism, and security secrets, which if revealed may be exploited by terrorists or entities backed by foreign countries. Moreover, some invoke Arab experiences, including that of Jordan, which had approved a law granting the right to access information.

The local organizations' initiative to develop the draft is very important, for fear that the government would issue its own draft that would restrict the right of access to information, especially in light of the current security deterioration, and increased demands of the right of access to information by some active civil groups in order to expose cases of corruption, conflicts of interest, and nepotism prevalent in the majority of the state services and departments.

But this initiative is still at its infancy, since, if adopted by a parliamentary committee or the government, this draft would become the original draft upon first reading and any amendment to its provisions must be based on the original draft.

► Freedom of expression and peaceful association and assembly

The need for a law regulating freedom of expression, peaceful association and assembly emerged in the wake of sweeping protests and demonstrations across more than half of Iraq's provinces, with calls for a peaceful sit-in for several days. The Iraqi government and security authorities have been dreading such an exceptional popular movement in the past 40 or 50 years. In 2011, the Iraqi government, in cooperation with parliamentary committees affiliated to the government, introduced a draft law of freedom of expression and peaceful association and assembly. The draft was based on the idea of limiting these freedoms rather than regulating them as it claimed. This is not a surprising behavior by the parliamentary Security and Defense Commission, a vital partner in issuing this draft, on the pretext of maintaining security invoking that these protests and demonstrations are terrorist activities or have foreign agendas. The arrests and attacks campaigns that accompanied the demonstrations by the security services had only as legal base the laws of the former regime, whose legitimacy is contested in this field. Moreover, it is also important to talk about the death of significant number of victims from Iraq and the Kurdistan Region of Iraq, noting that there are well-known figures who sacrificed their lives for the sake of freedom of speech or freedom of expression and assembly, not to mention the various forms of threats of arrest and liquidation across different regions. This includes the attacks by official agencies or partisan entities, and some of the armed groups and finally the assaults committed by ISIS against journalists and others.

One cannot talk about a democratic society without a legal space or environment that grants such society the chances and the possibility to freely express its views and orientation while enjoying a sense of social safety.

Despite the fact that elections are the most prominent practice of freedom of expression, such freedom would not achieve its sought objective in the absence of supervision over the performance of the elected or executive institutions or participation in political decision-making. This is only achieved if there is a suitable space for citizens to express their views in an environment that can ensure them all of their rights and public freedoms. This is why international treaties and UN conventions sought to prove that the right to freedom of expression is an essential pillar for any society. No democratic regime may exist if its local constitution and laws do not ensure the right to freedom of expression.

The Iraqi constitution consecrated public rights and freedoms, and included a special chapter on civil and political rights, which emphasized the right of freedom of expression as an essential and important right for the democratic regime that the Iraqi state is seeking to establish.

Article 37 (Second) stipulates that the State shall guarantee protection of the individual from intellectual, political and religious coercion.

Article 38 reads as follows: "The State shall guarantee in a way that does not violate public order and morality:

- A. Freedom of expression using all means.
- B. Freedom of press, printing, advertisement, media and publication.
- C. Freedom of assembly and peaceful demonstration, and this shall be regulated by law."

The Iraqi parliament completed its first and second reading of the draft law on freedom of expression and peaceful assembly and demonstrations, but this draft is still facing broad local civil pressure as well as pressure by some of the United Nations organizations, especially UNESCO, and some international organizations and institutions involved in this field. The draft has not been voted on so far, and under the exerted pressure, voting has been postponed several times even after being included on the agenda more than once this year. Moreover, voting on this draft has been removed twice from the agenda as an item on the day of the session.

Some groups of local organizations, supported by stakeholders in the field of media and thought, are leading this pressure campaign under different forms. They are even holding meetings with the parliamentary Human Rights Committee, the Committee on Culture and Information and the Committee of civil society organization for the purpose of not allowing the draft law on freedom of expression and peaceful assembly and demonstration to be passed in its current status and the adoption of the proposed amendments thereto. Moreover, meetings were held with some of the political blocs and parties at the parliament. A series of television shows and public debates were organized across different media outlets and large social media campaigns were organized in this field.

What are the most important observations of the Iraqi and foreign civil society organizations and the institutions concerned with the media on the draft law?

The Constitution guarantees freedom of expression by all means and in a very express manner, but such freedom must be regulated by a law. According to the Constitution, the freedom of assembly and peaceful protest are regulated by law, therefore the subject matter of the draft law on freedom of expression is supposed to be limited to this freedom.

The draft law has granted only legal entities such as organizations and other institutions, and not to natural persons, this freedom or right to request to organize a demonstration or gather in open public places. The term “public spaces” was used in the draft to refer to roads and public squares, because the right to organize meetings and events in halls is guaranteed in The NGOs Law No. 12 of 2010.

The most important issue remains that the draft required a license or prior authorization from the government department or concerned administrative authority, instead of a notice. NGOs are demanding to amend this draft in this regard.

The government, security agencies and legislative bodies close to the government feared protests that may continue for days, since they see them as a threat to their survival or a tool of popular or public pressure on them. This is especially true after the sit-ins staged in some Arab countries in 2011, which overthrew the governments of some of these countries, namely Tunisia and Egypt. This is why the draft law prevented the right of assembly between ten at night and seven in the morning. Moreover, the draft does not punish the government agency or the official in charge who denies people this right while on the other hand it holds accountable for the damage caused to public property the organizers of the protest or demonstration. It should be noted that protecting public places falls within the scope of the tasks of the security authorities who should punish those who attack public property and not the organizers of demonstrations. Accordingly, it seems that the draft law is trying to prevent any form of peaceful protest.

What is striking is that some of the members of the previous government (the government of Nouri al-Maliki) — now that they are outside the power — disapprove of some of the articles of the draft that they had previously approved. Therefore, the prevailing mentality among the regime when it wrote and promoted this draft did not take into account that one day the ruling power may turn into an opposition camp, and did not understand or operate according to the peaceful transfer of power principle, whereby a party may be in power today and in the opposition the next day and vice versa. Therefore, setting the foundation for a legislative mentality that takes into account these possibilities and principles is necessary for political action in Iraq, if it the country still wants to be democratic.

Based on the Iraqi experience, one may note that in countries where conflicts or wars had erupted, the new government, which needs an international and UN support and recognition of its legitimacy, may be pressured to pave the way for developing a positive enabling environment for the work of organizations, and to try to involve local civil society in all activities and events its organizes. These events include workshops to formulate laws or policies, and even draft a constitution in modern states. This would contribute to breaking the ice between the various parties, and to bring together all parties to avoid political bickering through the media or in different forums and to start building and developing trust and solid relations between the parties and all stakeholders in the society so as to shape a pluralistic participatory society, if this country really aspires to build an effective democratic society.

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Brief Case on Enabling Environment in Iraq: amid war, conflict and confessionalism donors' commitment to enhancing the role of civil society

Iraq's history has witnessed war, foreign occupation, political confessional system and continuous lack of stability and security. In such a setting active civic participation has been challenged seriously. Indeed, as noted by Jamal Jawahiri in his report, "citizens would lose their sense of belonging to the state or the nation."

Whereas for an enabling environment, legislative framework constitutes a central role, the overall context and the notion of belonging comes at the forefront for citizens' willingness to participate, take an active agent role in monitoring, documenting, service provision or advocacy among many other roles they can play in civil society. In this regard, the case of Iraq is particular, in which "identity", defining one and the other thus political, religious, sectarian division has been a top trend since many years. Peaceful coexistence and trust; that would eliminate conflict and stand at the core of the enabling environment simply lacked within the society. In this context perspectives on Iraq were different for each group, and lack of unity further challenged a role for civil society that can engage within the country in different roles.

Nevertheless, we should also consider the positive achievements in this challenging context. For instance, a March-April 2017 survey ¹ on Iraqi population reveals that %39 sees the country direction right, %60 sees security better, %39 sees corruption better and %62 sees sectarianism better. The improved legal environment through the Law of Non-Governmental Organizations in Iraq is a positive step as well. This should be further enhanced with effective implementation, developing societal relations based on mutual trust and ensuring an inclusive, transparent and participatory decision-making.

The Iraq "Dashboard" - Bounce back from historic lows			
Metric/survey question	Current %	Change Jan '18	Movement
Country direction, % right, total	39	+29	Much Better
Security, % better, total	60	+26	Much Better
Electricity supply, % better, total	39	+12	Better
Corruption, % better, total	13	+3	Stable
Job opportunities, % better, total	12	+1	Stable
Abadi favorability, % favorable among Shia	46	+15	Better
Abadi favorability, in west	68	+52	Much Better
Sectarianism, % better, total	62	+32	Much Better
Iraq is mostly unified %, total	45	+3	Stable
Sunni/Shia relations, % better, total	84	+40	Much Better
KRG//Baghdad relations, % better, total	22	+18	Better
Kurdish direction, % right, Krdistan only	43	+15	Better

¹ By NDI, available at <https://www.ndi.org/sites/default/files/Iraq20%April20%202017%Survey20%Public20%Final29%281%20%29%281%20%.pdf>

Yet this is not enough for ensuring an enabling environment unless it is supported also by the international community. Especially for Iraq, a country of huge flow of funds and donor community interest, donor's engagement and agenda in the country is important. For instance in 2016, over 2\$ billion is pledged for Iraq.² Civil society access to these funds and the development outcomes achieved; CSOs independency on implementing nationally owned development agenda vis-à-vis donor-led projects, or transparency and capacity in absorbing this financial assistance and CSOs self-accountability are all at the core of ensuring enabling environment for Iraq as well as development effectiveness. Iraqi history should make us recall previous experience during which, NGOs were considered to be "formed ...as opportunistic ventures aimed at gaining access to the massive amount of humanitarian aid that was pouring into the country"³.

Therefore strong civic participation through inclusive, transparent, participatory mechanisms at national level together with laws on association, assembly and expression, as well as access to information and resources should be adopted and effectively implemented. Donors should undertake transparent and inclusive processes for civil society to play a proactive role in their engagement within the country respecting development effectiveness principles for ensuring enabling environment in Iraq.

² <http://www.iq.undp.org/content/iraq/en/home/presscenter/pressreleases/21/07/2016/twenty-six-international-donors-pledge-1-2-billion-to-address-iraq-crisis.html>

³ As noted by the Iraqi NGO Coordination Committee http://www.ncciraq.org/en/archive/ncci-studies/item/download/9_78ca12bd5662385e43d8eb194dffeca80

**Freedom of Assembly and Association
between Law and Practice**

in Lebanon

Zahra Bazzi

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► Introduction

The introduction to the Lebanese Constitution defines the state of Lebanon as a democratic parliamentary republic based on respecting public freedoms, mainly the freedom of opinion and belief, social justice and equality of rights and duties among all citizens without distinction or preference. The law abides by these principles and gives the international norms and standards a constitutional status prioritizing them over the Lebanese laws. The freedom of the civil society is a fundamental right in democracies and a precondition for the exercise of other human rights. The civil society in Lebanon has been active since the mid-nineteenth century, yet there is no reliable data determining the number of civil society organizations in Lebanon. An assessment conducted by the United States Agency for Development (USAID) concluded that there were about 5000 civil society organizations,¹ while the observatory of the International Center for Not-for-Profit Law (ICNL) indicated that there were at least 8500 organizations in Lebanon, including 200 branches of international organizations.²

Lebanon has many factors of social, economic and political instability negatively impacting the democratic life and the enjoyment of economic, social, cultural, civil and political rights. Among the instability factors are the spread of extreme poverty around the urban areas, the increasing disparities and inequalities between and inside regions, the high rates of youth unemployment and the high numbers of Syrian and Palestinian refugees, implying many challenges to ensure their integration in the economic and social life and to secure their rights in general, in addition to the continuous security risks closely related to regional fluctuations.

Despite all the conflicts and the crises that the country has undergone from the civil war and the attacks by the Israeli enemy to hosting the highest numbers of refugees compared to the number of the country's population, the civil society organizations have been able to play a key role and to be a source of stability in the country, particularly in terms of the provision of services, as they replaced the government in a role the latter failed to accomplish. The civil society organizations have been distinguished in many aspects, such as the environment, agriculture, rural development, good governance, democratization and capacity-building.³

As for the political role involving the supervision and accountability, the civil society organizations in Lebanon played an important role in pressuring the decision-makers to approve the reforms in various aspects, including pushing and signing petitions to oblige the government to call on municipal electors and to hold the municipal elections in 1998 after 30 years of not doing so, putting an end to violence against women and guarantying the right to access information. The efforts deployed in these fields led to the promulgation of laws deemed to be advanced in these areas.

Despite these important achievements, the civil society organizations in Lebanon are still limited in their ability to influence the policy-making industry. The sectarian system in Lebanon hinders the enablement of political and constitutional institutions and public departments, which obstructs the mechanisms of participation, surveillance and accountability. The blowout of sectarian clientelism and nepotism related to the nature of the state and the fact that the services are provided by the leaders of the sects allow them to dominate the members of the sect. Thus, the services which are practically the rights of the citizens become a mechanism used by the leaders of the sects to ensure their continuity in power and governance.⁴

In this context, the paper provides a historical overview on the civil society in Lebanon and then presents the main axis of the enabling environment for the civil society, including the freedom of assembly, demonstration, opinion and access to information, as well as the relationship between the civil society and the state and the funding mechanisms by analyzing the law and the practice. The paper highlights the main challenges facing the civil society organizations and limiting their influence.

¹ Civil Society Organizations Sustainability Report for the year 2013 for the Middle East and North Africa, USAID, 2013, available at <https://www.usaid.gov/node/189771>

² The International Center for Not For Profit Law, ICNL, Civic Freedom Monitor, <http://www.icnl.org/research/monitor/lebanon.html>

³ Civil Society Organizations Sustainability Report for the year 2013 for the Middle East and North Africa, USAID, 2013, available at <https://www.usaid.gov/node/189771>

⁴ Ziad Abdulsamad, the Lebanese Civil Society and the Lebanese Experience, November 2012.

► A historical overview of civil society in Lebanon

The work and activity of Lebanese civil society dates back to the nineteenth century with the popular movements, which are peasant movements aiming at eliminating the privileges of feudalism,⁵ but the Ottoman and European authorities ended this movement. These movements were followed by educational and advocacy missions that established schools, universities, dispensaries and charities that provide services to the persons in need for free or at nominal prices. The existence of these organizations was linked to the religious authorities and the funding thereof depended on Zakat, fifth income contributions and donations in Church.⁶

During the civil war between 1975 and 1990, the civil society organizations intervened to handle the exceptional circumstances resulting in deaths, injuries, displacement and lack of food, which required direct intervention by the forces and parties operating on the ground, as well as the initiative of the popular committees in neighborhoods to organize the public steadfastness and support. The retreat of public institutions from performing their role created a gap in the society that was filled by the civil society organizations that focused on the services and health aspects of a relief nature and devoted their field institutions to meet these essential needs in the society. It should also be noted that a number of organizations played a key role in maintaining the communication between the various categories of the Lebanese society, particularly among the different sects, in order to preserve national **unity** and to build civil peace.

During the reconstruction phase, the civil work contributed in the reconstruction and in monitoring the rebuilding and the reconstruction projects carried out by state bodies. This period was characterized by the cooperation with the State in the implementation of service and welfare program.

However, the civil society organizations faced major challenges, including the persistence of the sectarian system, the spread of corruption and clientelism and the lack of transparency, which hindered the possibilities of monitoring and accountability by the civil society organizations.

Post-Syrian War: The Syrian war and the influx of Syrian refugees into Lebanon should be taken into consideration when studying the civil society. As the need to provide different types of services to Syrian refugees witnessed an increase, most of the efforts of civil society organizations since 2012 have shifted to relief work in order to support the Syrian refugees residing in northern Lebanon, the Bekaa and the poor areas in Beirut and Mount Lebanon due to the extreme need to this support, while noting that the donor agendas also turned to this issue. However, this change in the priorities negatively impacted the course of development of Lebanese civil society organizations as they were no longer practicing their regular activities. It should also be noted that the change in the priorities of the donors reduced the number of projects directly supporting the local communities. Thus, the role of organizations in the control and accountability, as well as in influencing public policy-making declined as most of them turned to relief work, while the remaining organizations that maintained their regular activities suffered from a lack of funding.

⁵ Georges Karam, the Civil Society complements and does not monitor the role of the State, October 2010 in Afaq Al Mustaqbal, Issue No 7, available on http://www.georgescorm.com/personal/download.php?file=afaq_almustaqbal_sepoct_2010.pdf

⁶ Adib Nehme, an interview published in Janoubia entitled the Civil Society Organizations in Lebanon: how, why and when? October 2011, janoubia.com/2011/10/13/Civil-Society-Organizations-in-Lebanon/

► Freedom of Association

a) In the texts:

The freedom of association in Lebanon is one of the principles expressly provided for in Article 13 of the constitution: “the freedom to express one’s opinion verbally or in written, the freedom of assembly and the freedom of association are all guaranteed by the law”. Thus, the freedom of association is considered a constitutional freedom that cannot be restricted unless in a legislative frame and “in order to maintain the national security, public security, public order, public health, public morals and the rights and freedoms of others”, as stipulated in Article 22 of the “International Covenant on Civil and Political Rights” signed by Lebanon in 1972. The associations in Lebanon are subjected to the law promulgated on 03.08.1909, which the general law imposed on all associations and political parties, excluding the associations subjected to special laws: foreign associations, youth and sports associations, labor unions and cooperative and mutual funds.

This law also provides for the freedom of incorporation, as it adopted the notification system.⁷ Article 2 of the law of associations provided that “the incorporation of an association shall not require a license in the beginning but it is binding to notify the government following the incorporation thereof”. Accordingly, an association is established once the founders thereof agree and sign its memorandum of association, without the need for a license from the administrative authorities, as the association is only required to notify the concerned department of its incorporation. The freedom principle (meaning the foundation followed by notifying the concerned department of the same) is a main pillar in the freedom of association guaranteed by the law in order to avoid the intervention of the department in the incorporation of associations which may hinder the extent and efficiency of the freedom.

It is noteworthy that there are exceptions made to the principle of freedom of association:

- Youth and sports associations are subjected to a special law which is Law No 16 promulgated on 15 December 1972 – these associations are required to obtain a license from the Ministry of Youth and Sports and shall have a minimum of seven founders for the incorporation thereof.
- In addition thereto, Resolution No 369 issued on 21 December 1939 subjects the **foreign associations** to the licensing system.
- The **syndicates and unions** also abide by the licensing system provided for in the labor law promulgated in 1946. The founders thereof must obtain the approval of the Ministry of Labor for the incorporation thereof. The Ministry of Labor shall ask for the opinion of the Ministry of Interior pertaining to the license of the syndicate before approving or rejecting the license.⁸

If the principle of freedom of association is a cornerstone for the freedom of assembly, the freedom of administration is the other cornerstone. The law sets out a general framework for the management of associations leaving the details to the founders and the associations themselves.⁹ The Assembly shall have the right to determine the subject, provided not to be based on an illegitimate basis, not to be in contradiction with the provisions of the law and public morals, not to have the intention of changing the form of the present government or the policy of separation between the various Ottoman factors. It is also prohibited to establish political associations which basis or title is nationalism or nationality.

The association shall have the full right to amend its regulations without the need to obtain the approval of the concerned department, except for the associations subjected to special laws (example: youth and sports associations, cooperative and mutual associations, unions...). In such a case, the association shall only notify the government – Article 6 of the Law of Associations provides that the notification shall be “immediate” – of any amendments made to its articles of association, board of directors or status. This Article also adds that “the amendment shall enter into force on the day of notifying the government of the same”.

⁷ Shaden Daif, National Assessment for the Enablement Environment of Civil Society Organizations, Lebanon Case, Arab NGO Network for Development, September 2014, <http://www.annd.org/data/item/pdf/208.pdf>

⁸ Article 87, Lebanese Labor Law, September 1946.

⁹ Ghassan Mokheiber, Between the Freedom and the Restrictions, published on the writer’s page: <http://www.ghassanmoukheiber.com/showArticles.aspx?aid=44>

The third component of the freedom of assembly is the right to join or to leave any association, noting that the principle is the right to join any association while abiding by specific restrictions pertaining to the age and eligibility: as such, persons under the age of twenty years old, convicted persons with felonies and deprived persons from civil rights shall not be allowed to join associations.

The regulations of an association may include provisions regularizing the membership thereto, such as determining a specific age or qualifications or requiring the approval of a membership committee for the membership applications. In addition to the right to join an association, the law also affirmed the right to leave an association in Article 10 of the Law of Associations, which states: «A member in an Association may leave it anytime he wishes, even if otherwise mentioned in its statutes, provided that the member shall settle the membership allowance of the current year”. The law did not stipulate any provisions restricting the right of General Assemblies to select their administrative bodies and did not authorize the executive authority to interfere in any of the activities of these public bodies, and particularly in the elections of their administrative bodies.

b) In practice:

We must refer herein to the various violations of the freedom of incorporation and management of associations, including the following:

The Legislative Decree No. 42 was issued on 26.05.1977 pertaining to “exceptional provisions relating to the elections of councils in syndicates, cooperatives and associations”. This legislative decree included exceptional provisions by virtue of which the conditions of quorum and majority necessary for to hold a meeting for the assemblies called for the election of administrative bodies, as well as the term of these assemblies shall be extended in case the elections were impossible to be held under specified conditions. The term of the Legislative Decree was extended several times, the latest was under Law No. 26 dated on 3.11.1990, by virtue of which the term of the administrative bodies was extended until 31.12.1992 .¹⁰

On 16.9.1983, a Legislative Decree under no 153 was promulgated amending all the provisions relating to associations and subjecting them to an extremely strict regime contrary to the principle of constitutional freedom. The decree provides for granting a license and imposing control over associations by binding the attendance of representatives of the Ministry of the Interior in the General Assemblies and the public activities organized by these associations. In order to compel the associations to do so, they need to adopt a form for the internal regulations previously prepared by the Ministry of Interior including all the obligations, such as calling the delegates of the Ministry to the meetings of the General Assembly. However, the legislative decree was annulled on 23 March 1985, and the associations were subjected once again to the provisions of the Law of 1909, which is still considered more liberal and respectful to freedoms although it dates back to a long time ago. It is noteworthy that Decree No. 2231 was issued on 15 February 1992 stipulating «to withdraw the licenses of 138 social and political associations» all together. This decree was based on the annulled legislative decree...”.

We must also mention another legislative intervention in the freedom of administrative bodies election, by virtue of Special Law No. 28 issued on 22.11.1990 authorizing the Minister of Interior to appoint a new administrative body for the Joubran Society in Bsharri. The Council of Ministers also issued Decree No. 1881 on 7 November 1991, authorizing the «appointment of Provisional Committees of the Lebanese Red Cross Society» and obliged the appointed executive committee to set out a new public and administrative order.

During the Syrian guardianship of Lebanon until 2005, the notification system was replaced by the licensing system that set conditions for the incorporation of associations under the pretext of obtaining a receipt. Indeed, several organizations had to wait years to obtain the receipt, considered by the authorities to be the only legal proof of incorporation (otherwise it would be considered a secret organization and thus an illegal one). Another arbitrary and restrictive procedure deemed to be an alternative form for the receipt was conducting a large number of investigations by the concerned authorities, specifically the Ministry of Interior. These investigations focus on the identities of the founders and the goals of their associations, especially political associations operating in the field of human rights¹¹.

¹⁰ Ghassan Mokheiber, Associations, published on the writer’s page: <http://www.ghassanmoukheiber.com/showArticles.aspx?aid=44>

¹¹ Shaden Daif, National Assessment for the Enablement Environment of Civil Society Organizations, Lebanon Case, Arab NGO Network for Development, September 2014, <http://www.annd.org/data/item/pdf/208.pdf>

In the beginning of 2005, the power of the Syrian guardianship started to decrease gradually, which facilitated the incorporation and operation of the civil society. Thus, the civil society organizations operating in the human rights and development field prospered. In 2006, the Minister of Interior Ahmad Fatfat issued memo no 10 which entered the Law of the year 1909 back into force. The memorandum was adopted based on the resolution issued by the State Legislative Council in 2003.¹² Furthermore, the investigations conducted before prior to the incorporation were annulled and the notification system was enforced again.

Conclusion: there are no legal restrictions or actual obstacles currently facing the incorporation of a civil society organization in Lebanon. However, the laws changed with the political situation in the country and thus the public freedoms, although protected by the constitution and the laws, remain fragile and easily impacted by political crisis.

In terms of the texts, there are main claims in this field in order to guarantee a more suitable environment for the operation of civil society organizations:

- To include the syndicates, unions and foreign associations, as well as the youth and sports associations and to provide them with the freedom of incorporation.
- To lower the age required to join the civil society organization to 18 years old instead of 20 years old in order to enable the participation of the youth.

► Freedom of Demonstration in the Law

a) In the texts:

Lebanon has the duty to guarantee the freedom of demonstration to its citizens, as provided for in the international conventions, such as the “Universal Declaration of Human Rights (UDHR)” and the “International Covenant on Civil and Political Rights”. The constitution acknowledged this right in general, as Article 13 of the constitution provided for “the freedom of opinion verbally and in written, the freedom of printing, the freedom of assembly and the freedom of incorporation of associations which are all guaranteed by the law”. Legally, the Ottoman peaceful assembly of the year 1911 (known as the Public Meetings Act) subjecting these meetings to the notification system shall be implemented. Article 1 of the Ottoman Law states that it is not mandatory to obtain a prior permission (license) in order to hold a meeting or an assembly; as long as the demonstrators are not armed, they are allowed to gather together. However, the government prohibits holding any meeting that failed to comply with the notification principle, and as a result thereof the organizers thereof shall be imprisoned for a period varying between one week and one month or shall be subjected to a financial fine.¹³ Thus, the notification condition is mandatory according to the Lebanese Law.

Article 4 of the aforementioned law provides that the notification shall be presented to the Ministry of Interior and Municipalities at least 48 hours before the date of the assembly. In addition to the notification requirement, the organizers of the gathering shall present a “written request” determining the reason, the purpose, the location and the time of the event.¹⁴ The request shall be signed by two persons at least; noting therein their addresses in the area where the gathering will be held, while affirming their enjoyment of the political and civil rights, their names, occupations and marital status.

In the same context, the Penal Code criminalizes **riots** in article 345 thereof: «a person who was in a meeting that does not have the nature of a special meeting in terms of its purpose, objective, number of invitees and participants, location whether in a public place or place accessible to the public and shouted riot expressions or showed signs disturbing the public security or committed any riot demonstration, it shall be punishable by imprisonment from one month to one year and a fine varying between twenty thousand Lebanese Pounds and two hundred thousand Lebanese Pounds”.

¹² This resolution was made the State Legislative Council stating the annulment of a statement issued by the Council of Ministers in 1996 restricting the freedom of assembly and the Law of the year 1909, based on a request made by ADDL in 1996.

¹³ Article 3 of the Peaceful Assembly Law in 1911.

¹⁴ Article 2 of the Peaceful Assembly Law in 1911.

The Lebanese Public Assembly Act states the restrictions and exceptions related to this right. In fact, the Lebanese government may, by virtue of a resolution made by the Council of Ministers, reject the request to hold a public meeting considered to be a threat to the public security, the public morals, the public order or the public interest¹⁵. In addition thereto, the restrictions imposed on the location of the public assembly are also determined. As such, it is not allowed to hold a protest or assembly on a public road since it may stop the traffic or cause traffic congestion. This right breaches the freedom of peaceful assembly and contradicts its purpose, which is allowing the protesters to reach the public. Furthermore, it is not permitted to hold public meetings in open spaces located near the presidential palace of the parliament (within a 3 km distance) .¹⁶

b) In practice:

The way the security forces handle the demonstrations and assemblies is not in conformity with the right of assembly and other public freedoms guaranteed by the law, as sometimes the purpose of intervention of the security forces is to disperse the demonstrators rather than to preserve the safety and security.

For instance towards the end of July 2015, Lebanon witnessed a series of movements organized by “Tol3et Rihetkon” condemning the poor management of the waste file. Numerous violations of the freedom of assembly were documented during these demonstrations in the report of the ALEF Act for Human Rights ¹⁷, which considered that the tactics adopted by the law enforcement authorities in these demonstrations were aiming at dispersing the demonstrators rather than to maintain security and order. The report of the Legal Agenda ¹⁸ listed the most important of violations, including the violations during demonstrations, the use of excessive violence without serious accountability of the security forces, violations during detention and transport and in detention facilities, violations during investigations and the trial of detainees before military courts.

These violations were preceded by similar incidents in a sit-in organized by residents of Naameh against Sukleen Company for waste collection in Lebanon, as the Authority resorted to violence against protesters. The three days sit-in led to the closure of roads leading to the landfill near the town, and as such the streets of Beirut and Mount Lebanon were filled with unregulated waste. The spokesman for the campaign aiming at closing the landfill in Naameh was arrested on charges of inciting the protesters ¹⁹.

Conclusion: The Lebanese Law acknowledges and protects the freedom of assembly but the practice of this freedom is not always in conformity with the provisions of the law due to political reasons and for the protection of the authority. The law shall also be amended in accordance with the international standards:

- Annuling the restrictions relating to the location of the gathering, as prohibiting any demonstration to take place in public spaces is in full contradiction with the idea of demonstrating in order to reach and impact the public opinion.
- Working on enhancing the capacities of the law enforcement authorities in the human rights field, particularly in terms of the protection of the freedom of assembly ²⁰.

¹⁵ Article 3 of the Public Assembly Law in 1911, which was added to the amended law issued on 4 June 1931.

¹⁶ Same reference, Article 6.

¹⁷ Alef act for human rights, Waste Management Demonstrations Documentation of main human rights violations committed, August 22-23, 2015

¹⁸ <http://74.220.207.224/print.php?id=1244&folder=articles&lang=ar>

¹⁹ Naharnet (24 January 2014). ISF scuffles with Naameh landfill protesters as they vow to go on with sit-in Accessed on 22 July 2014 via:

<http://www.naharnet.com/stories/en/115492>.

²⁰ Idem. P. 10.

► Right to access Financial Resources

a) In the law:

The Lebanese law does not provide for any article limiting the capacity of the civil society organizations to access the resources. Article 8 of the Law of the year 1909 discussed the legal capacity of an institution to manage and to use its own resources. With the exception of any necessary assistance provided by the state, the association may “manage and dispose of: first, all cash shares given by the members provided that a share does not exceed twenty four in gold in a year; second, the store allocated for the management of the association and meeting of its members; third, immovable properties necessary to achieve its objectives as per its articles of incorporation”. The associations are strictly forbidden from disposing of any other immovable properties. The civil society organizations are allowed to participate in activities generating an income but cannot distribute it among its members but rather use it to provide services ²¹.

b) In practice:

In fact, the civil society organizations in Lebanon are permitted to access various funding resources, including self-funding, governmental funding and foreign funding.

Self-funding: It guarantees a limited amount of financial resources for the association. This type of financing can result from different resources ²², such as donations campaigns or symbolic contributions from the beneficiaries or annual membership fees from the members. The association may also organize activities that generate profits.

Governmental funding: The governmental funding (local donations in general) is usually allocated for welfare and charity associations in the field of health and education services and services provision for the disabled persons. Thus, the human rights and developmental associations mainly depend on the external funding to carry out their activities and to achieve their goals. The governmental funding in Lebanon is done through contracts concluded by the Ministry of Social Affairs, Ministry of Health, Ministry of Education and other ministries and departments in order to provide services and to conduct specific activities. The contracts also organize partnership projects funded by the Ministry at a rate of 70% and the remaining 30% are covered by the contracting associations. A joint committee is assigned for each project to be formed of four members (representatives on behalf of the ministry and representatives on behalf of the civil society organization) appointed to follow-up and monitor the execution process ²³. It shall be noted that the partnership between the ministry and the civil society organizations are facing several obstacles. Mainly, the issue is the lack of coordination in terms of allocating the resources to respond to the different needs of groups, as well as the limited nature of the developmental and enablement programs. In addition thereto, we must say that there are no standards or conditions set for the distribution of financial assistance. In reality, the corruption and the nepotism are affecting the selection of partners, as is the case in general in Lebanon.

External or international funding: Most of the funding of civil society organizations in Lebanon comes from international donors. This reality creates financial difficulties and challenges for civil society organizations, and also affects their ability to achieve objectives that are independent from donor agendas. Since 2012, the majority of the funding allocated by the donors has been diverted to support the relief of the Syrian refugees, which forced the civil society organizations to redirect their programs towards assisting the refugees or reducing the number of staff members due to the declining budgets.

²¹ Shaden Daif, National Assessment for the Enablement Environment of Civil Society Organizations, Lebanon Case, Arab NGO Network for Development, September 2014, <http://www.annd.org/data/item/pdf/208.pdf>

²² NGO Resource and Support Unit, UNDP/MOSA, “Internal governance for NGOs in Lebanon: Reference Book 2004”, IEC Unit, Ministry of Social Affairs, Lebanon, 2004, p.90.

²³ Shaden Daif, National Assessment for the Enablement Environment of Civil Society Organizations, Lebanon Case, Arab NGO Network for Development, September 2014, <http://www.annd.org/data/item/pdf/208.pdf>

It is a fact that dealing with donors constitutes a real dilemma, as they may contribute in development work and programs effectively and realistically, but they can also play a negative role if not used in a meaningful way. The assistance must be used to fund national action programs and to serve national and local goals and objectives. The agenda must be determined only in partnership and mutual understanding without preconditions imposed on policies, which is one of the basic principles for the effectiveness of the assistance. The civil society organizations should be able to define the relations with donors independently and without being subject to extortion, pressure or conditionality, knowing that partnership, national ownership and respect for national mechanisms prevent conditionality from being imposed on assistance ²⁴.

The organizations in Lebanon face procedural difficulties in dissolving bank accounts due to the complex procedures imposed by the Central Bank as part of efforts deployed to combat money laundering and terrorism financing operations and to comply with relevant international standards. In this context, the Banque du Liban issued its main circular No. 83 to banks and financial institutions that was implemented pursuant to the provisions of law no. 318 dated on 20.4.2001 on the fight against money laundering and which required banks to monitor their transactions with their clients in order to avoid their involvement in money laundering or terrorism financing. Article 3 thereof provides that this circular includes any natural or legal person, whether a company, an institution of any kind, a body, an organization or a nonprofit organization (mutual funds, cooperatives, social welfare centers, charities, clubs, etc...). The banks must adopt clear measures to open accounts and apply due diligence procedures, which include verifying the identity of both permanent and new customers, residents and nonresidents, as well as determining the purpose and the type of the transaction or of opening the account, the economic right holder, the source of money, the control of transactions at all times, especially before or upon conducting a transaction or opening accounts of all types, including credit accounts and numbered accounts, when conducting electronic transfers, or when conducting operations at amounts exceeding USD 10,000, or its equivalent in any other currency. These transactions are conducted by the civil society organizations in the frame of receiving external funding. New and under incorporation organizations faced difficulties in opening bank accounts. As such, the security approach shall not prevail to avoid any negative impact on the freedom of associations. These matters should be clarified to the organizations to be able to respond in transparency to the obligations of the terrorism financing and money laundering law rather than leaving them pending depending on the changes of the laws.

Conclusion:

It is crucial that the civil society organizations tend to diversify the funding resources and to enhance the capacities for self-funding, in order to overcome the challenges caused by external funding such as imposing the agendas of the donors on the associations, regardless of the local priorities and needs. The corruption and clientelism are a main challenge preventing the associations from benefiting from governmental funding. There is a need for the civil society organizations to promote their professionalism and transparency to be able to set out their strategies as per the national priorities, regardless of the donor agendas and independently from the governmental funding to play a role in the accountability and surveillance.

²⁴ Ziad Abdulsamad, the Lebanese Civil Society and the Lebanese Experience, November 2012.

► Access to information

a) In the law:

The right to access information or the freedom of association is considered to be one of the main principles of the International Human Rights Law, as numerous international agreements and conventions protect this law.

The “freedom of information” is defined as “the right of each individual to knowledge: each individual shall have the right to access information required to make choices freely and to live an independent life ²⁵”. The truth is that the citizens who are well informed of the department conduct can better engage in public policy, which facilitates holding the government officials accountable for their performance and decisions.

Article 19 of the Universal Declaration of Human Rights provides that: "everyone has the right to freedom of opinion and expression. This right includes the freedom to have an opinion without interference and to receive and publish information and ideas by any means without being bound by geographical boundaries ²⁶". The aforementioned was stipulated in the International Covenant on Civil, Political and Cultural Rights in Article 19 thereof. A number of other international conventions adopted and affirmed the importance of freedom of information, in order to create a well-informed and active citizenry. For instance, the American Court of Human Rights declared that the right to access information is a fundamental right, and states are **obliged** to guarantee it ²⁷. Lebanon ratified the “International Covenant on Civil, Political and Cultural Rights”, the “Universal Declaration of Human Rights” and freedom of information. The introduction of the Lebanese Constitution is based on these three instruments, thus binding Lebanon to respect the provisions thereof.

On 19.01.2016, the Parliament approved the draft law aiming at securing the right to access information, submitted by a group of MPs in April 2009. The most important provision of the law is devoting the right of every «natural or legal person to access and to review existing information and documents available at the Department”. The department was also required to adopt transparency in its work, by binding it to publish a large number of its documents on its websites. It also allows access to information of the institutions contracting with the State, including hospitals, welfare centers and contracting companies, in connection with the management of the public facility.

The law listed the inaccessible information; the most critical thereof is “the information that damages the financial and economic interests of the state and the safety of the national currency.» It is noted that the international standards only allow the exception of any information from this right, if the social interest relies on the secrecy rather than the disclosure thereof. When reviewing the exceptions provided for in the law, it is noted that some of them are not justified ²⁸, as if the Lebanese legislator adopted an inaccurate balance between the social interests or used this law to prevent access to information that should be accessible by virtue of the international conventions.

The executive law instruments remain weak. The law assigned an essential task in the context of its implementation to an inexistent body, which is the proposed body to be established under a draft law that has not yet been adopted. The law also does not punish administrators in case of violating the law or refuse to abide by the right.

²⁵ Association for Civil Rights and ARTICLE 19 (July 2007). Access to information: An instrument right to empower.

²⁶ Article 19, Universal declaration of Human Rights, adopted on December 10th, 1948.

²⁷ Association for Civil Rights and ARTICLE 19 (July 2007) Access to information: An instrument right to empower.

²⁸ Law of Right to Access Information, Achievement with many traps, Legal Agenda, 02.02.2017, <http://www.legal-agenda.com/article.php?id=3496>

b) In practice:

The law pertaining to the right to access information is not yet implemented in order to assess the practice thereof. Thus, we will focus on the previous practice of this right within the Lebanese context. A study carried out by the Lebanese Transparency Association (LTA) ²⁹ in 2012 that tackled the public opinion and the status of access to information in Lebanon, it was found that 45% of the participants in this study found it to be extremely difficult to access information, while 19.7% were uncertain and 12.5% considered it to be impossible to access the necessary information in public bodies.

As for the bureaucracy and corruption, they constitute a main challenge in public institutions. The bureaucracy hinders the possibility to access information.

It shall be noted herein that in many cases the difficulties of accessing information vary considerably, depending on the requesting party ³⁰. The current situation makes the freedom of access to information unfair and subjective, which is contrary to the characteristics of democratic institutions. Of course, some types of information are not registered, making it impossible for anyone to access them, requiring a review of the organization and performance of public institutions.

Conclusion:

- The promulgation of the law on the access to information is a positive step towards guarantying this right. However, it is necessary to follow-up on the efforts being deployed in terms of implementing this law, issuing executive decrees pertaining to the establishment of an information access committee and setting penalties for any violation committed by the department against this law.

- It is essential to work on fighting corruption in general and promulgating other laws relating to fighting corruption which are still pending at the Parliament.

²⁹ Lebanese Transparency Association (September 2012). Survey report on access to information in Lebanon.

³⁰ Shaden Daif, National Assessment for the Enablement Environment of Civil Society Organizations, Lebanon Case, Arab NGO Network for Development, September 2014, <http://www.annd.org/data/item/pdf/208.pdf>

► Relation between the Civil Society and the State

The activities of the civil society are partially linked to providing humanitarian services and assistance and the development and defense policies. The humanitarian organizations succeeded in filling the gap created by the weakness of the State during the civil war. The historical and rich cooperation between the government and the civil society organizations in providing services made the government realize that the work of the civil society complements rather than replaces the efforts of the State. In fact, “the Ministry of Social Affairs had strong and successful partnerships before the war with the civil society organizations through the Social Recovery Committee ³¹”.

Lebanon chose the democratic system in managing the affairs of the State, noting that the current definition of democracy does not limit it to the public elections but rather gives an essential role to the civil society in monitoring and calling to account the public institutions. Thus, we note the importance of the relation between the observing civil society and the State liable for implementing the policies in a democratic State. In this context, it is noted that the State is less cooperative with the civil society in setting the public policies, although the work and experience of the civil society organizations is an added value to the State. For all these reasons and many others, the governments are required to build cooperation and partnership relations with the civil society organizations. In return, the civil society shall maintain its complete and professional independency, as it the party monitoring the performance of the government and pressuring it for better and improved performance and decisions. The civil society also negotiates with the government and thus it shall enhance its negotiation capacities, expand its knowledge, set alternatives and present political and programmatic suggestions for it to develop its professional capacities.

In 1998, the Lebanese government established the Economic and Social Council (ECOSC), which consists of various factors of the civil society to provide advice to the government on economic and social issues. However, the work of the Economic and Social Council (ECOSC) has been suspended since 2004.

International donors also played a key role in stimulating the cooperation and partnership between the State and the civil society organizations. This is due to the fact that some donations and technical assistance provided to the State by donors require the participation of civil society organizations for the implementation thereof, which obliged the State to seek cooperation with them.

Despite the existence of some initiatives to open up and to cooperate with the civil society in some fields, there are major challenges related to the Lebanese political system which hinder the cooperation with the civil society organizations. The main challenges are the following: the sectarian system hindering the work of political and constitutional institutions and public departments; the domination of religious leaders over the system, the provision of services and appointments in public positions to satisfy the members of their sects and to protect their leadership. The control of the sectarian system and its association with political corruption obstructs the aspired reforms and the openness to the change initiatives. This reality limits the ability of the civil society in influencing the public life as well as political, administrative, economic, social and cultural decisions, and thus contributes to the disruption of the public space for policies or developmental work.

³¹ ANND (November 2005). Partnership of civil society organizations for development, the Case of Lebanon. Annual Report of the SHABAKA, p.22.

Enabling Environment for CSO's

in Occupied Palestine

Ayman Abdul Majeed
Center for Development Studies - Birzeit University

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► Introduction

In order to assess the civil society organizations (CSO) environment in occupied Palestine and determine whether this environment is supportive or restrictive, we need to understand the overall context of occupied Palestine.

CSOs in Palestine operate in a colonial general working environment, where colonial policies affect the Palestinians' lives and the developmental work environment in general. Colonialism also affects the local environment, i.e. the legislative and political environment of the Palestinian Authority (PA), in terms of its perception of and dealing with civil society as an authentic component of the Palestinian civil life. Colonialism also affects the policy-making and legislative approach adopted by the PA towards civil society.

To answer the question about whether the Palestinian environment is supportive or restrictive of the work of Palestinian CSOs, it is important to understand the current situation of the Palestinian political economy, particularly with respect to its impact on public freedoms, and its contribution to or its restriction of the creation of an environment suitable for the activities of CSOs. It is also important to examine whether this environment leads to this situation which produces a full agenda of activities for CSOs compared to an enabling environment that perhaps creates developmental action plans that serve the civil society's agenda and message.

For example, the Palestinian citizen's social and economic hardships have caused the Palestinian people to lose their basic life necessities, such as the components of social justice, the right of self-determination, and freedom from colonialism. This is in light of an absence of national policies to restore basic life components that provide people with a decent life. This led the Palestinian people to lose faith in the usefulness of civil participation and mobility, which could affect their present and future. This is particularly true in light of policies based on market economy, which serve the interests of political and economic power groups, not to mention the colonial policies on the ground, which limit the freedom of movement of the Palestinian society in key fields in the Palestinian civil and development activity.

This paper attempts to cover constraints and colonialist practices facing the work environment of Palestinian CSOs and to assess the Palestinian environment related to the PA institutions, whether legislative, executive, or judicial. This paper relies on analyses, through the available literature on the discussed axes, reports, data provided by the Palestinian Independent Commission for Human Rights (ICHR), and other reports from human rights organizations, CSOs, and research centers.

The term "non-governmental organizations" or NGOs in Palestine is attributed to a wide range of non-profit CSOs or institutions working voluntarily in the humanitarian, social, developmental, or educational services fields. This kind of institutions is the oldest in Palestine and is influenced by the traditional structure of the Palestinian society. This means popular organizations (interests groups), such as women's organizations, trade unions, and development organizations¹.

At the end of 1999, around 1,750 NGOs operated in the West Bank and Gaza Strip compared to 2,999 in 2009² and 3,906 in 2015.

When talking about the enabling environment more broadly, it is important to look at the structural environment in which the Palestinian civil society operates, whether economic / political, legislative / legal / policy-related / environmental / social / cultural / intellectual, or related to the international financing environment.

¹ Muheissen Taysser (2011) in Political associations and volunteer organizations in the Palestinian context, Roubiya magazine

² See the annual reports of the independent commission for human rights (ICHR): <http://ichr.ps/en/6/1>

Accordingly, these “environments” will be examined over four axes, taking into account the vital indicators that enable or restrict the NGOs working environment, especially in terms of public freedoms, social participation and mobility, and the ability to access information.

► I - The Palestinian Political Economy Environment³

Israel's policies based on exclusion, subordination, fragmentation, and dependency have consecrated and consolidated a Palestinian economic and political situation that has been prevailing for decades, whereby the Palestinian economy is kept dependent and subject to the economy, the policies, and practices of Israel.

What made matters worse is geographical division (zones A, B, C, Ramallah, Hebron, Nablus, Gaza, etc...). Each geographical division has its own economic specificities, logic, and perspective. These economic models are marginal economic models linked to the quality of services they provide and have their own economic and political interests. The main productive sectors, such as agriculture and industry, remain subject to intentionally introduced difficulties that limited their development, especially since these sectors are linked to a central national and economic role related to land, steadfastness, and production. The services sector created consumer models managed under an economic perspective that reinforced citizens' subordination to economic alternatives such as bank loans.

In light of this situation, the PA failed to face reality. It has yet to draw up policies that limit Israel's practices and restrictions and has rather adopted a political economy perspective and vision under the approach of “investing in peace through open and free market economy.”⁴

This situation consecrated marginal economies and led to marginal individual prosperity at the expense of the prosperity of a collective integrated economy, through the promotion of individual consumption models opened by the market to certain segments from among those working in the service sector.

The situation is the result of a strong separation on the ground between the West Bank and the Gaza Strip, and between the various Palestinian areas and the occupied territories of 1948, in light of daily [Israeli] practices and policy of fragmentation and segmentation as well as in light of fragile and foggy Palestinian policies.

The Palestinian situation suffered from Israeli restrictions, constraints and practices that limit the freedom of movement of persons and goods.

Human, agricultural and financial resources are concentrated mostly in Area C as determined by the Oslo Accords, which constitutes %63 of the West Bank surface area. The sever blockade imposed on the Gaza Strip and the successive wars have affected the economic and social infrastructure. Moreover, foreign financing policies led to a Palestinian national lassitude, since negotiations and peace are set as a top priority. This has led to a series of contradictions that affected the economic situation in Palestine.

³ The description of the political economy of the Palestinian territories depends on the discussions led by the Center for Development Studies, see the following links for further information: http://sites.birzeit.edu/cds/new-cds/sites/default/files/sites/default/files/publications/daleel20%arb20%to20%print.indd_.pdf, and <http://sites.birzeit.edu/cds/new-cds/sites/default/files/sites/default/files/publications/CRITICAL-READINGS29%281%20%2529%25281%20%1.pdf>

⁴ See Article 21 of amended Basic Law of 2003

The Palestinian economy subordination to the Israeli economy and the local economic conditions contributed to the creation of a small capitalist monopolistic class controlling the largest share of the Palestinian society's economy, a middle class overwhelmed with debt, annually increasing high rates of poverty and unemployment, a consumer society, and a political situation reeling under crises and unable to provide a vision for the development of an economic work approach that may improve this reality or even attempt to counter it. On the contrary, Palestinian society has been coping with and adapting to this reality. This benefited the strong parties and sectors at the expense of the most vulnerable groups. Moreover, political divisions had its consequences on the economic and political situation, which formally and informally excludes any possibilities for communication between the country's economic sectors facing several crises.

This situation also produced small enterprises employing, on average, less than five workers. According to the results of a survey on enterprises in 2012, enterprises employing between 1 to 4 persons employed 89% of the total workforce in Palestine. The survey also indicated that 91% of the enterprises are private sector enterprises, 85% of enterprises are owned by one individual, and the nature of their work is related to trade and general services.⁵

Before discussing the indicators related to Palestinian enterprises, it is important to note that the consequences of the Israeli policies and practices limit the movement and work of CSOs and of other segments and components of Palestinian society. If we link the work agenda of CSOs to their developmental and political context we will find that in addition to colonial challenges, they face the challenge of working in remote communities and areas.

Indicators linked to the Palestinian government:

- 1) The fiscal law and policies do not provide for tax exemption of civil activities. The policy of imposing taxes on the structure and projects of CSOs is still adopted and tax exemption is subject to a decision by the Ministry of Finance. Based on correspondence from financiers and according to NGOs, there is no automatic exemption.
- 2) The legislative structure sets the foundation for the predominance of the private market. Article 1)21) of the amended Basic Law states that, "The economic system in Palestine shall be based on the principles of a free market economy. The executive branch may establish public companies that shall be regulated by a law."
- 3) There is a lack of protection and social security programs: the Social Security Law stirred controversy in Palestine since it was based on an investment perspective, it was allocated to those involved in the labor market and neglected vital categories in the society such as the poor and unemployed. This indicates that the government's vision is to guarantee physical capital at the expense of human capital.
- 4) The PA's budget tends to support the security sector at the expense of the vital social and services sectors. A report by the Civil Society Team for Budget Transparency showed that 28% of the general budget is allocated to the security sector, while the share allocated to vital social sectors is much less, with 10% to social affairs, 18% to education, 12% to health, and 1% to agriculture.⁶
- 5) There is confusion in the official Palestinian development planning: the most important vital changes undertaken by the current Palestinian government include the abolition of the Palestinian Ministry of Planning from the cabinet and its merger with the Palestinian Ministry of Finance. This confirms that the objective of planning in Palestine is to collect the maximum amount of money for economic and financial sectors while neglecting the social sectors. Planning is based on a sectoral perspective and not on variable vital developmental issues. This contributes to the consecration of the colonial status quo. Civil society's partnership in planning, as seen by many NGOs, is a fragile partnership not based on a practical developmental complementary perspective. Planning aims to satisfy the needs of international donors rather than being a vital issue.⁷

⁵ The Palestinian Central Bureau of Statistics, enterprises survey 2012, Palestine, Ramallah

⁶ The Coalition for Accountability and Integrity - AMAN, the 2016 budget of the Palestinian Authority, the Civil Society Team for Budget Transparency

⁷ See the literature of Birzeit University's Center for Development Studies on the following address sites: birzeit.edu/cds

► II - The legislative, policy-related and legal environment and the relationship between civil society and the Palestinian government

The features of Palestinian civil society took shape within the scope of legislative and legal visions with the formation of the National Palestinian Authority. The discussion of the vital role played by civil society under the occupation in terms of encouraging steadfastness, protecting the land, and promoting the people's participation in political and social life, took a different approach after the Oslo Accords. The various parties believe the nature of the relationship between the PA and CSOs created a legislative, legal and policy approach. This approach had hidden and overt features that appeared following two different experiences summarized by some experts as follows:

The representatives of CSOs still have a blurry vision of the relationship between the PA and civil society institutions. Many attribute the tension in this relationship to several factors, most importantly the difference in terms of experience between the PA leaders outside occupied Palestine and the PA leaders who stayed in the occupied territories (West Bank and Gaza Strip).

Some may now argue that these experiences came into fusion, but it should be noted that all of the political, social, economic, and cultural implications of the experience inside the occupied territories created a vision about different issues, contradicting the vision and experience that the PA tried and is trying to impose on the ground, in particular in terms of the economic, social, legal and legislative orientation with respect to the various social and economic policies. Others believe that the difference lies in the PA's perception of the concept of civil society and its role in and vision of Palestinian development. This led to additional tensions linked to competition for funding and the role of such funding in terms of development, democracy, and policies, as well as the PA's participation in the Palestinian social, economic, and political structures.⁸

Regardless of the above explained situation and difference, the Palestinian civil society system was forced to introduce changes to its orientation and mechanisms of action following the establishment of the PA, mainly by focusing on issues and aspects that the PA does not focus on, such as democracy and human rights, participation, and work in marginalized areas, etc... This was accompanied by clear changes in the civil society's legal working environment, in particular legislations and laws regulating the work of NGOs and the freedom of association guaranteed by the Basic Law amended in 2003. Article 26 of his law reads as follows: "Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular:

1. To form, establish and join political parties in accordance with the law.
2. To form and establish unions, associations, societies, clubs and popular institutions in accordance with the law.
3. To vote, to nominate candidates and to run as candidates for election, in order to have representatives elected through universal suffrage in accordance with the law.
4. To hold public office and positions, in accordance with the principle of equal opportunities.
5. To conduct private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law." ⁹

This is a vital pillar and component for laying the foundation of CSOs and NGOs. Law No. 1 of 2000 on Charitable Associations and Civil Society Organizations determined the conditions and mechanisms of formation of NGOs and the re-registration of existing ones. While some see this law as advanced, it was however criticized for making the Interior Ministry the competent authority for registration and supervision. This prejudices the work and the environment of NGOs and CSOs. The law granted the Minister of Interior the power to dissolve an organization if it violated the provisions of its by-laws. The law should have given the minister the right to resort to the courts to request the dissolution of an organization. An organization should only be dissolved by a judicial decision, and not by the Minister of Interior, since this has security dimensions.

⁸ Birzeit University, the Center for Development Studies 1999, the Palestinian civil society activity – participation in development and the civil society – Birzeit (unpublished study by a group of researchers.)

⁹ See the following link of the legislations and laws: <http://muqtafi.birzeit.edu>

Article 29 of the draft implementing regulations of this law determined the mandate of the board of directors of an organization at three years. The Law did not specify a term for this mandate and left this to be determined by the organization's internal regulations.

Moreover, Articles 1 and 2 of the draft implementing regulations determined the fields of work in which the organization may engage. This means that is not permissible for organizations to work in fields other than those specified in the regulations, unless following the Minister's approval. Accordingly, a number of restrictive decrees, decisions and directives were issued by the PA, including Presidential Decree No. 16 of 2007 granting of Minister of Interior the power to review the licenses of all organizations and Council of Ministers decision No. 8 on organizations carrying out activities in violation of the law, as well as Decision No. 2 of 2007 obliging the Department of Registration of Civil Society Organizations to send registration applications to security authorities and subjecting them to security screening.

Moreover, the Hamas government in the Gaza Strip required a certificate of good conduct and lack of criminal record to register an organization. This condition was later canceled.¹⁰

The special report of the Independent Commission for Human Rights (ICHR) on the status of charitable organizations in Palestine in 2009 pointed to the right that guarantees the establishment of associations and organizations. The report indicates that the formation of associations in the territory of the Palestinian National Authority has become subject to political considerations as of mid2007-, by both parties to the political division. It noted that institutions and associations face a number of violations that undermined this right, by giving priority to security considerations over human rights considerations.¹¹

These practices restricted the movement of CSOs and included confiscation of property, denial of licenses, closure under various pretexts, and direct interventions by the security forces in the work of those institutions. This also affected trade unions. Hamas security forces seized the property of the Palestinian General Federation of Trade Unions (PGFTU) – Gaza Strip. Security forces also closed down the headquarters of Sharek Youth Forum and several other institutions. In the West Bank, numerous institutions faced other restrictions and constraints. Some were suppressed under the pretext of being subordinated to Hamas.¹²

Between 2008 and 2009 in the West Bank, temporary committees were formed for 39 CSOs, while 22 organizations were dissolved in 2009 and 69 in 2008. In the Gaza Strip, 40 CSOs were dissolved in 2009 and 171 in 2008 and security forces took over numerous head offices of CSOs and turned them to security headquarters for their services.¹³

Based on the ICHR - Ombudsman, NGOs and CSOs faced many challenges, such as closure of headquarters, confiscation of funds, denial of registration, and dissolution. It should be noted here that dozens of organizations were dissolved, mostly in the Gaza Strip and some organizations faced obstacles in terms of registration under security pretexts. In the West Bank, it became clear that the registration of NGOs is subject to a security decision based on a circular issued by the Ministry of Interior subjecting applicants for registration of an organization to a security screening. This constitutes a violation of Law No. 1 of 2000 on Charitable Associations and Civil Society Organizations and its implementing regulations No. 9 of 2003. Back to Gaza, Hamas government also carried out the same practices, as it dissolved organizations, refused registration, took over head offices, and requested a certificate of a good conduct, in light of a sharp political division in 2007.¹⁴

¹⁰ The Independent Commission for Human Rights: the situation of charitable organization in Palestine I 2009: series of special reports (68). Palestine, Ramallah, 2009.

¹¹ The Independent Commission for Human Rights: the situation of charitable organization in Palestine I 2009: series of special reports (68). Palestine, Ramallah, 2009.

¹² See the ICHR reports

¹³ The Independent Commission for Human Rights: the situation of charitable organization in Palestine I 2009: series of special reports (68). Palestine, Ramallah 2009.

¹⁴ The Annual Reports of the Independent Commission for Human Rights –Ombudsman. See: <http://www.ichr.ps/ar/6/1>

Despite the existence of a modern and advanced legal and legislative framework, the security approach in dealing with institutions and NGOs prevailed after 2007, over the human rights, social, and development dimension and role of civil society institutions.

► III - The social and cultural environment

Civil society organizations.... A major social and cultural legacy

Researcher Jamil Hilal asserts that sectoral and professional organizations established by the Palestinian political forces in the occupied territories are different from those in the Diaspora. The organizations in the occupied territories rely on an organized popular base. Moreover, the coalition relationship among factions is different from the prevailing approach among the [PLO]'s leadership bodies, which was based mainly on the quota system, regardless of the popular weight and the degree of influence in Palestinian public opinion.

When voluntary organizations became independent from their political affiliations, they started acquiring new features, including a growing sense of professionalism (specialization, which means that they started dealing with social and economic problems from a pure professional or technical perspective), internal bureaucracy, rentier practices, provision of civil services outside the scope of the political decision-making process, increase of the middle class among their cadres, and the weakening of the social base. Some do not agree with this and believe that CSOs are less bureaucratic than some of the public institutions and more influential in public policy from some political organizations.¹⁵

Based on the above, the impact of international financing on the social and cultural visions in the Palestinian sphere as a whole became clear. The western financing parties' influence was entrenched on the perspective over poverty and living standards issues, as well as on the development process vision in a country still living and suffering from the ravages of colonialism.

Democracy and human rights, freedom of movement, access to information, and gender and youth issues, are all developmental issues that were discussed away from the effects of colonialism on the one hand and the mechanisms of political economy and their consecration of the state of impoverishment and exclusion on the other.

It seemed that there was a trend to further consolidate the power relations among the components of Palestinian society, and within the society itself. Such approaches in the Palestinian context are based on dealing with the occupation as a de facto reality rather than a situation that must be confronted and challenged. Some invoke analyzes of dismantling the existing context of neo-liberal practices, without linking between the dynamics of the relationship between colonialism and these practices.

This led to a loss of confidence in Palestinian institutions, including the loss of confidence in civil society institutions. In light of a state of social exhaustion, consumer trends based on lending policies grew among the population, according to the new perceptions of new normative economic scenarios reflecting the state of deformation experienced by the Palestinians.

In this context, there was an intentional absence of "liberation" projects, values of "voluntary action", and resistance to colonialism. These were replaced by a discourse on "economic development", World Bank reports on "state readiness", and legal discourses on human rights, based on obtaining human rights merits in international forums. This made the society as a whole in a state of anticipation and drew its attention away from resistance and liberation issues.

¹⁵ Hilal Jamil: The political system after Oslo (Ramallah, Muwatin, 1998)

The abovementioned factors contributed to reinforcing the consumption tendency over direct moral productivity. This led to spreading negative manifestations of the capitalist economy, which in turn undermined social values (solidarity, voluntary work, community service, and maintaining public facilities) and strengthened values of nepotism, bribery, favoritism, the misuse of public office, extravagance, and corruption. Thereby, poverty rates increased and the middle class was reduced and became more preoccupied in daily life problems instead of struggling for the collective benefit.¹⁶

The suitable environment for civil society work, with the formation of the PA and two decades after its founding, contributed to the establishment of many Palestinian NGOs. Some of these NGOs were the result of changes in the work structure, others took a dimension linked to the objectives of some political parties (including Fatah and Hamas), and others were the product of orientations of international donors.

This environment created trends and shifts in the vision and role of the Palestinian civil society. It also changed the developmental agenda aimed to support steadfastness and development in order to protect the homeland and liberate the land and people, into an agenda based on interests aimed to preserve the existing Palestinian political system and keep up with the changes in the post-Oslo development agenda.

This demonstrates how the general environment, in particular the political environment, shifted the interest of civil society from confronting occupation to focusing on how to shape a Palestinian political system of an emerging authority, restricted by the political agreements with colonialism.¹⁷

Questions rose about the form of the Palestinian political system and the extent of the contribution of Palestinian civil society in shaping this system. New indicators showed a possibility of forming a Palestinian entity within the scope of a state, which imposes democratic transformation requirements on the authority. Thus, the future of the Palestinian civil society and its impact on the democratization process¹⁸ became organically linked to political developments in the region.¹⁹

► IV - The right to freedom of assembly, protest, and access to information

Public Meetings Law No. 12 of 1998 provided for the right of individuals to peaceful assembly. Article 2 of said law states that: "Citizens are entitled to the right to hold public meetings, symposiums and free protests without any restriction but within the boundaries of law." Article 5 reads as follows: "Competent parties, upon request of the party organizing the meeting, shall take the required protection measures with no prejudice to the right of the participants in or process of the meeting."

In its Article 3, the Law did not bind individuals to obtain a permit to exercise their right to peaceful assembly. It stated that "[p]ublic meetings may be held, provided that a written notice to this effect is addressed to the Governor or Director of Police at least 48 hours in advance."

According to Article 4 of the Law, the purpose of the notice is to allow the competent authorities to take the necessary traffic measures to prevent any disruption.²⁰

¹⁶ A guide to applied field research in the occupied Palestinian territories, Ayman Abdul Majeed and Abaher Sakka

¹⁷ Muheissen Taysser (2011) in Political associations and volunteer organizations in the Palestinian context, Rouiya magazine, issue 13

¹⁸ Maliki Mahdi, 1999, Democracy and the civil society, review of Palestinian literature, Palestinian Policy, Issue 24

¹⁹ Manuel Hassassian, (2002) «NGOs in the context of national struggle.» in Benjamin Gidron, Stanley N. Katz and Yeheskel Hasenfeld (eds), Mobilizing for Peace: Conflict Resolution in Northern Ireland, Israel/Palestine, and South Africa, Oxford :Oxford University Press, p.134.

²⁰ Palestinian Center for Human Rights: The right to peaceful assembly, see: www.pchrgaza.org

Moreover, according to Article 26 of the Palestinian Basic Law of 2005, Palestinians shall have the right to participate in political life, both individually and in groups and they have in particular the right “[t]o conduct private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law.”²¹

Article 32 of the Basic Law provides that, “[a]ny violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.”

According to the Annual Reports of the Independent Commission for Human Rights, there have been some practices that violated the Basic Law and the Law on Public Meetings, regarding the right to peaceful assembly.

In 2015, the right to freedom of peaceful assembly was affected by many violations. Palestinian security agencies continued to prevent some peaceful assemblies, including sit-ins, demonstrations and public meetings. In addition to banning media coverage, restrictions continued to be imposed and sometimes peaceful assemblies were banned by the Ministry of Interior. Over 2015, the ICHR received 23 complaints on the right of assembly in Palestine, including 17 in the West Bank and six in the Gaza Strip. In 15 incidents (12 in the West Bank and three in the Gaza Strip), security forces used violence and physically assaulted participants in peaceful assemblies. Compared to past years, however, encroachments on peaceful assemblies decreased. A total of 51 complaints on attacks on peaceful assemblies were reported in 2015.²²

As for the right of access to information, a draft law has been prepared but has yet to be approved. The draft mainly aims to:

- Enable citizens and residents in Palestine to exercise their right of access to information held by public institutions in accordance with the provisions of this law; and
- Instill a spirit of transparency and accountability within the Palestinian public institutions and encourage openness to the people.

The Coalition for Accountability and Integrity – AMAN has stressed the importance of approving this draft law in several statements and seminars since the lack of such legislation contributes to the lack of accountability and deprives citizens of their right to access and obtain information related to the work of public sector institutions .²³

► V - The international financing environment and its effects on the relationship with the PA

International financing is a vital indicator for civil society institutions. A report prepared by the Palestine Economic Policy Research Institute (MAS) and the NGO Development Center (NDC) and published in 2009 on External Donor Funding to Palestinian Non-Governmental Organizations showed that external aid to Palestinian Non-Governmental Organizations as a Percentage of Total External Aid to the West Bank and the Gaza Strip (in USD) is %9.7, registering its best record in 2006 at %14 and a low %5 in other years.

²¹ Article 26-5 of the Basic Law of 2005: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=14138>

²² See the ICHR annual report of 2015, <http://ichr.ps/en/1941/6/1/ICHR21-st-Annual-Report.htm>

²³ <https://www.aman-palestine.org/en/reports-and-studies/1362.html>

External Aid to Palestinian NGOs as a Percentage of Total External Aid to WB& GS (USD) ²⁴			
Year	Estimated External Aid to WB&GS World Bank	Estimated External Aid to INGOs/ MoP	% of External Aid
1999	516,000,000	48,000,000	9.3
2001	869,000,000	93,000,000	10.7
2003	972,000,000	65,000,000	6.7
2004	1,115,000,000	57,000,000	5.1
2006	1,450,000,000	196,000,000	13.5
2007	1,876,000,000	213,000,000	11.4
2008	3,250,000,000	258,000,000	9.7

In terms of NGO revenues and dependence upon external aid, the MAS survey showed an increasing dependence on international aid, from %47 in 1999 to %78 in 2008. This demonstrates CSOs dependence on [external] funding approach rather than the self-financing approach or reliance on the support of the local community. The ratio of self-financing dropped from %29 in 1999 to %12 in 2008, while the local community support dropped from %11 in 1999 to %5 in 2008.²⁵

Palestinian NGO Sources of Revenue (1999, 2006 & 2008) ²⁶			
Source/Year	1999	2006	2008
External Aid	46.8	60.9	78.3
Self-generated Revenues	28.8	21.5	12.4
PA Funding	4.9	0.7	0.8
Local Donations	10.8	9.3	5.3
Donations from 1948 Palestinians	1.4	3.7	0.1
Donations from the Diaspora	5.5	3.2	2.3
Others	1.8	0.7	0.8
Total	100	100	100

It seems that the increase or decrease of International Funding in occupied Palestine had political dimensions. External funding was closely and directly associated with the tight Palestinian space, without attempting to understand it or change it. Despite the attempts to push it towards developmental directions, international funding remained restricted by the political situation and its fluctuations. It remained dependent on the political agenda (conditioned upon the peace settlement). Thus, International funding, of different sources, remained hostage to political bickering. The Oslo Accords era and the program of investment in peace led to a high flow of funding to build economic peace between Palestinians and Israelis. During the second intifada and the siege of Arafat, external financing dropped as a result of the new political phase, represented by the second intifada and the re-occupation of so-called Area A cities. At this stage, focus was on reform and institutional structuring. The following period that included legislative elections and the victory of Hamas witnessed a sharp decline due to the international positions opposing the results of the democratic elections. Things became worse in the period of political division and the separation of the West Bank from the Gaza Strip, which led to a siege on Gaza, and an increase in the flow of funding to the government in the West Bank, under the pretext of building state institutions. In the political context, the PA was accused of not responding to the efforts to resume negotiations in 2011, which led to a drop in funding and the tightening of the noose on PA institutions in the West Bank. Thus, a financing map was drawn up in line with the political situation and the presumed state of peace with colonialism.²⁷

²⁴ Joseph DeVoir and Alaa Tartir (2009), "Tracking External Donor Funding to Palestinian Non-Governmental Organizations In the West Bank and Gaza 2008-1999" prepared by Palestine Economic Policy Research Institute (MAS) and the NGO Development Center (NDC)

²⁵ Joseph DeVoir and Alaa Tartir (2009), "Tracking External Donor Funding to Palestinian Non-Governmental Organizations In the West Bank and Gaza 2008-1999" prepared by Palestine Economic Policy Research Institute (MAS) and the NGO Development Center (NDC)

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²⁷ A guide to applied field research in the occupied Palestinian territories, Ayman Abdul Majeed and Abaher Sakka

This politicized international financing approach also affected International funding for NGOs, especially in light of the international requirements set by some funding institutions, such as the US. Indeed, the US requires for the provision of funds the signature of a memorandum that accuses the resistance factions of terrorism. Moreover, some international institutions assumed the role of executing parties of the programs that they are funding. Some European or US funding institutions established advisory executive companies as their executive wing in charge of implementing some of their projects through local partnerships.

As noted earlier, international funding represents a subject of conflict between the PA's institutions and CSOs, both in terms of competition on funding and/or differences in priorities and issues.

A report issued by the State Audit and Administrative Control Bureau of the PA on civil institutions, administratively and financially audited the records of 27 NGOs during 2012 and the first quarter of 2013. It indicated that the financial value that the state treasury has lost as a result of failure by these NGOs to apply the provisions of the law and regulations governing their work reached 21,906,406 shekels and 10,343\$. It also indicated that the NGOs lost 437,552 Shekels and 719,151\$. The report issued recommendations acknowledging the importance of introducing strict modifications to the work of NGOs, whether through an increased intervention of government institutions in terms of regulatory and administrative work within civil institutions, or through amendments to Law No. 1 of 2000 on Charitable Associations and Civil Society Organizations to provide for deterring sanctions and enhance the role of government with respect to CSOs.²⁸

The report's recommendations acknowledge and try to strengthen the domination of government institutions over the work of NGOs. There may be violations, but remedying them has to be through a Palestinian regime interested in following-up on the Palestinian institution as a whole, in all sectors, civil, governmental and private. On the SAACB website, we did not find any report that attempts to curb corruption of private sector profitable and non-profitable companies.

► Main conclusions and recommendations

First conclusion: The political economy environment existing in Palestine is divided into two restrictive aspects. The first is a restrictive aspect produced by colonial practices and practices of occupation, such as restrictions on movement, freedom of access, and the Palestinian financial accounts. This aspect is also the result of the PA's economic policies, which provide a suitable environment for free market and liberal economic policies, leading to the domination and expansion of capitalism to the detriment of the poor and working classes. This environment generates a fertile working environment for the role that the civil society institutions and NGOs are supposed to assume in terms of protection of rights, drafting pressure policies against the PA, and lobbying and advocacy with and through the international institutions system.

The second aspect is related to field activity in a different direction contrary to what NGOs and civil society institutions have been trying to implement in light of the post-Oslo Palestinian political system.

The political economy environment in occupied Palestine:

First: NGOs have to shift their focus on the Palestinian political system as its unique interest. They should rather revive their historical heritage and main working agenda with the poor and working classes, by drafting a national agenda that promotes Palestinian steadfastness and survival within a scope of a policy aimed to liberate the land and the people. They should not restrict their working agenda and link it to the post-Oslo political system.

Second: On the internal scene, it is important to track Palestinian governmental policies and to work on drafting alternative policies opposing market-oriented policies. These alternative policies should be social policies that ensure social justice and rights, especially those of the working class. Moreover, it is necessary to draw up protective and strategic policies opposing the existing approach.

²⁸ State Audit and Administrative Control Bureau - Palestine, (2013), third-quarterly annual report, entitled, "The most common violations in the civil institutions and non-governmental organizations." Palestine: Ramallah.

Second conclusion: Blurriness and confusion prevails over the relationship between the civil society system and the PA institutions. This confusion and disagreement reached its peak in light of the Palestinian political division. The Palestinian law was violated through presidential and ministerial decisions and decrees enhancing the influence of the security establishment and the Interior Ministry over the work of civil society institutions. This legislative integration with the security approach created an unhealthy environment, and promoted political and security estrangement and conflict with CSOs and NGOs, which led to further confusion in an already confusing general environment.

The legislative and legal environment in occupied Palestine:

First: CSOs' activity must abide by the relevant Code of Conduct, which enhances the developmental effect, promotes the transparency of the work of civil society institutions, and strengthens compliance with the law.

Second: CSOs and NGOs should show transparency by issuing and publishing public administrative and financial reports to prevent the government from raising any questions or invoking false pretenses to interfere with their work.

Third: CSOs and NGOs should expand their interventions in the legislative policies in the country, especially by strengthening the institutional frameworks and networks of various specializations and drawing up policy strategies, whether in terms of human rights or basic services or economic sectors.

Fourth: A code of honor must be applied among the Palestinian civil society components, to combat all forms of discrimination and corruption, enhance access to the community base, promote behaviors of acceptance and participatory engagement, and address all forms of discrimination on the basis of age, sex, disability, and class. The code of honor paves the way for a social life and environment that respond to the requirements of and achieve social justice in Palestine.

Third conclusion: Social and cultural life is in a state of confusion as a result of the effects of the political and economic situation in occupied Palestine. Trends started appearing in society, oriented towards individualism at the expense of collectivism, towards consumerism at the expense of productivity, as well as towards corruption and material values at the expense of voluntarism, etc... This has set the foundations for a regional and tribal social and cultural situation at the expense of a collective and national situation. The civil society movement in the seventies, eighties, and early nineties had consecrated good social values, but these values have been replaced with different ones. This requires civil society to assume a leading, original, and authentic role to promote collectivism and social movement on social, national, political, and economic issues, so as to curb the rising trend of individualism.

The social and legal cultural environment in occupied Palestine:

First: It is important to link policies and work strategies to efficient programs, away from instantaneous interventions based on temporary reactions. These programs must not rely on funding and the current situation. Rather, they must set the foundation for a process of sustainable change in the society towards steadfastness and justice.

Second: Work strategies in terms of raising awareness, lobbying, and advocacy must be changed so as to build a community base conscious of its collective rights and values and that has a pressure power on the ground. This community base must be fully aware of the concepts of social justice, rights, and demands and must be able to interpret the Palestinian political economy map. Political economy imposes a structure with clear features. Therefore, training and awareness must be changed from "consumer-based" trainings to trainings on production that contribute to the promotion of collective participatory action towards change in societal life.

Third: A social justice policy must be adopted and intensive attention must be accorded to Palestinian social and livelihood issues. Legislations, laws, policies and programs must be improved to bring about a fundamental change in the structure of laws and legislation to achieve social justice. This must be coupled with a unified struggle to fight discrimination, approve civilized legislations and laws that protect the large diversified poor and working class. Legislations should be treated as a package that integrates economic, social and political life, to create a fertile environment for social justice. It is important, in this context, to deal with these programs as starting point for social struggle in terms of human rights advocacy and the national and societal agenda.

Fourth conclusion: in 2016 the security aspect dominated over the lives of the people as a result of the internal Palestinian conflict. This led to the violation of many rights, most importantly the right to peaceful protest and assembly.

The rights to assembly and peaceful protest and access to information

First: It is important to introduce clear amendments to the Implementing Regulations of the law governing protests. The implementing regulations have restricted the right to peaceful assembly and gave the Minister of the Interior certain powers contrary to the spirit of the public meetings law.

Second: It is important to impose a more stringent control over the performance of the security services and their overlapping powers, since this undermines the freedom and the right of Palestinian citizens to peaceful protest and assembly.

Third: It is important to end the state of legislative chaos and in particular with respect to legislation that contradicts the Basic Law and the Law on Public Meetings (Penal Code, political governmental and security procedures,).

Fourth: It is important to approve the law on the right to obtain and have access to information since this law promotes transparency and accountability.

Fifth: It is important to apply the spirit of the Basic Law, which promotes the principles of rights and separation of powers.

Fifth Conclusion: The dependency on international financing directly and indirectly affects the work programs and policies of civil society. Civil society is often inclined towards projects that do not conform to the local agenda and are restricted to the financing party's agenda and policy. Moreover, NGOs have a relationship with the PA, sometimes secret and sometimes public. The government has leveled accusations against and imposed restrictions on CSOs concerning the funding that they receive and the efficiency of their programs. Moreover, competition intensified between these NGOs and the government over international funding, since they compete for funding in the same field. This increased the domination of funding and direct and indirect interventions in the projects' activities and performance.

There are main courses of action in the funding environment:

First: It is important to form a mechanism of coordination concerning international funding among CSOs, and to strengthen the role of networks in building relations of cooperation between the competing institutions operating in the same field by linking policies and working strategies to efficient programs away from competition and contradiction.

Second: Efficient programs related to the structure of the social, economic and political production must be developed, in relation to international financing and its role in Palestine, reeling under colonialism.

Third: High transparency in financing must be a vital issue to CSOs, especially in the stages of implementation and announcement of the development-related values and impact in Palestine. It is important to develop mechanisms of action in international financing that contribute to improving performance, lobbying and advocacy in Palestine. It is also important to build a plan to end dependence on international financing and promote self-financing.

Fourth: It is necessary to build a participatory approach with local communities in the stages of planning financing and needs, in line with the experiences, expertise and interest of the local community, which must be reflected in the various programs.

Fifth: A self-reliance policy should be adopted in financing, which must support local communities, since this would promote social values, such as voluntary work, solidarity and social responsibility.

**The legal environment for NGOs changed
but challenges remain**

in Tunisia

Slaheddine el-Jourchi

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► Introduction

When the Revolution was sparked in Tunisia, not everyone was ready to bear the consequences and repercussions of this sudden change that shook the ruling power. Political parties, civil society organizations, and influential elite groups did not expect that the regime would be toppled so quickly, in light of the show of force exhibited by governance and state institutions. But the protest movement lasted almost a month, from Dec. 2010 ,17 to Jan. 2011 ,14, and this was enough to create a deep fracture within the ruling power regime and push President Ben Ali to flee the country, leaving behind a huge vacuum. This urged the dissenting political forces and the forces that were excluded from the government to cooperate in order to fill the void, prevent the country from falling into chaos and ensure the continuity of the state.

It was clear from the early days after the ousting of Ben Ali that the opposition parties have found themselves in a state of confusion. They were surprised by the quick pace of events and were not prepared to ensure proper alternation of power. This pushed the Tunisian General Labour Union (UGTT) to bring parties and some associations, such as the Tunisian League for the Defense of Human Rights, together to discuss how to manage the new situation and seek to ensure a peaceful transition of power.

Thus, local civil society, which had suffered from despotism and marginalization and was prevented from assuming public positions of responsibility and management, found itself from the first moment called to partner with the political parties in the management of the democratic transition process.

For years, civil society has withstood tyranny, which reached its climax under President Ben Ali. Civil society was thus left weakened and in a state of exhaustion. Only a few civil society organizations maintained their independence but were poorly equipped. That is why, after the revolution, these organizations broadly exercised their right to freedom of movement and organization, taking advantage of the collapse of the previous regime. Nonetheless, activists accorded priority to reviewing the civil society law and replaced it hastily by a decree that made sure to give civil society organizations the rights they were denied in the previous period. They were keen on doing so before the situation becomes unfavorable and prevents the expansion of the democratic practices of civil society.

Thus, the legislations governing civil society activity were rapidly revised and Decree No. 88 was issued in 2011. This rush was understandable and expected, given the importance of laws in guaranteeing rights and creating a favorable environment for civil society organizations allowing them to broaden their social base, assume multiple roles, take initiatives, open up to the community and to surroundings, and gain a wider and more efficient social base.

The Decree is advanced in its content and in its mechanisms, and is greatly consistent with the goals of the revolution. It included several fundamental guarantees for the protection of the financial and administrative independence of civil society organizations. The Decree also cancelled the condition of prior authorization for the incorporation of a civil society organization and replaced it with the condition of notification. Moreover, the decision to change the competent authority in charge of follow-up on the affairs of civil society organizations from the Ministry of Interior to the Prime Ministry allowed for free initiative from CSOs. The establishment of a Ministry concerned with the state relationship with constitutional bodies, civil society and human rights, freed the civil society organizations from the suffocating security surveillance they were subjected to before. These two elements (the decree and the Ministry of Cooperation with Civil Society) were a radical transformation with respect to civil society organizations and their relationship with political authorities. Civil society was rejuvenated and the number of civil society organizations doubled in a short period, jumping to an estimated number of 18,465 in 2016, most of which were incorporated in the period from October 2011 to January 2012.

In light of the foregoing, the overall aspects of the situation of civil society organizations during 2016 can be examined in the light of the risks and difficulties ensuing from the democratic transition stage.¹

¹ This paper relies on several documents, mainly the study prepared by Al Kawakibi Democracy Transition Center entitled, "the status of civil society in Tunisia" presented by Anwar Mnsari and Amine Ghali.

► Freedom of association

Decree No. 2011/88, issued before the Constituent Assembly elections, was a real revolution in the associative life in Tunisia. In order to provide constitutional support for this Decree, Tunisian civil society organized large-scale movements during the drafting of the new constitution issued on January 2014 ,26. The Constitution, which has supremacy over all domestic legislations, guaranteed major and fundamental rights for civil society and made it a true partner in the process of democratic transition and building the second republic.

The new constitution guaranteed freedom of association and called for the protection of civil society organizations. It made their incorporation subject to notification while it was subject to prior authorization. Under the previous system of incorporation, the Ministry of Interior enjoyed full powers to approve or reject the establishment of a civil society organization and determine its activity. The Minister of Interior had the authority to freeze or dissolve an organization.

Given the increase of the number of organizations and their relative popularity and remarkable effect in more than one field, parties within the executive branch voiced concerns over what they called a quantitative inflation of civil society organizations, invoking rapid political changes, the crises and state of confusion prevailing over state institutions, and the growing risks of violence and terrorism. Accordingly, these parties argued that there are security necessities to expedite the issuance of a new law to make up for Decree No. 88 governing civil society organizations.

Despite the quantum leap in the legislative environment of associative work and despite the fact some civil society organizations are still facing some difficulties that would adversely affect the exercise of the right of association, civil society activists in Tunisia expressed concerns that the real purpose behind the plan to promulgate a law as an alternative to Decree No. 2011/88 would be to undermine the gains obtained by civil society organizations and to tighten the noose on the components of Tunisian civil society. Civil society organizations grew in size and their functions developed despite the numerous and continued impediments.

These concerns are attributed to two factors:

First: The experience of civil society organizations after the revolution revealed a paradox confirmed by numerous reports and studies conducted about this stage, including a report issued by Al Kawakibi Democracy Transition Center. According to this report, “The administrative authorities in charge of registering new associations have not kept pace with the liberal provisions of the new legislation pertaining to associations. Moreover, some gaps in the law have led to the establishment of an administrative jurisprudence restrictive of freedom of association.”

Second: Associations, affiliated with violent so-called Salafi Jihadi organizations, in particular those linked to Ansar al-Sharia, obtained a legal license immediately after the revolution, which raised the authorities and public opinion’s concern. This necessitated the re-examination of the legal mechanisms that would prevent the exploitation of freedom of association to undermine the national security of the country.

Civil society believes it is its mission to address the various threats to society and to the state, but civil society activists have expressed and are still expressing fears of the misuse and exploitation of the war on terror to bring back restrictions on associations by giving the Administration control over the legislative environment, tightening conditions required for the establishment of organizations, and interfering in the independence of the management and funding of civil society organizations.

Within the scope of the state agencies’ fight against Islamic State (IS) cells and the remnants of Ansar al-Sharia, the state suspended the activity of dozens of civil society organizations over charges of complicity with armed organizations. A number of associations, whose activity was suspended, were referred to the judiciary.

Moreover, the Tunisian government has decided within the scope of the war on terror to suspend the activities of 157 associations accused of maintaining suspicious relations with [terrorist] organizations. According to judicial sources, at least 60 cases have been examined by the Administrative Court in this respect.

In 2016, Minister of Relations with Civil Society said that 157 associations have been classified as terrorist organizations, based on the affiliation of their members and activities. Moreover, it should be noted that a warning was sent to 84 associations, a request was made to judicially dissolve 74 associations, a permit was obtained to suspend the activity of 77 associations, and 3 associations were dissolved under a judicial decision.

This data is provided by the Prime Minister's office, according to Minister Ben Gharbia, who also reported that a judicial permission was obtained to dissolve two associations because of their foreign funding, which are Marhaba association for charitable projects and Tunisia Charity organization.²

It should be noted that the judicial institution is currently facing great difficulties that restrict its ability to supervise these associations and other organizations, since the administrative and structural efforts are still not enough to cover all of the activities of these associations. In this context, a broad debate about charities has been flaring up for more than two years. Before the revolution, the establishment of associations was banned and the ruling party monopolized fundraising and supervised charitable work for political reasons, in particular, to give more legitimacy to the head of state and the ruling regime.

But after the revolution, a large number of charities were established. Some claim that they reached around five thousand associations³, 11% of which were religious associations. It is difficult to verify the authenticity of these figures, but undoubtedly the number of charities climaxed and their roles were expanded.

In light of the spread of this type of associations, some accused them of serving Ennahda Movement or alleged that some of their donor organizations are closely linked to al-Qaeda. Media and political uproar sparked when news spread that one of the charities obtained in October 2013 foreign funds exceeding 200,000 Tunisian Dinars without abiding by the legal requirements of notification and publication.

Moreover, a US intelligence report classified some charities of being a cover for the Muslim Brotherhood and accused their bodies, branches, and members of being associated to jihadist organizations.

This entrenched the lack of trust and stirred further suspicions in some local, Arab, and international charities in the absence of an objective and unbiased study based on reliable information and sources.

► The Freedom to Protest

In the pre-Revolution era, associations were completely deprived of the freedom to demonstrate and protest, but after January 2011¹⁴, they started enjoying this freedom to an unprecedented extent and exercised the right to protest in an excessive and careless manner. Tunisia became widely known as one of the countries that witnesses protest movements the most, almost on a daily basis. These protests often led to violent confrontations with security forces.

The exercise of this right generated several problems, especially since the Tunisian security forces, as well as citizens in general, are not accustomed to this type of direct and open peaceful protest. During these protests, security forces and some of the protesters committed documented violations and abuses. However, civil society firmly defended—and still does—the right to peaceful and lawful demonstration, arguing that some mistakes should not be a sufficient justification to deny the right to demonstrate, especially since the democratic experience in Tunisia is still in its infancy. This position relatively contributed to the consecration of new traditions in the exercise of this right, but did not prevent the recurrence of violations, especially during spontaneous and unlicensed protest movements, which often lack leadership or are not controlled by recognized associations that may be held accountable for organization and follow-up.

² Al-Chourouk newspaper, Nov. 21, 2016, www.alchourouk.com

³ Ifeda center mentioned that the number of associations in Tunisia reached in March 2015 around 2,362 and that cultural organizations reached 3,032. See: <http://www.ifeda.org.tn/fr/>

Although the right to protest was set forth in the Constitution of 2014, a gap still exists between the Constitution and the law regulating this right. The law of 1969 is still in force and is fundamentally contradictory to this right and to the relevant provisions in the 2014 constitution. Article 37 of the Constitution specifies that “the right to assembly and peaceful demonstration is guaranteed.” Moreover, Article 5 of Decree No. 88 of 2011 regulating associations specified that “an association has the right to organize meetings, demonstrations, conferences, workshops and all types of civil activities and Article 7 expressly specified that the State shall make all necessary arrangements to guarantee that each person receives the protection of competent authorities against any violence, threat, vengeance, actually or legally damaging, discrimination or pressure, or any other coercive measure as a result of the legal exercise of the rights guaranteed in Article 5.

On the contrary, the law of 1969 on public meetings, marches, rallies, demonstrations, and gatherings, empowered the Security Administration to prevent protests based on its discretion in assessing whether the exercise of this right would prejudice public security or order. Thus, this contradiction continues between the new constitution on the one hand and the law governing the right to demonstrate, and which is contrary to international standards, on the other hand.

The regime not only preserved the Law of 1969, awaiting for its subsequent amendment, but due to continued terrorist threats, the successive presidents and governments who managed the affairs of state maintained the state of emergency, which is governed by Order No. 50 of 1978 dated January 1978 ,²⁶. The state of emergency allowed the authorities to prevent the free movement of people and vehicles, ban any strikes, even if decided before the proclamation of the state of emergency, regulate people’s stay of residence, carry out requisitions, put people under house arrest, forbid any meetings which have the potential to cause disorder, carry out search orders both day and night, and control the press, radio, television, cinema and theatre.

Civil society reacted against this Order to confront its negative repercussions, arguing that although such exceptional measures are justified in terms of security, they should not restrict the associations’ right to protest and demonstrate. In this context, the Ministry of Interior launched an initiative within the scope of the comprehensive reform of the security system, aimed to develop a new draft law on the right to peaceful assembly and protest regulating this right in accordance with international standards and providing for the necessary measures to control its exercise in line with the rules set forth in international conventions on civil and political human rights. The draft law has been referred by the prime minister to the Parliament since May 2013, but its approval has yet to be given priority.

► Civil society relationship with the state

The Revolution ushered in a fundamental change in the relationship between the state and civil society. The regime's dominance over civil society organizations ended, and a new approach was adopted. Most of the successive governments since the end of President Ben Ali's rule were keen on cooperating with civil society organizations and working on the development of partnership mechanisms away from any relation of trusteeship and subjugation. This allowed civil society organizations, or at least some of them, to influence the political decision-making process and sometimes to assume key leadership roles.

Moreover, several reports, including the report of Al Kawakibi Democracy Transition Center, which monitored this change in the relationship between the state and civil society, asserted that "this partnership is very important, in that it promotes the proper functioning of public facilities, and guarantees that the activities to be executed by associations based in the concerned regions are in line with the services of the competent administration. The competence and expertise of associations, gained through their field experience and the technical support they received, are, therefore, used in the concerned field of partnership."

Here it is worth mentioning some vital experiments and partnerships between the state and associations, such as with respect to the management of shelters for battered women, entrusted to the Association of Tunisian Women for Research on Development (AFTURD). This association was established in 1989 and aims to support research on women and to promote the integration and participation of women in development.

In this context, several experts and civil society organizations called for "Adopting a participatory vision regarding the manner the Administration deals with public funding, through amending article 10 and involving civil society in the technical committee, thereby guaranteeing neutrality and transparency in granting the funding and in setting the selection criteria."

► Public and private funding

The Tunisian legislator conferred to associations a large and broad extent of freedom to choose their funders, but this does not mean that access to public funding has become easy and accessible to civil society organizations. This type of funding still faces complicated administrative procedures that imperatively must be revised and simplified. This shows that public funding is still limited, for reasons different than those that prevailed during the pre-revolution era. In the previous era, public funding was conditional on political loyalty, but today, the economic crisis crippling Tunisia negatively affected the funding available for civil society organizations, particularly newly established associations.

With respect to external financing, the constraints imposed by the authority were lifted. This offered several associations an opportunity to obtain grants, which were sometimes huge and diversified. Moreover, Article 35 of Decree No. 88 allowed associations to accept assistance, donations, or grants from countries linked with Tunisia by diplomatic relations, or from organizations which defend the interests and policies of those countries.

Moreover, the received foreign financial donations started to be directly transferred to the beneficiary associations while in the pre-revolution era they had to pass through the channels of the Central Bank at the request of the ruling authorities. On another note, the Decree only required associations to inform the Secretary General of the government of the obtained funding. However, with the escalation of the security and political clashes with terrorist groups, the funding of associations became highly suspicious, especially with respect to associations receiving funds from suspicious or doubtful foreign bodies.

In this context, the prime minister, through former Minister of Relations with Constitutional Authorities, Civil Society Kamal Jendoubi, acknowledged the existence of large loopholes in the legislative framework governing the activity of civil society, and considered that this situation allows foreign funding that is not subject to any supervision and follow-up. The report issued by the ministry in 2016 said that there are suspicions regarding the illegal financing by Gulf States and Europe of the activities of a number of associations and civil society organizations of a religious or civil and social nature. The report also pointed out that some of these associations are involved in activities deemed suspicious by the law and related to the financing terrorism, partisan and electoral activities and the travel to security hot zones.⁴

The report further noted that Decree No. 88 is limited in content and does not allow the administration to make claims, but rather just to remind and warn associations that they are not abiding by its requirements, especially with respect to compliance with the rules of publication and disclosure of the sources of financing.

The minister also pointed to the ambiguity concerning the authority in charge of supervising foreign funding since the decree does not confer directly to the Tunisian Central Bank the power to control over foreign funding transactions.

He also noted that in this connection, around 16,000 civil society are listed in Tunisia but that only 40 to 50 of them submitted their financial report despite the prime minister's call on associations on various occasions since the issuance of Decree No. 88 to abide by the provisions of Chapter 6 of said decree on financial resources and in particular the obligation to disclose information on the sources of funding.

However, the Court of Auditors provided more accurate information. In its report issued in 2014, it indicated that only 1,832 submitted their reports for the year 2014 to the Court of Auditors from among 18,000 associations whose financial status is not accurately determined.

Accordingly, calls were made to revise Decree No. 88 and replace it by a law that regulates the work of associations and abolishes the current gaps and deficiencies in order to provide more accurate control and management mechanisms of associations.

It is worth mentioning that a large number of associations have violated the procedures of transparency and disclosure and failed to submit their financial report. This however should not be generalized with respect to external funding, since there are associations committed to publishing their budgets in the media as required by law.

Controversies erupted about charitable associations, especially those that failed to abide by the principle of transparency and to disclose their sources of funding. It should be noted that a strict approach is currently being implemented to tighten control mechanisms on funding sources and expenditure and disbursement, especially by the Ministry of Finance, the Central Bank of Tunisia, and the Court of Auditors.

In the same context, observers held that allowing associations to obtain foreign funding would help some political parties to get hold of these funds through indirect and illegal maneuvers and that some foreign funds may be used by certain groups to buy weapons and promote and carry out acts of violence.

According to a survey by the National Center for Associations (IFEDA):

- 37% of non-governmental organizations (especially national sports organizations) publish their annual financial income and expenses sheets.
- 29% of NGOs do not have a bank account; while 11% of NGOs, especially those of national character, have access to supervised international and regional funding for financial support; 13% of NGOs of a charitable and religious nature get their funding from political parties and undeclared foreign sources, not to mention the zakat financing which is not subject to supervision, and 10% of NGOs are financed by state funds.

⁴ These statements were made in 2016.

It should be noted that Article 4 of Decree No. 88 of 2011 prohibits NGOs from reaping profits; it specified that civil society organizations are prohibited from the “collection of money to support political parties or candidates for national, regional or local elections or extending material support to them. This prohibition excludes the right of the association to express its political opinions and positions vis-à-vis issues of public affairs.”

The follow-up unit on the affairs of associations in the Tunisian Prime Ministry indicated that “it is difficult to control the access by associations to suspicious foreign funds since this funding is made in cash and directly and does not necessarily pass through traditional and formal channels that allow the Central Bank to exercise any supervision.”

This Unit also noted that “under Decree No. 88, it lacks the powers necessary to supervise suspicious foreign funds and thus the Decree must be revised to set accurate supervision mechanisms,” explaining that the Decree only requires associations to disclose their foreign financing and this is not enough to achieve the desired level of transparency and therefore public authorities must be given powers to exercise direct supervisions.”

Former Secretary of State in charge of security affairs Rafik Shalli called for “revising a number of decrees issued after the revolution, including the decrees on associations” since they “contain several loopholes, most notably since they did not specify the authority competent to supervise foreign funding.”

For his part, the head of the General Department of associations and political parties Selim Triki stressed that he had already coordinated with the Central Bank unit “to verify the sources of funding for associations, and focus in particular on the associations in border areas and slums to check the disbursement of public spending and foreign financing.” He also noted that as of July 2014 “the ideological orientations of those supervising over associations in hot spots would also be examined.”

Prompted by this serious situation, Prime Minister Yousef al-Shahed decided on 7 June 2017 to give a one-month deadline for associations to publish their financial reports on foreign funding and grants, including their sources and purpose. The decision aims to evaluate the level of commitment of associations to the law and financial transparency, in order to take related measures. To the day of writing this report, it is not clear if the measures would be in favor of associations or if they will further restrict their freedoms.

In this context, civil society activists fear that the abovementioned, indisputably dangerous, mistakes and legal loopholes would be exploited to justify setting strict limits on funding, which would weaken local civil society in light of the associations and the authority’s inability to develop public funding sources.

This sense of security climaxed when the head of the Tunisian Anti-Corruption Authority said that the number of associations practically and unequivocally involved in corruption cannot be determined and that there are difficulties to tighten controls on associations, as the members of the supervising commission can be counted on the fingers of one hand.

He added that 215 suspicious cases were reported in 2013 and the relevant files were referred to the public prosecution. Complaints were dismissed since the law does not prohibit foreign funding, and there is no evidence to prove the crime. This happened again in 2015.

Experts argue that the law contains several loopholes with respect to supervision over associations that are considered suspicious, whether in terms of their affiliation or sources of their funding.

Moreover, some impartial reports confirmed that several associations and also some foreign organizations were subject to serious criticism and accusations of being partial or mixing civil activity and political action. It was also noted that despite the criticism leveled against the branches of some foreign associations, no restrictions were imposed and these branches were not prevented from exercising their activities.

► Freedom of movement

In the pre-revolution era, civil society movement was severely restricted and security forces were able to prevent the entry of foreign activists to Tunisia to participate in demonstrations organized by independent associations not approved by the previous regime. Nowadays, all previous barriers are lifted and activists enjoy complete freedom of movement inside the Tunisian territory or in terms of entry into the country. Foreign activists visiting Tunisia for various purposes were not denied entry, except in one case, where one female activist was held up for six hours at the airport before being allowed to enter. Moreover, members of local associations were not banned from travelling unless there are legal constraints, such as a complaint before the judiciary that would prevent the concerned person from leaving the Tunisian territory.

► Access to information

The former regime waged a fierce battle to prevent Tunisians, particularly journalists, dissidents, and civil society activists from enjoying their right to access to information deemed likely to affect the national security of the state. But the revolution created the appropriate environment to exert pressure in order to break the restrictions that prevented access to all kind of information. Censorship was completely lifted off different websites and the relevant legislations applicable during the previous phase were abrogated.

Thanks to civil society organizations pressure, the Tunisian parliament approved in June 2016 the Law on the right of access to information. This was a one of a kind law in the Arab world. Article 1 of said law specified that the law aims to guarantee the right of every natural person or legal entity to have access to information, to promote the principles of transparency and accountability, especially with regard to public utility management, to enhance confidence in the authorities subject to the provisions of this law, to support public participation in drawing up public policies and following up on their implementation and evaluation, and to encourage scientific research.

This law is in line with international agreements and covenants related to this right, especially the United Nations General Assembly Resolution of 1946, which states that the freedom of access to information is a fundamental human right and the cornerstone of all freedoms.

Such a law would bridge the gap between citizens, promote freedom of the press and push governments toward greater openness and dissemination of information. The law on access to information may be turned into an efficient mechanism to fight corruption plaguing Tunisia's emerging democracy.

► Freedom of expression

One of the most important gains made after the revolution is the high level of freedom of expression. Most of the chapters of the Press Code were punitive and restricted freedom of expression. This Code was abolished and replaced by Decree No. 115, dated November 2011 ,2. This Decree provided for the fundamental guarantees for freedom of the press, publication, and printing. In order to remove the contradiction between domestic and international legislations, this Decree stated that "the right to freedom of expression is guaranteed and shall be exercised in accordance with the provisions of the International Covenant on Civil and Political Rights." The law also guaranteed free circulation of information.

The problem in Tunisia was no longer ensuring freedom of expression, but rather mobilizing all parties to protect this right against any practice that may limit this freedom or exploit it to infringe upon other freedoms or the rights of citizens. In Tunisia, there are different and conflicting parties. The main challenge is to protect this diversity, and achieve peaceful coexistence among the society components, and to confront anyone who seeks to silence opposition under various political, ideological, and religious justifications.

In this context, battles are still waged in Tunisia by the journalists syndicate, as well as by the Independent High Authority for Audio-Visual Communication — a constitutional institution working to protect the ethics of the profession and to address the excesses that would violate the rights of citizens, their honor and privacy in the name of freedom of expression.

Journalists are also fighting against terrorist organizations dealing with anyone who has a different vision and belief by resorting to violence or political assassination, which highly prejudices and undermines the core of freedom of expression.

Despite the high level of freedom of the media and the press, Tunisian media figures and syndicates are still expressing their fears of the possibility of a setback in light of the harassment of some of their colleagues. Journalists were sometimes assaulted by security services during the exercise of their professional activity. Tunisian media figures strongly reject the criminalization of their colleagues or their imprisonment for expressing their views or for committing an unintentional professional error. Indeed, some journalists have been referred to the judiciary over charges of slander and defamation under specific articles of the Penal Code that provide for prison sentences.

The last report issued by the National Syndicate of Tunisian Journalists on the activity of the Syndicate's executive office, released on September 2016,²³ described the media landscape in the following paragraph: "Although the Syndicate focused last year on economic and social rights, it still believes the freedoms of the press is a top priority that requires vigilance and firmness to confront all transgressors or violators. The Syndicate seeks to develop the related legislation, and provide legal support, and training on legal and digital protection. Moreover, although the Syndicate asserted that the assault on freedom of the press in 2016 was not systematic, however some restrictive practices were still observed."⁵ These practices were expected in light of the continuing fragility of the transitional phase that Tunisia's emerging democracy went—and is still going—through. However, the Syndicate insisted on issuing a joint statement in 2016 with other civil society organizations. The statement stressed the importance of the gains in the field of human rights and fundamental freedoms, in law and in practice, six years after the Tunisian revolution, but warned of recent violations and departures in this field, which could form the basis for the return of the former ruling mechanisms."⁶

⁵ <http://snjt.org/>

⁶ The website of the National Syndicate of Tunisian Journalists: The twelve organizations that signed this statement include the Tunisian General Labour Union, the Tunisian Human Rights League, the Tunisian Forum for Economic and Social Rights, Union of Unemployed Graduates, the Euro-Mediterranean Network for Human Rights and the Committee for the Respect of Freedoms and Human Rights in Tunisia. The statement was issued on December 23, 2016.

► Conclusion

In light of the foregoing, one may say that associative work has improved a lot in Tunisia, whether in terms of the legislative environment that witnessed several changes introduced by the revolution during the first period after the overthrow of President Ben Ali, or in terms of the relationship between the authorities and civil society. This, however, does not mean that the road ahead for associations would be easy since there are still risks, obstacles, and concerns that would hinder civil society's activity or impede its development. One of the main risks is the serious and dangerous battle waged by Tunisians against terrorism. But, the current challenge is to prevent this battle from affecting the fundamental human rights and freedoms, including the right to form associations, respect their independence and ensure non-interference in their affairs or the restriction of their activities.

At the end of this report, it is worth noting that the issue of associations in Tunisia was presented in parliament and discussed from several aspects, including the concerns expressed by civil society activists as to the possibility of seeing the freedom to organize and obtain financing withdrawn. Answering the questions of member of parliament, Minister for the relationship with the constitutional bodies, civil society and human rights Mehdi Ben Gharbia said that the ministry "took the initiative to organize consultations to amend the decree regulating associations so as to have a law that maintains the libertarian spirit of the Decree, reduces complications obstructing the formation of associations, and provides for mechanisms of control that increases transparency, especially with respect of the associations' activity and funding." The minister added that the issue of accepting foreign funding or not must be the subject of a participatory dialogue and consultation in order to support the civil society, which had a major role in maintaining the transitional path in Tunisia. ⁷

Despite continued promises by the government, civil society activists are still concerned about attempts by authorities to circumvent legislative gains obtained by associations, which are currently involved in a wide campaign to convince decision-makers throughout the country that Tunisia does not currently need a new law to govern associations. Decree 88 is considered to be sufficient, including in a decision by the administrative court. It was also considered by the UN to be one of the top 20 associations laws in the world. The problem does lie in the law's text, but in its application by the administration and its institutions.

Brief Case on Enabling Environment in Tunisia: In light of the mushrooming⁸ of NGOs, ensuring national ownership and inclusiveness

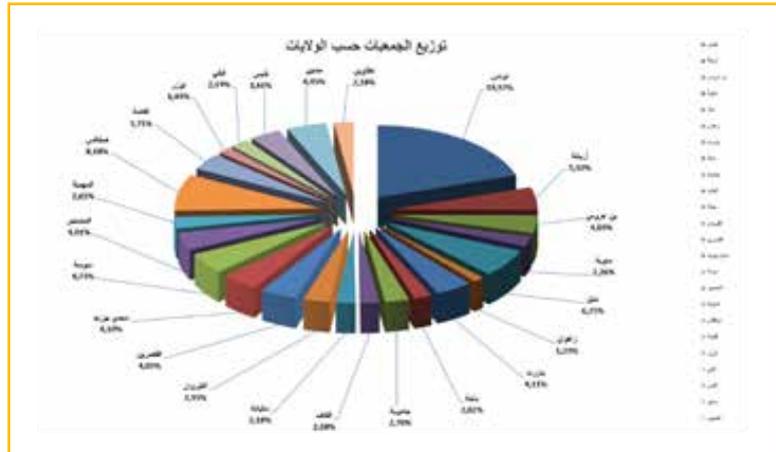
Tunisia can be considered as the most successful case among the countries of the Arab Spring. For civil society as well. It was the Tunisian civil society members that formed the National Dialogue Quartet, who played an active role in Tunisia's transition period. Their role and success was even rewarded with the Nobel Peace Prize.

As the analysis by Salaheddin El Jourshi demonstrates the immediate post-revolution conditions were welcoming for civil society, with a positive legislative and institutional framework. He notes in the report as following "the Decree and the establishment of the Ministry for cooperation led to a quantum leap and radical transformationthe civil society was rejuvenated and the number of civil society organizations doubled in a short period, jumping to an estimated number of 18,465 in 2016, most of which were incorporated in the period from October 2011 to January 2012".

⁷ See Al-Chourouk newspaper on November 21, 2016: www.alchourouk.com

⁸ <http://www.ifeda.org.tn/stats/arabe.pdf>

The rapid emergence of numerous civil society organizations is a positive development reflecting peoples' willingness to participate more, get mobilized more and engage more in a conducive environment. Increasing number of organizations' work in open and transparent collaboration and cooperation would definitely contribute more to Tunisian society development.



However, a key element in this regard is ensuring and preserving national ownership. This requires effective civil society structures that can identify their needs and strategically undertake implementation to address them; rather than being sub-ordinated to the Donor's perspectives and priorities. Whereas the capacity, experience and strength of the civil society is key in this regard, foremost donors should abide by the development effectiveness principles. This is particularly important, because as in the case of Tunisia, the increase in number of organizations and positive developments in Tunisia created more donor interest in the country and availability of more funds for civil society. For instance, as significant partner the European Union increased support to Tunisian civil society substantively, between 2011 and 2016; EU assistance to Tunisia amounted to EUR 2 billion .⁹

Availability of local and/or foreign funding contributes to an enabling environment of civil society, but ensuring an equal partnership between the donor and the local/national civil society groups and enhancing national ownership is key to achieve development outcomes from such assistance. Furthermore, donors and the recipient should establish a partnership based on the understanding of equal partners, with shared responsibility and mutual accountability ensuring transparency.

In this regard, enabling environment should be considered comprehensively: legal and institutional framework should be supported with coordination and collaboration among civil society groups and with full adherence to development effectiveness principles by the stakeholders, particularly donors.

Democracy support, promotion of human rights sound very "attractive" but would only succeed once they are designed, owned and implemented with effective local actor engagement. Projects and programmes supporting donor agenda and interest would remain only ad hoc and superficial.

⁹ https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/tunisia_en

Jordanian Civil Society: Between the Challenges of the Conservative Forces and the Varying Developmental Assistance

Ahmed Mohamed Awad

Phenix Center for Economic & Informatics Studies

In the context of the political, security and economic transformations taking place in the region, the Jordanian civil society is currently facing a complex crisis resulting from facing two fundamental challenges that determine its development and effectiveness. Thus, many Jordanian civil society organizations are making changes in their strategies and plans and reconsidering their priorities in light of these two basic challenges.

On one hand, the political and bureaucratic forces opposing to the Jordanian civil society and doubting its role inside and outside the state's public institutions continue to play strong roles in narrowing the already limited scope of its work, within the framework of legislations and policies, as well as practices on the ground. The legislations and policies regulating the operation of civil society organizations are still enforcing many severe restrictions on their establishment and operation mechanisms, and restricting partnerships and funding for their activities. On the other hand, the development financing trends of the countries of the region and civil society organizations are also witnessing changes in their goals, courses and priorities, mainly focusing on the relief of the Syrian refugees and responding to their integration requirements into the host countries and communities.

In order to face these challenges, the civil society organizations need to deploy all their efforts and capacities defending their operation space and existence justifications. We are witnessing a progress in the roles and impacts of many Jordanian civil society organizations, especially the human rights organizations strengthening the human rights situation in Jordan at the level of legislations, policies and practices, as well as the level of direct humanitarian services for many vulnerable social sectors.

In the recent years, the roles of the Jordanian civil society in the public life has grown, diversified and expanded to include monitoring the performance of governments in respecting the human rights standards, observing various electoral operations, analyzing public policies in many areas and offering alternative policies, in addition to its usual roles such as offering direct social and humanitarian services for large sectors among vulnerable social sectors. The growing role of civil society in Jordan due to the professional work of many of its organizations angered other actors, especially officials, such as government officials and parliamentarians who have been used to working without supervision, accountability and partnership, which are among the roles and responsibilities of the civil society. These organizations managed to impose their presence on various levels at the same time, reflected through the establishment of many networks and qualitative alliances in order to achieve common objectives, especially those relating to all types and levels of international mechanisms for the protection of human rights, or to the protection, defense and expansion of the free space given to civil society organizations.

It is useful to note that the official way of dealing with civil society suffers is inconsistent. The official discourse of public institutions emphasizes the importance of its role, while there are no governmental or parliamentary attempts to reconsider the basic legislations regularizing the civil society and its organizations, including the Law of Associations and Labor Law, which comprise a high number of restrictions imposed on the establishment and operation of associations and trade unions.

Unfortunately, the restrictions imposed by the Ministry of Interior and its administrative officials as well as some security agencies are expanding more and more with the violation of the Public Gatherings Act by banning dozens of events, activities and workshops without proper legal justification and responding to many labor protests with violence, in addition to the practices of some of the executive authority bodies in order to push the civil society organizations to become a part of the executive authority that abides by the latter's strategies. Thus, the main objective is removing the justifications for the existence of the civil society, as it reflects interests and visions that are in conformity with the interests and visions of the executive authority. The "anti-terrorism" slogan is often used as a justification for restricting the limited freedom space available to the civil society forces.

In order to face these challenges and in response to the developments resulting from the entry of approximately 1.4 million Syrian refugees and non-refugees and the new funding leanings, the Jordanian civil society organizations are reviewing their strategies and plans, as the groups benefiting from their activities and services are being reconsidered to match with the emerging new priorities.

There are many concerns that can arise from these changes and that must be taken into consideration by the various actors in the governments, the civil society and the donors, as the support, encouragement and enhancement of democratic changes including the various political reforms necessary to enable the financing of development are being neglected which weakens the transformation to democracy and accordingly the development pathways and financing mechanisms.



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