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National Policy Paper
On CSO, Political Parties and Labor Union Laws

Written in good conscience¹ by

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This paper is based on the results of specialised opinion surveys and focus groups that included societies, political parties, unions, parliamentarians and officials, from ministries and public administrations, conducted at the Arab Centre for the Development of the Rule of Law and Integrity, in Beirut, in September 2007.

Expert consultant Dr Issam Suleiman, led the discussions at the meetings, Mrs. Ubab Murad, from the Friedrich Naumann Foundation, attended some of them, and Ms Joyce Hakmeh from the Arab Centre, oversaw all relevant preparations and logistics. The author of this paper also took part in the meetings and presented a preliminary report.

Although the author of this paper had prepared the agenda for the above-mentioned meetings, the present paper seeks to delineate the required national policies, based upon compatibility between local norms and international standards. The paper adopts the following systematic division, designated by the organising side, in each of the sections relevant to societies, parties and unions:

-The Current Situation

-Diagnosed problems, among which are:

¹ This paper, on national policies, was written based on consultations and meetings of focus groups. Although I do not agree with all opinions expressed in them, I included in the paper the international standards agreed upon and discarded all what contradicts them. I, therefore do not agree with all their findings.

² This paper was written at an earlier date, based on a commitment to the contract, timetable and amendments.

- Constraints and their compelling causes, as seen by the authorities
- Required amendments, changes and their compelling causes, as seen by civil society
- Priorities and Strategies

Focus group findings and possible solutions, in particular mutual suspicions expressed by civil society and the authorities and the means of dispelling them:

- Position of civil society vis-à-vis the constraints limiting their societies' freedom and their suspicions of the authorities
- Position of the authorities vis-à-vis allowing societies the freedom to operate, and their suspicions of civil society

Recommendations:

- To the authorities, including ways to dispel mutual suspicions
- To civil society, their expected activities and facility of implementation
- To the international community, including the firm stand expected of it.

Preliminary remarks:

-We will have to integrate rules common to political parties and non-political societies³ since, in Lebanon, they are both subject to the same laws and regulations, and are under the supervision of the same state administration, therefore are subject to the same official policies. Rules particular to one group or the other will be highlighted when relevant.

- To produce a comprehensive paper, we tried to coordinate between recommendations submitted by the side organising the project, and those of the expert/consultant overseeing its implementation.

-The present national policy paper was written in light of consultations and meetings among focus groups. However, although we do not necessarily agree with all opinions expressed therein, we included the lowest common denominator of what conforms to international standards and discarded those that contradict them. We therefore do not necessarily espouse all that came out of those meetings.

³ Despite our initial reservations regarding the difficulty of separating between what is political and what is not in the world today.

International Standards and characteristics of civil society in Lebanon

According to the organising side, the term civil society includes non-political organisations, political parties and unions.

The present paper focuses on local particularities as much as on international standards. Although Lebanese society has its own characteristics, respect for them necessitates a commitment to the most common legal standards and guarantees, recognised internationally; if not we risk regressing from all what humanity, as a whole, has achieved and the common human values agreed upon. This necessarily means a commitment to international constitutional, legislative, administrative and interpretive principles, most important among which are the Universal Declaration of Human Rights (especially Article 20), the International Covenant on Civil and Political Rights (especially Article 22), and, in particular, the European Convention on Human Rights, as well as other international conventions that should never be violated. The above conventions were careful not to restrict in any way the right to form political parties or of assembly, except in rare and extraordinary cases, and in a limited manner, to serve national security interests, public safety, public order, morality and respect for the rights and freedoms of others. The closest equivalent of these reservations can be found in Article 3 of the Lebanese Societies Law of 1909.

Characteristics of Lebanese Society

Laws governing political parties, and their backgrounds, differ from one society to another, as do various societies and political parties (the Greens, consumers and liberal groups, labour unions...). Based on that, new legislation regarding societies and political parties in Lebanon, and all amendments introduced to it, should take into consideration the country's particular political and social characteristics, and the means of building a modern Lebanese state based on "right". In Germany, for example, where legislation regarding political parties is quite advanced, a party is dissolved if it does not take part in general elections for 6 years running (Article 2 of the German Parties Law), which explains why German parties are few in number. This stipulation will not work in Lebanon, since not all parties take part in every election, nor can their number be reduced to only two or three. Therefore, foreign experiences cannot necessarily be made to fit the situation in Lebanon, no matter how successful or advanced they are.

Another example is that a Parties Law in a Western country could require a certain number of members, or signatures, as a condition for the party to participate in the general elections. This condition is not always justified and may not apply to other countries; but once imposed in a country like Lebanon, for

example, it should be within reasonable limits lest it be used to limit the number of parties or restrict political activity in the country.

Requirements of compatibility

The enactment of laws in Lebanon requires a good knowledge of the local social and economic situation, and the country's sectarian make up, so that they can be taken into consideration; the same goes for any amendment to, or improvement of any law. On the other hand, the aim behind the enactment of laws is both the development and advancement of society.

This paper, therefore, seeks to render international standards and local characteristics compatible, in view of adapting laws governing political parties and societies to the political and social infrastructure of the state, while taking their respective needs into consideration.

For example, most civil society institutions suffer from poor internal organisation, infrequent rotation at the leadership level, and memberships restricted to those loyal to the founders and leaders. Is it possible to ignore these organisational democratic characteristics on the pretext of giving free reign to the founders? This means that civil society institutions will be democratic in form only, and would remain the domain of a few founders who will monopolise leadership positions, decisions regarding enrolment and the entire decision-making process. Could or should certain standards be imposed on these institutions to guarantee an internal democratic system? If yes, should the law intervene, or should such an internal matter be left entirely to the society's own rules and regulations? Should the process of registering societies in Lebanon be divided among the Ministries of the Interior, Youth and Sports, and Labour?

These points, and others, will be answered under the next two subheadings.

The lowest legal standards

By looking at international conventions and reviewing international jurisprudence and interpretation, we identify a number of standards that one can build on in the effort to find legislative and organisational options regarding the freedom of societies. This freedom could form part of the fundamental freedoms based on the two following principles⁴:

1. Principle of freedom and the exclusivity of restrictions: Freedoms cannot be restricted except "when they are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a

⁴ Mukheiber, Ghassan, "Film Censorship in Lebanon: between the Law and Practice", p. 10, unpublished.

democratic society.”⁵ This means that any activity not clearly forbidden by law is permitted. As for legal restrictions referred to sometimes as “organisational”, these have an exclusively and limited manner. In cases where the text is unclear, the law always favours freedom, not restrictions.

2. The principle of taking suppressive rather than preventive measures: this means that only after the fact state control over the freedom of societies is allowed and not preventive control, which violates the right to freedom.⁶

Therefore, preventive control should be abolished, and administrative and legal authorities should only be allowed to take measures after the fact.

Before tackling details according to the list of required systematic standards, we shall highlight the main principles and norms that Lebanon should adopt:

a. The right to form societies:

International jurisprudence and interpretation have established the principle of simply “announcing to the authorities”, or what is known as “give prior advise and notify” when forming a society, since it avoids any interference by the administration in the formation process through the “prior registration” of the society and its activities. The freedom to form applies to societies, political parties and unions, with slight differences between each. It also applies to other aspects of public freedom, such as the freedom to establish media outlets.

b. Supervising authorities:

Three different authorities could supervise societies and their activities:

1. The administrative authorities,
2. The independent commission responsible for societies’ issues, and
3. The judicial authorities

Each of these options entails several pertinent problems and complexities:

1. In the first case, where the supervisory responsibility is in the hands of an administrative authority like, for example, the Ministry of the Interior, as is the case in Lebanon and a number of Arab countries, the fear is that it would not be even-handed or would interfere politically in the society’s affairs to bring it to heel under the pretext of the “rule of law”. This is the reason why liberal governments have not chosen this option; the administration in these countries does not interfere in the freedom of societies.

2. In the case where an independent commission is responsible for societies, the emphasis is on its genuine independence. Will it be made-up of experts, independent persons, or both? Will it be appointed by the legislative or executive

⁵ Article 29 of the Universal Declaration of Human Rights

⁶ Liver, Pierre “L’autorisation préalable et les libertés publiques” LGDJ, 1974, in the above-mentioned Mukheiber, Ghassan “Film Censorship in Lebanon: between the Law and Practice”

authority, or both, like in Lebanon where appointments are divided equally between the two groups, i.e., the case with the National Council that supervises the audio-visual press, and which formation requires reconsideration? Should it, perhaps, be elected by the people?

3. If, however, supervision is entrusted to the judicial authorities, questions would be raised as to which tribunal has the right to try cases and violations committed by various societies.

c. Abolishing preventive supervision:

Preventive supervision over societies obstructs their freedom; it does not exist in liberal countries, in general, and was replaced, where it once existed, by clear legal texts and an independent judiciary – or by independent civil institutions charged with reviewing various crimes and violations. Violators are punishable under the terms of the relevant law, exactly as other sentences are handed-down in other domains, by the legal authorities when necessary. There is, therefore, no need for barring any activity before it happens, lest supervision becomes a tribunal for trying intentions or, in the best-case scenario, turns into political interference, either to entice civil and political activists or scare them away.

Although the abolition of preventive supervision is now an internationally accepted fact, which we recommend the Lebanese authorities adopt, and since departments of the Ministry of the Interior and the public security services no longer supervise societies, the strategic options of entrusting legal authorities, or an independent civil commission, with looking into crimes and violations related to the right of assembly should be further studied.

Societies and Political Parties

We will review below the current state of both societies and political parties, given that legislation governing parties and non-political societies is one, and the same in Lebanon, and is based on the Ottoman Societies' Law, issued on September 3, 1909. The law in question regulates the formation of societies and their activities, and includes a number of texts relevant to certain types of societies such as those related to youth, sports and scouts,⁷ and to the supervisory role of the Ministry of the Interior.

First: the current situation

Although the Lebanese 1909 Law was inspired by the French Law of 1901, the latter underwent several amendments to keep up with development in civil society and partisan life in France, while Lebanese Law remained almost static. Now, one hundred years later, the experience of civil society in Lebanon deserves a thorough review of that Law.

Despite being issued under Ottoman rule, the Lebanese Law is considered quite liberal because, despite its brevity, the commonality of its terms and its lack of compatibility with the modern concept of societies and parties, it conforms to a large degree with the principle of freedom of societies. The formation of societies – including political societies and parties – does not require, according to this law, any prior permit but only a simple notification of the Ministry of the Interior by the founders (Articles 2, 6, and 12 of the Law).

Though it is true that this Law was issued under Ottoman rule, it is liberal to a certain extent, and has pre-empted the decision by international jurisprudence and interpretation allowing after the fact supervision, rather than before, over the rights of assembly and self-expression.

Lebanese civil society has suffered, over the years, from the bad implementation of this “advanced Ottoman” Law. If the Ministry of the Interior has transformed the “advise and notification” practice into a requirement to seek prior licensing, in violation of the law and international standards, it ultimately voided its own measures when the head of the Consultative Council declared them null and void “to preserve the freedom of societies and prevent the excesses of authority.”⁸ Prior to that, the founders of one of the societies had rebelled in defence of the freedom of societies by notifying the Ministry of the Interior of their society’s formation after it refused to receive their “advice and notice” by hand.⁹ On 19/5/2006, the Ministry issued circular number 10/M/2006 that underlined the need to respect the law relative to the formation of societies and their activities in

⁷ Law 16/72 dated 15/12/1972

⁸ Consultative, first chamber, no. 135/2003-2004, dated 18/11/2003

⁹ The Lebanese Association for Democratic Elections

Lebanon. Based on that, developments in the domain of freedom of societies in Lebanon in the past few years, could be summarised by the following two points:

- The Consultative Council's decision, based on an appeal by the "al-'Adl" Society, to void the Ministry of the Interior's declaration to protect the freedom of societies, and prevent excesses by the state, (First chamber 135/2003-2004, of 18/11/2003).
- Circular number 10/M/2006 of 19/5/2006, regarding "new methods of notifying the Ministry of the Interior and Municipalities about the formation of a society in Lebanon, and facilitating relevant procedures, in implementation of the Societies Law of 1909, and its amendments."

Thus, thanks to the text of the Law of 1909, and its liberal applications, Lebanon is almost the only country in the region that enjoys the freedom to form societies, and engage in their relevant activities.

Second: Problems and principles that should be adopted

The issue of freedom of societies and the system of advise and notify raises constant problems and questions. For example, as this paper is being written an issue is brewing regarding the formation of terrorist organisations and societies that finance them under the guise of charitable organisations. Its founders enjoy the freedom guaranteed by the Law of 1909 and have to simply notify the authorities for their society to become legal without the need for prior licensing. This has elicited calls for a review of the system of "advise and notify" in order to combat this phenomenon.¹⁰

Regardless, the system of "advise and notify" should never be tampered with. The idea of obtaining a prior license, which relies on investigations and evaluations by the authorities as a condition for forming a society, or party, and undertaking relevant activities, violates, under any circumstance, liberal principles of partisan and civil society activities, and is tantamount to interference in public freedoms. It is also considered, at least as far as the political party is concerned, overlapping between different constitutional authorities for the party is itself also a "constitutional institution" no less important, in a democratic state, than others. The difference is that the latter does not enjoy decision-making or public powers like traditional constitutional authorities (legislative, executive and judicial), and should not at all mean that it is a state party. As proof of that, the German constitution of 23/5/1949 elevates political parties to the rank of constitutional institutions, which is why the exchange of visits by officials, in

¹⁰ Declaration by Mr. Jibril Bassil, responsible for political relations in the "Free Patriotic Movement", newspapers 24/7/2007; it elicited many responses in the next few days' newspapers.
-The response of Minister Ahmad Fatfat and clarification of deputy Ghassan Mukheiber; newspapers 25/7/2007
-Clarification by Paul Morcos, newspapers 26/7/2007

advanced countries, is not restricted to the party in power, but also involves leaders of opposition parties.

***Mutual fears**

Authorities are suspicious and fearful of civil society and, in turn, civil society is fearful of the government. The reasons are the submission by societies to prior security investigations, the authorities' preoccupation with security, the close monitoring of societies' activities, interference in their elections and imposing on them organisational models and proceedings to follow in electing their representative committees. On the other hand, the authorities drown civil society by encouraging the registration of a large number of societies – particularly sectarian and family-based societies – especially in the last few years, which does not necessarily signify an improvement in the civil society sector. There is also the arbitrary manner in which advise and notify could be withdrawn,¹¹ and the way in which societies, headed by wives and relatives of officials, are established to benefit from foreign grants and their closeness to the centre of power...

***Internal democracy**

No political party or society will ever state that it is not democratic. Democracy has become such a strong and overpowering idea that even dictators are eager to declare their adherence to the notion, to the point that even highly centralised parties insert the word in their name. Democracy, however, does not flourish in a party just by being claimed, but requires effective internal standards and measure to ensure rotational change in leadership positions, or when party members see it fit; activate the participatory role of members and allow them to express their opinions freely. It also flourishes when different opinions are voiced, the enrolment of women is encouraged and party leaders are held accountable...¹²

Democracy within societies and parties in Lebanon raise the following problems:

- Rotational change of leadership (i.e. reserving membership to hard-core loyalists and supporters of party founders and leaders, closed election lists, the founder leader is always the candidate by acclamation...).
- Self expression and effective means of communication within the society, and the extent to which groups, rather than a single individual, can influence decision-making (effectiveness of the administrative council's role, administrative committees, general council...).

¹¹ The president of the "Amel" organization, Dr Kamel Mohanna, revealed in a meeting that an administrative decision was issued in 1982 withdrawing the organisation's advise and notify just as it was rescuing the wounded from the Israeli invasion and sending them for treatment abroad!

¹² See in particular the Guide to "Political Parties and the Transition to Democracy", National Democratic Institute for International Affairs (NDI), 2004, p. 14

-Internal activities reserved for only a few members, versus the pro-forma membership of the “others”.

On the other hand, among factors that obstruct power sharing in Lebanon, are the difficulties resulting from the departure of the founding leader from power, especially the ensuing fear that the society might unravel, and the sectarian system that leaves no room for others to take part in public service.

Solutions for the above problems comprise, among others, democratic empowerment and training of new leaderships by the old guard, and creating honorary positions for the founders to facilitate power-sharing, benefit from their experience and ensure continuous contact with the new leadership. There should also be emphasis on the high calibre of members, awareness should be raised continuously regarding internal democratic practices, and all concerned should be reminded that power should not be monopolized by the head of the society, but should involve the administrative council.

To ensure internal democratic practices, it is necessary to develop the infrastructure of societies in Lebanon. Among them is ensuring that genuine elections take place to select a new leadership and install a democratic administration. Furthermore, members should be made aware that internal democratic practices are closely tied to the behaviour of members, since democracy does not reside only in power sharing but also in taking part in the decision-making process.

-Ability of internal systems to absorb democratic change: organising democratic systems should be left to the society’s internal mechanisms, and should not figure in the Societies Law, especially when matters of internal society organisation, the election of the administrative council and technical details and measures that ensure rotational internal elections are concerned.

-Empowerment of members: Protecting the right of the society’s members and affording them the right to participate in the general council’s decision-making process, ensuring transparency in all internal activities and emphasising the need to raise the youth’s awareness of the importance of collective public-oriented activities, so that they can one day become active members of societies.

***Finances:** Most societies and parties in Lebanon suffer from financial crises due to weak sources of finance or poor financial administration. This requires the following:

-Undertaking in self-financing activities (establishing productive projects with the revenue going to the society, establishing an endowment (*waqf*), reaping interest

on capital, revenue from various activities and projects the society undertakes, membership fees...¹³

Membership fees, according to Duverger, are a psychological factor of membership and participation and, at the same time, a sign of loyalty. Added to that are the fees paid by supporters, fundraising campaigns and assistance from the state, according to set rules, such as winning a certain number of votes in the election and recovering the cost of election campaigns (as is the case in Germany).

The above requires a ceiling on donations by ordinary citizens, limiting gifts from persons in high office, forbidding donations from foreign businesses and groups, and monitoring the financing of election campaigns. Furthermore, amounts that the party has at its disposal, and the manner in which they are spent or liquidated in the eventuality of its dissolution should be limited (Article 14 of the Lebanese Law).

Relevant, in this context, is the issue of holding party leaders accountable in cases of financial mismanagement, and other such cases. To avoid financial mismanagement and guarantee financial transparency, internal rules and regulation should delineate the way funds are raised and spent, and regulate all facets of financial administration.

-Facilitating procedures for financing requests and foreign donations, and allowing societies and parties to formulate these requests and provide them with every chance for success.

In particular, the society's finances should be subject to tight controls, especially since the current law does not stipulate it, by forcing societies to submit their budgets to the scrutiny of financial controllers. Internal sources of financing also should be activated to avoid having foreign donors impose projects that do not suit local needs.¹⁴ Banking secrecy over society and party funds should be lifted to enhance the transparency of political and social activities. In the same vein, the state should be made to give financial and in-kind assistance to societies based on rules in effect, and according to an objective evaluation, which takes into account the society's volume of activities and their effectiveness, their sustainability, and the level of participation by members. In addition, other measures liable to encourage donations – whether directly or indirectly – should be adopted, such as allowing the donor tax exemptions, a win-win situation for both the donor and the society.

¹³ For more information, see: Paul Morcos "Remarks Regarding the Financing and Organisation of Parties", Legal Consultants Symposium, al-Nahar, 13/8/22005, p. 7.

¹⁴ Here, A. Ne'meh Jumaa gave an example of how he attended a conference on the role of women in preparing the general budget, when the budget was not approved for many years in Lebanon.

***Administrative burdens:** Efforts should be exerted to reduce the societies' administrative burden by reaffirming the following:

- Facilitating the registration of both the society's founding and internal charters at the Ministry of the Interior, and after that, its election proceedings and financial documentation,
- Avoiding the imposition of any conditions or terms regarding the founding and electoral systems over and above what the existing legal texts require,
- Removing the condition that a representative of the Ministry of the Interior be present during the society's elections,
- Not subjecting the society's founders to investigations by the security services during the process of registering the society

***Other obstacles:** The preponderance of a society's social and celebratory activities (annual dinner, press declarations, awarding medals, side lectures ...), and using the society for political or electoral purposes.

In light of the above, the question of whether a new societies and parties law is necessary for Lebanon imposes itself, and the answer requires going into some detail.

No doubt, a heightened level partisan activity in Lebanon would enrich political life in various domains, among which are:

1. Reducing the emphasis on the "sect" since parties could offer an alternative for sectarian groups (by which we do not mean religious groups that enrich a pluralistic society).
2. The formulation of a modern electoral system; the proportional representation system, for example is often set aside – despite the consensus behind it – due to a lack of parties organised according to modern methods.

There is also no doubt that Lebanon's partisan experience suffers from many shortcomings: suspect financing, sectarian partisanship, lack of internal democratic practices.¹⁵

There is no need, under the present circumstances, for a new societies law and another for political parties, because the issue is covered adequately by the Societies Law of 1909. The latter law is considered very liberal, especially if new specific and limited amendments are introduced to it, and to other related laws.

These shortcomings can be dealt with gradually, and indirectly, through the introduction of various amendments to the Societies Law, and the passage of new laws in related fields. Among these is the fair distribution of electoral districts; equal opportunity for all candidates; regulating party financing, spending

¹⁵ Morcos, Paul, "How Do Advanced Laws Guarantee the Freedom of Political Action", long study in al-Nahar, 7/9/2005, p. 8

and electoral publicity, and allocating equal time in the press for various party platforms. This could be done through new additions to the Societies, Parliamentary and Press Laws, inspired by advanced legal systems like the German, French and American systems, and adapted to political realities in Lebanon.

There is also no need for a new Lebanese Societies' Law to replace that of 1909, as much as there is need for the introduction of amendments that would serve the purpose, and for streamlining the state's assistance to societies according to clearly defined rules.¹⁶

***Among the suggested amendments to the current law are the following:**

Reserving the responsibility for registering and dissolving societies to a mixed and independent judicial-administrative body, in which civil society is represented. The registration of societies would be taken away from the Ministry of the Interior, and, instead, would take place in a special societies' registry at the Ministry of Justice, according to Article 19 of the Societies Law, which is currently not being applied, just like the civil companies register that falls under the jurisdiction of the Tribunal of First Instance.

The body in question would have a monitoring prerogative and have at its disposal civilian rather than police monitoring agencies. When necessary and for the sake of after the fact monitoring – it would also have the right to call upon the assistance of the security departments to which it submits its reports about suspicious behaviour by a certain society. However, only this body – and not the security services – will have the right to take necessary measures against the violating society and, if need be, resort to the courts to resolve the issue.

-Granting the society the right to take legal action in matters of public interest, provided it is given to all societies equally, in their capacity as high moral entities, and not grant it to one society to the exclusion of others (like the consumer society to which the law flagrantly gave the right to take legal action),

-Lowering membership age from 20 to 18,

-Introducing the principle of "Ministerial Approval" that allows the state to allocate funds to societies under the supervision of the Consultative Council. This would be conditional upon the society having a good administration, that it not discriminating, treating its members equally and granting them equal rights. ... Strict standards should be applied to avoid favouritism among parties like, for example, the French model – from which the Lebanese Law has extracted its laws – where the standard for party financing is subject to stringent rules,

¹⁶ In France, there is a principle of "Ministerial Agreement" to prevent donations from countries that are under the supervision of the Consultative Council. It is conditional upon a society having a good administration, that does not discriminate and affords its members equal rights.

beginning in 1988, when the laws on the transparency of political life, and the financing and electoral expenses of parties, went into effect.¹⁷

-Amending cash sums allowed under in the Law.

In return, Law number 16/72 relevant to youth, sports and scout societies that necessitates prior licensing from the Ministry of Youth and Sports to establish a society, should be abolished. The law in question places these societies' administrations, activities, members and administrative committee elections under the close, and unjustified, scrutiny of the Ministry.

***Monitoring violations:** We suggest the establishment of a body, which would be under the scrutiny of civil society, charged with applying the text of the law governing societies, and monitoring any violations and contraventions against the freedom of societies.

***Reclassification:** There is a need to reclassify societies, delineate their *raison d'être*, and avoid drowning civil society with sectarian, family-based and pro-forma societies (it is important here to differentiate between "civil society", where the young are brought up on democratic practices, and community-based organisations where hereditary succession is rife). Other societies to be avoided are those set up by political officials and their families to benefit from their proximity to power. It is important to note that the suggested classification presupposes that a party's aim is to attain power, while a society's aim is simply to act as a pressure group.

There is also a need to review the privileges granted to existing public interest-type societies, and reclassify them without any discretionary considerations.

***Putting limits on the abuse of civilian activities for political advantage:** To prevent the abuse of power, we suggest forcing holders of official political positions to suspend their activities in civil society organisations, and barring them from forming societies either directly through relatives, up to a certain degree of relationship, or under assumed names.

***Networking:** Networks and unions should be formed to avoid harmful competition harmful to civil society, following the experience of the Higher Council for Childhood that groups under its wing several societies working in the field of child welfare, and the Lebanese Women's Council (there is no need for hundreds of societies that have the same objectives).

***Specialisation:** Societies should specialise in a given field (there is no need, for example, for many non-specialised child welfare societies at a time when childhood issues are diverse, such as violence against children, child

¹⁷ Among the standards in the German Parties Law, in effect since 1967, is coverage of part of the election campaign expenses of parties that submit lists of candidates for the German Parliament, the Bundestag, on condition that they obtain a certain number of votes.

education...). As far as children's societies are concerned, the young are guaranteed the right to form societies under Articles 12 and 17 of the Convention on the Right of the Child, including those under the age of consent, at least within the school's confines. On the other hand, when the society is located outside an academic or educational context, these organisations should be annexed to prominent societies, like UNESCO's children societies, to guarantee that both the society and the children are not politicised.

***The society's programme:** Activities should not be confined to particular circumstances; furthermore, the society's plans should be followed-up, practical suggestions offered, democratic practices inculcated and programmes, that attend to the people's needs and problems, developed.

***Restoring confidence in political parties** after the weakness of the partisan experience as the result of the Lebanese war, for there is a need to combat the culture of enmity towards parties prevalent after the war. This should be followed by critical, courageous, serious and deep re-evaluation by the parties, including accountability and severing ties with external and sectarian interests, to remove any suspicion regarding the partisan experience.

Annexes

1. The Societies Law

2. Law no. 16/72, dated 15/12/1972 (Youth, Sports and Scout Societies)

3. Decision of the Consultative Council abolishing the declaration by the Ministry of the Interior, in order to protect the freedom of societies and curb the excesses of power, based on the appeal by “al-‘Adl” Society (First Chamber, no. 135/2003-2004, dated 18/11/2003)

4. Circular no. 10/M/2006 relevant to the delineation of a new mechanism to advise and notify the Ministry of the Interior and Municipalities of the establishment of societies in Lebanon, and facilitate the process, in application of the Societies Law issued in 1909, and its amendments (G.R. no. 26, 25/5/2006, p. 2962)

III Unions

Union activities in Lebanon are different from those of other societies, and are subject to different legislation. This is why we devote a separate chapter to them in this paper.

First: The current situation

The fact that Lebanese Law has a section for union activities, separate from the September 3, 1909 General Law that covers the activities of societies, which means that this liberal law is not applicable, including the section related to the freedom to form societies and their activities.

The most prominent provision in this special text is Article no. 4, and the relevant sections in the Labour Law, issued on September 23, 1946, that divide unions into three categories: Business Owners' Unions, Employees' Unions and Artisans' Unions.

1. The principle of freedom to organise unions

Lebanese union legislation, issued in the middle of the past century, is a regression from the principle of freedom to organise unions that Lebanon had enjoyed since the early 1990s, as enshrined in the 1909 Law. The Unions Law demonstrates a degree of suspicion and fear of unions and places restrictions on their formation and activities, more than it does for other societies covered by the 1909 Law. This suspicion, which is still there today, was due to fears of the growing communist, Marxist and socialist ideology at a time that witnessed the rise of the Soviet Union, the ban on the Communist Party in Lebanon, restrictions on its members and the ensuing instability involving these groups, and culminating in what was called the "1958 Revolution".

Despite all that, it is well known that Lebanon enshrines the principle of freedom to organise unions with, however, a significant number of restrictions. As a founding member of the United Nations, it ratified many labour conventions and freedom to organise unions issued by international organisations, at the head of which is the International Labour Organisation. Among these international conventions is the Philadelphia Declaration of May 10, 1944, Agreement no. 98 of 1949, the International Convention on Economic, Social and Cultural Rights of 1966, and the Declaration on the Fundamental Principles and Rights at Work of 1998. It also ratified the conventions issued by the Arab Labour Organisation.

Although, at first glance, Lebanese union and labour legislation seems to contradict modern international standards regarding the freedom to form unions, the international conventions that Lebanon has ratified supersede local legislation, according to Article 2 of the Law relevant to civil court proceedings.

2. Restrictions

However, Lebanon has refused to ratify the “Freedom of Association and Protection of the Right to Organise Convention”, under the pretext that it opens the door to the formation of unions, especially given that Article 2 grants workers and business owners, without discrimination or prior licensing, the right to form and join unions.

The Lebanese Labour Law conditions the formation of unions on prior licensing from the Ministry of Labour, according to Articles 86 and 87, and uses its discretion in granting licenses. The Ministry often resorts to granting a large number of licenses to drown the union movement with new imaginary unions, or loyal pro-government unions, to thwart the result of elections to the General Labour Union. This violates the international conventions that Lebanon has ratified, as well as the ordinary law that regulates the activities of societies (1909), which requires only advise and notify from the founders.

Furthermore, the rules and regulations of any union do not enter into effect unless approved by the Minister of Labour, based on Article 89 of the Labour Law. This places obstacles on union life and activities, on and above the already existing pressures and discretionary measures. The same goes for the supervision of the Ministry of Labour over the unions’ administrative and financial minutiae, their membership fees and the assistance granted by the Ministry.¹⁸

In addition, and despite all the conventions that Lebanon has ratified, it still restricts the freedom of individuals to form unions; thus the formation of unions remains restricted to a number of specific professions specified by the Ministry of Labour in accordance with Article 85 of the Labour Law.

Furthermore, the Labour Law only covers unions formed by business owners and employees, based on Article 86 of the Labour Law, and excludes other professions that are not covered by this Law.

The Labour Law also neglects domestic workers and agricultural unions, in Articles 6 and 7, despite the fact that these unions are subject to its rules. It also does not cover teachers’ unions that are subject to special legislation.

In violation of international labour conventions that Lebanon has signed, regulations relevant to employees prevent them from forming a union, save for the employees of private concerns. The latter practice freely their union rights and benefit, like their colleagues in the public sector, from collective conventions, mediation and arbitration, based on order no. 17386 of September 2, 1964, that violates the principles of freedom to organise unions and equality before the law.

¹⁸ Order no. 8275 of 19/4/1996, and order no. 18071 of 12/12/1957

In 2000, the International Labour Organisation evaluated the situation in Lebanon and, prior to that, reviewed many correspondences and complaints it received against government intervention in union activities. We can say, however, that Lebanon adheres, not totally but to a certain degree, to international standards relevant to the organisation of unions; and though the Lebanese Government said, in response, that it intends to develop relevant legislation, it did not positively respond to the request for abolishing prior licensing.

Second: Problems and the principles that should be adopted

***Legislative reforms**

-Lebanon should respect international conventions regarding the freedom to form unions and their activities, and should sign all other international conventions, without any reservation, especially Convention no. 87 of 1948 regarding freedom to organise unions. Lebanon is a member of the International Labour Organisation and, as such, is bound by all United Nations Conventions and the Universal Declaration of Human Rights, as stated in the preamble of its constitution.

-Articles that violate Conventions 87 and 151 should be removed from Lebanese laws.

-Restrictions on the freedom to organise unions, prior licensing, and prior and direct government monitoring of union activities should be abolished. The system of advise and notify should apply to the formation of unions instead of the prior licensing system.

-The ordinary law (of 1909) that frees the formation of societies from prior restrictions should equally apply to unions, with the addition of special provisions for each type of union. Unions are one of the many types of societies and should therefore benefit from all that other societies enjoy, including the freedom to form a union and engage in relevant activities. There should be no discrimination between a “society” (according to the 1909 Law), and a “union” (subject to labour laws) in matters relating to the freedom of forming unions and engaging in their activities.

-Discrimination among unions should be abolished, and measures taken to prevent certain sectors, like the public sector and agricultural workers, from enjoying their right to form and join unions, should be withdrawn.

-A review of the Labour Law and the practice of prior administrative control by the Ministry of Labour, and other amendments,¹⁹ should be re-examined, and Chapter 4 amended.²⁰

-Abolishing or amending Order no. 7993 of April 3, 1952, to remove restrictions on union activities, abolishing prior supervision, and re-examining the significance of the Ministry of Labour’s administrative control.²¹

¹⁹ Articles 94, 96, 103, and 105 of the Labour Law that violate Article 2 of Convention no. 98

²⁰ Articles 480 and its annexes, and 84 that bar employees from engaging in politics

- Codification the union sector, through the adoption of unified and modern legislation uniform to all professional sectors.²²
- Guarantees, privileges and rights stipulated in the Labour Law should apply to all types of unions, including old age pension and health benefits to union members, workers and professionals.
- The need to protect the right of foreign workers and professionals to join unions, in light of market requirements, as well as regulating the right to take days off from work.

***Dispelling mutual fears** and the role of the Ministry of Labour and professionals in forming unions, and in their activities, rules and regulations, finances, elections, negotiations, collective contracts, etc. It is obvious that since the end of the war, the authorities fear unions and, in return, the latter fear the government due to the Ministry of Labour's control over many of their activities. The Ministry has drowned the union movement by creating a large number of unions, and imaginary ones, in order to influence their demands – especially in the last few years – without any sign of improvement in the union movement. In general, the authorities pursue a policy of impoverishing public service institutions in view of privatising them. This state of affairs requires the reestablishment of trust between the union movement and the authorities, as well as a review of the infrastructure of unions.

***Adopting the notification system and the establishment of a mixed supervisory body:** We suggest confining the registration and dissolution of unions to a mixed and independent body, of a legal nature, a legal and administrative union-like entity, similar to the situation for societies.

Such a body would be granted supervisory and monitoring prerogatives, and would have at its disposal effective monitoring tools; it, rather than the administrative authorities, would have the right to take the appropriate measures vis-à-vis the unions. The right to dissolve a union would be the prerogative of the general assembly rather than that of the administrative authority;²³ short of that, either the mixed body, or the law, would shoulder the responsibility.

²¹ For example, the Ministry of Labour sets an election date if union members do not; and prior prerogatives of the Ministry of Labour's representative regarding the election process (M 5). Results would not go into effect except upon the approval of the Ministry of Labour, despite the above-mentioned supervision (M6). Giving the Ministry the alternative prerogative to the law in mediating disputes... and, in the same vein, Articles 12 and 13 of the Order that stipulate on the right to dissolve a union and form another!

²² For more information, see: Morcos, Paul

-“Will the Lebanese People Get their Right to Legislation?”, al-Nahar, 7/6/2004, p. 17

-“How are Laws Written?... the danger of violating the principles of legislation”, al-Nahar, 7/6/2004, p. 9

²³ Article 105 of the Labour Law (administrative dissolution)

***Regulating union infrastructure, renewing sectors and classifying professions**²⁴ to prevent interference by the authorities in limiting the number of unions to only 18 or 19 (their number increases as the technologies that requires the formation of new unions improves) and leave the door open as far as their number is concerned.²⁵ It is also necessary for members of each sector to carry a professional ID cards (to identify union members and avoid duplication).

*The need to stop all discretionary self-serving decisions, on the part of the authorities, when dealing with the union movement.

*Establishing a **full-time body devoted to the welfare of the union movement**, to protect the right of workers, expose violations and decide on the right amount of financing each union deserves.

***Activating initiatives by unions to improve their image and effectiveness:**

-Taking note of the **regression** that afflicted the effectiveness of the union movement after the war: calls for sit-ins issued by the General Workers Union are weak, and the Union has failed to adopt the standard of living index since 1996... **Obstacles:** preponderance of festivities and celebrations in the activities of unions instead of those that effectively impact on public policies, and using unions for political and electoral purposes...

-Unions should play a distinct role in the formulation of public policies and the development of economic and social plans, in partnership with the public sector, and should participate effectively in councils and public institutions (the Economic and Social Council, the Arbitration Council...).

-Unions must engage in lobbying activities that aim at improving the people's daily standard of living (electricity cuts, kind and quality of mobile phone services, rise in prices and the unduly high number of foreign workers...). The government should take into consideration the reaction of unions and labour associations when taking executive decisions on economic and social issues (rise in the price of petroleum products, the price of bread and other subsidised goods...).

-Activating the performance of unions whose aim is to improve the living conditions of its members.

-Labour unions and associations should be free from political and sectarian pressure so that it does not obstruct or paralyse their activities. Unions should also not trespass into the political sphere (from the point of view of the struggle over power).

-The representative and democratic nature of unions: Genuine representative unions should exert all efforts to build up their capabilities. This can be done first by representing the union and, second, by fostering internal democratic practices to ensure that genuine elections are held, a new leadership is selected, and a

²⁴ Certain professions do not have a business owner (drivers, tobacco), and should therefore have a separate union.

²⁵ To avoid names that hide the existence of a union, such as the Association of Secondary Education

democratic administration put in place (limiting the term of the president of the General Workers Union to two years only).

-Democratic behaviour within unions: It is important to note that the practice of internal democracy is linked to the behaviour of the union members, and that democracy does not only rest in the way power is wielded but also in taking part in the decision-making process. Training within the union regarding legal awareness-raising and union rights and responsibilities should be intensified now that these subjects have been integrated into the curriculum.

-Empowering the members: Protecting the rights of members within the union, allowing them to participate in the general council's decision-making process, ensuring transparency of all the union's activities, emphasising citizenship education to encourage enrolment in unions, and citizenship accountability based on union activities. Union membership should be increased (currently, only 5-7% of the work force is unionised),²⁶ union finances should be built up through membership fees, especially since both members and non-members would benefit from the fruits of the unionist struggle.

-Ability of the unions' internal systems to absorb democratic change: Democratic reorganisation should be left to internal systems, without any interference from the Ministry of Labour, especially regarding the internal organisation of societies, election of the administrative council and all technical details, measures and entitlements, and ensuring rotational internal elections.

²⁶ The weak enrolment in the private sector is due to fear of being dismissed from work; there is more protection in both the public sector and private businesses thanks to solidarity among employees. Italian law forces the business owner to reinstate the dismissed employee if judgement goes in his favour, and would be jailed if the owner does not comply.

Annexes

- 1. Excerpts from the Labour Law**
- 2. Order no. 7993, dated April 3, 1952**
- 3. Order no. 17386, dated September 2, 1964**

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