

Memorandum to Prime Minister Nader al-Dahabi of Jordan concerning the 2009 Proposed Amendments to the 2008 Law of Societies,

Submitted by the Euro-Mediterranean Human Rights Network and Human Rights Watch

International human rights law and Jordan's Constitution establish the right to freedom of association and allow only narrow limitations to be placed on that right.

Article 22 of the International Covenant of Civil and Political Rights (ICCPR), which became Jordanian law following its publication in the Official Gazette in June 2006, sets out the "right to freedom of association with others [on which no] restrictions may be placed ... 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." Article 15 of the Convention of the Rights of the Child (CRC) repeats Article 22 of the ICCPR verbatim. Article 16 of Jordan's Constitution guarantees the right of Jordanians "to establish societies and political parties provided that their objectives are lawful, their methods peaceful, and that they have bylaws that are not contrary to the provisions of the Constitution."

The existing 2008 Law of Societies and the 2009 proposed amendments do not fully comply with those standards. They unnecessarily limit the remit of societies and place restrictions on the right to establish societies. Furthermore, the law, and the proposed amendments, give the government inordinate control over a society's activities, in particular its finances, requiring special approval for all foreign funding.

1. Remit and Establishment of Societies

Both the 2008 law and the 2009 proposed amendments (Article 3.a) restrict the activity of societies by prohibiting "any political objectives that fall within the framework of the work and efforts of political parties." Such a broad prohibition can too easily serve to suppress legitimate efforts by nongovernmental organizations (NGOs) on the pretext that political parties are already engaged such activity -- for example, improving the health care system, advocating on behalf of women in so-called protective custody, or raising awareness about the environment. The proposal for amending Article 3.d. broadens the existing prohibition on societies with "racist goals" to ban any society with goals that "contradict public order in the kingdom." This broad prohibition does not meet the test in international law, that restriction on association in the interest of public order should be narrow, and applied on a case-by case basis.

Article 9 of the 2008 law and its 2009 proposed amendment place further restrictions on branches of foreign organizations operating in Jordan, or regional offices of foreign organizations based in Jordan. Such entities may not pursue "any political or religious

objectives.” The vague wording of “religious objectives” may be used to place unlawful curbs on legitimate activities by foreign organizations.

A 2009 proposed amendment causes further concern about possible discrimination on religious grounds between Muslim and non-Muslim organizations (Article 34). It restricts activities of “non-Muslim religious entities” to “social charitable services,” which it enumerates as “establishing a shelter or educational institute for the needy, or a social center for the poor, or distribution of monetary or in-kind assistance ... or provision of medical treatment.” Research and advocacy activities would thus be prohibited. Several Christian organizations are not recognized as churches but registered as associations with the Ministry of Interior, according the US State Department International Religious Freedom Report of 2008, because they are not recognized as denominations. Only non-Muslim entities are prohibited from “infringing the [Muslim] creed.” To ensure compliance with protecting Muslims (and only Muslims) against infringement upon their creed, a designated ministry will “monitor” and “supervise” only the services of such non-Muslim entities. The statutes of the Ministry of Awqaf and Islamic Affairs and Holy Sites (2001) oblige it to concern itself with “missionary affairs” [شؤون الدعوة] (art.5). Regardless of other legislation regulating Muslim organizations, the Law of Societies should not single out non-Muslim organizations for special, and discriminatory, treatment.

The proposed 2009 amendments would make only minor adjustments to the 2008 law regarding the establishment of societies. The authority to grant or deny permission to establish a society resides with the Council for the Administration of the Register and the law does not specify the criteria governing approval or rejection. Fulfillment of formal registration criteria, such as constitutional bylaws and provision of basic information as laid out in Article 7 (amended), does not guarantee registration. The law effectively allows the government to grant or reject the right of a society to register, on arbitrary and political grounds, significantly impinging on freedom of association.

The establishment of a Council to oversee registrations, and the presence of three NGO representatives on the 10-member Council, does not significantly remedy this serious shortcoming, since the Cabinet appoints members to this Council, including the NGO representatives. The establishment of “closed” societies with a membership of between 3 and 20 persons, and “private” societies, whose financing is exclusively provided by founding members, as well as those including non-Jordanians among its founders, inexplicably also requires Cabinet approval. This requirement for additional political approval is inconsistent with the narrow restrictions that international law allows a state to place on the exercise of the right to freedom of association of persons under that state’s jurisdiction.

In addition, the law limits any exercise of the right to freedom of association to Jordanian nationals, in clear violation of Jordan’s obligations under Article 2 of the ICCPR, which extends to “all individuals within [a state party’s] territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status.” By limiting rights of association to persons over 18, the law is also in clear violation of Jordan’s obligations under Article 15 of the Convention on the Rights of the Child, which guarantees the same rights to a child and to which Jordan is a state party.

Furthermore, while inclusion of the right to judicial review of decisions by the Council is welcome (amended Article 11.a.), it would not, in practice, enhance the right to freedom of association because the Supreme Court of Justice reviews the lawfulness of final administrative decisions with regard to the procedures set out in law for reaching such decisions, their legal basis and evidence (Law of the Supreme Court of Justice No 12 of 1992, Article 9.9.). Because the 2008 Law of Societies and the proposed 2009 amendments do not explicitly state what are the legitimate reasons for denying a request, the Court would be left with testing whether such a denial is in the public interest, leaving significant room for executive discretion curtailing the right to form associations.

The law further impedes the right to associate freely with others by placing restrictive conditions on founders and members of a society. While dispensing with the requirement of “good conduct” for founding members, the proposed 2009 amendments continue to require that founders of societies not be convicted felons, or have been found guilty of misdemeanors “breaching honor or integrity.” Thus, for example, a former felon may not be able to set up a society helping other convicts regain their place as productive members of society, and a person convicted of cheque fraud who has served her sentence could be barred from establishing a society to advocate safe driving, although her conviction appears entirely unrelated to her charitable engagement. These restrictions are not necessary in a democratic society and thus constitute unacceptable restrictions on the right to free association.

The Law of Societies also restricts the freedom to associate by mandating that a society’s structure be based on an executive elected by the society’s membership, and that the terms for acquiring membership with automatic voting rights must be spelled out in the bylaws. It is not obvious that such a structure enhances or is in any way necessary to the exercise of the right to free association. Free association includes the right not to associate with others, but open membership creates a right to join an association, even against the will of its current members. By mandating automatic acquisition of membership based on certain criteria (Article 14.a.), the law annuls the right not to associate with others. Indeed, failure to grant membership to a qualified candidate may result in the government’s dissolution of the society (see below). While membership-based societies may be beneficial to the healthy growth and accountability of civil society in Jordan, this cannot be imposed by law on all associations. Mandating an exclusively membership-based structure for all associating is likely to violate the international right of freedom of association by forcing persons to associate with others. Efforts to encourage accessibility and internal accountability within associations are best left to voluntary codes of best practices.

2. Ability to Function Independently

The 2009 proposed amendments would make few improvements to the disproportionate powers of the government to intervene in the legitimate affairs of a society under the current law.

The 2008 law contains numerous provisions that indirectly curb a society's freedom to carry out legitimate activities and to maintain its independence from government control. We believe these curbs have contributed to a climate that is not conducive to a critically-engaged civil society providing important services and public advocacy. A large number of members of Jordanian societies have repeatedly expressed apprehension about possible consequences for speaking out or engaging in activities critical of government policies and practices.

Among the provisions that curb a society's independence from government is the requirement to submit to the government, in advance, an annual plan of upcoming activities (Article 16.a). This is completely unreasonable for societies that, for example, plan to investigate human rights violations committed by government officials.

Other overly intrusive provisions oblige a society to inform the government of meetings of its general assembly two weeks in advance and empower the government to delegate two officials to attend these meetings (Article 14.a.3. and 14.b.2.). Decisions taken at such meetings must be submitted to the government and changes to its bylaws require governmental approval (Article 14.c.).

Government regulation of association finances are another area of deep concern. A 2009 proposed amendment would lift bank secrecy provisions for the accounts of a society (Article 17.e.), giving the government continual direct access, without the need to provide justification or judicial order, to all financial information of a society, including investments, funds on hand, salaries, overhead costs, project costs, and sources of funding, which must be recorded in its annual plan (Article 17.a. and b.). Regardless of other legislation that may not create rights to banking secrecy, the Law of Societies should not expressly lift such provisions. Some funders of charitable causes may wish to remain anonymous while supporting legitimate activities, but could not do so under this law. The legality of how funds are used should be Jordan's concern, rather than the provenance of funds. Such excessive monitoring violates the premise that societies should be free to carry out any legitimate activities, and that the state must have sufficient grounds before investigating any breach of the law.

The 2009 proposed amendments would also continue severe restrictions on foreign funding for societies, first introduced in the 2008 law. Under the proposal, each transfer of foreign funds would require ministerial approval. The competent minister is not bound by considerations of legality or proportionality in any decision to deny funding (Article 17.c). The Council for the Administration of the Register would designate a specific competent ministry for each society, potentially resulting in a large number of ministers wielding powers over societies under this law. Absent clear parameters for denying a society approval to receive funding, the right to challenge such a denial at the Supreme

Court of Justice carries little weight, as a judicial review of the ministerial decision would focus solely on the lawfulness of the procedures observed (see above).

The proposed amendments would also increase the government's discretion to pursue societies for what it may consider improper use of foreign funding. Article 17.b stipulates that foreign funded activities must not be contrary to "public order or morals," a concept so broad as to allow a multitude of interpretations. For example, the 2006 Yogyakarta Principles on human rights in relation to sexual orientation and gender identity are clear that governments must not employ "notions of ... public morality ... to restrict any exercise of the rights to public assembly and association" (Principle 20.b). Yet one can easily imagine how the government might invoke "public morals" to prohibit the establishment of societies promoting rights of lesbian, bisexual, gay, or transgender persons in light of prevalent homophobic prejudices, as evidenced by repeated police raids in 2008 on establishments frequented by homosexuals and disparaging articles about homosexuals in large Jordanian daily newspapers in 2007 and 2008.

The penalties for even minor infractions of these onerous obligations can be drastic and constitute a further inappropriate extension of government powers to interfere in the activities and independence of societies. The proposed 2009 amendments would continue to preserve the right of the minister to replace a society's executive with a temporary executive comprised of government-appointed officials for a tenure of 60 days, which can be once renewed (Article 19). The Council administering the registry of societies, an administrative, not a judicial body, may also dissolve a society outright, for example for twice committing an infraction of this law after receiving a warning. Failure to rectify a violation after the first warning within two months is sufficient grounds for imposing a temporary executive, as is the acceptance of funding without disclosure or proper accounting (Article 19). Doing so with a foreign donation is cause for dissolution (Article 20).