



JONAF's observations on bill () 2021

Jordan Associations' Law (associations' law amendment bill)

June 2021

Seeking to contribute to the efforts to create a law that promotes the role of various local and international civil society organizations and associations, the Jordanian National NGOs Forum (JONAF), sent a letter to the minister of social development and the reviewing committee of the Associations Law 2008 stressing the importance of implementing several procedures to ensure the issuance of an ideal law that emphasizes the constitutionally and internationally protected space and freedom of civil society organizations as partners in development. The forum wishes to highlight its recommendations regarding the amendment of the Associations Law, which it views as an integral part of this memorandum.

JONAF was founded in 2016 and is made up of over 40 local and national civil society organizations representative of the Kingdom's citizens. JONAF works to coordinate and consolidate various efforts in the areas of humanitarian response, implementation of response plans, developing the capacity to respond to crises of member organizations, observing and analyzing reports and research. Please find hereunder JONAF's comments on the law-amending bill () 2021 on Law on Associations and Foundations, which, we trust, may help pertinent actors work toward a balanced and just law that achieves the outcome expected from participatory work of local and foreign organizations aiming at serving and developing communities:

General comments:

1. The government has the responsibility to build trust in civil society organizations that prove to be valuable partners in attaining sustainable development. Trust can only be built by abiding by laws and regulations that guarantee space for organizations to carry out their work under constructive and transparent monitoring. Laws should be designed to help overcome the challenges of bureaucracy, which hinder the work of these organizations. While organizations abide by the national and international laws and standards, and ensure the safe and decent work environment that many private sectors may lack, they face stricter monitoring. Apart from content regarding violations of the law, the suggested legal texts go fail to facilitate the work of organizations, and can even restrict it, like, for example, laws pertaining to the legal status of organizations and their implementation of relevant laws.

2. The name of the law, like that of the council, is not a full reflection of the law itself. The bill does not cover all types of organizations, but is limited to charitable, private and closed ones. As such, we recommend using a clear name for the law, or preserving the existing law.
3. We previously requested that no amendment should affect already existent associations or be applied retrospectively unless it is in the interest of the associations. At the same time, a regularization period should be offered, and this process should be optional. Still, the bill will be applied retrospectively and offers a one-year, extendable, regularization period, which could harm organizations founded based on the current law. It affects the legal status of organizations established according to a law complying with the constitution and which is rendered unconstitutional by the new bill.
4. Numerous texts in the bill conflict with existing private laws, which causes confusion and makes laws contradictory. The Associations Law is a private law; other private and public laws guide their conduct. A private law supersedes a public law in case of litigation. The issue here is the conflict between the amended law and other private laws that can lead to confusion and require the Constitutional Court to solve it.
5. We request that organizations' titles and categories be given based on their size, capacity, operability of Jordanians [do not know what this is. Would it mean "whether they employ Jordanians"??? Please make sure it is fixed], mandate and objectives, and not only according to the number of their founders. Categorizations must also differentiate organizations according to their activity and humanitarian work, unlike the current differentiation, which is among charitable, private and closed [please see above] organizations.

Specific comments on articles of the bill

▪ **First: Article (3/A/1,8,9,10)**

This article provided definitions of organizations affected by this law:

- **Private organizations:** Private organizations equal not-for-profit companies that are covered by the companies' law under discussion in parliament for potential review. The companies law clearly covers not-for-profit companies, therefore, there the text of the existing law and the amending bill will be in conflict and the bill will render the old text obsolete.

- **Non-governmental foreign organizations:** The bill introduces a new type of foreign organizations, yet, examining the definition, it appears this new type is no different from what is defined as a branch of a foreign organization, making the creation of this new category unjustifiable. Moreover, a foreign organization may open a branch in Jordan, under the provisions of the law, so why does the bill differentiate between non-governmental organizations and branches of an organization in a foreign country? Any entity is required to register legally as a branch when it operates in a foreign country, to facilitate the authorities' work of monitoring funding, objectives and members based on official and accredited documents issued in the country where the headquarters of this entity is based.
- **International confederations:** The bill introduces a new type of organization, which may be interpreted as being an entity of the United Nations, to which international law applies. This definition conflicts with the international law where UN and other international entities are considered legal personalities and their relationship with a country is regulated by international law. They cannot be subjected to national laws in order not to create conflict at national and international levels. International legal personalities such as UN entities, international coalitions and international unions are founded through agreements that can only be amended with the consensus of all members. They function in a country only after international agreements are reached with that country, and allowing them to register in a country contradicts the recommendations of the United Nations World Humanitarian Summit (2016) and the UN General Assembly Resolution 61/134 that define a balanced and just relationship between local and international civil society organizations in terms of humanitarian, development and crisis and disaster response funding, and confirm the need to expand the role of local actors in research, planning, response and management, and sustainability of efforts, rather than limiting it to the current "service provision" and "execution" role.

Accordingly, JONAF cannot find justification for creating new types of foreign organizations, as long as their branches are registered, giving national numbers and are subject to the legislation in force. We demand the removal of additional titles since international organizations may function by virtue of international agreements with Jordan.

▪ **Second: Article (3/b):**

Article 3/b contradicts with Article 33/b/1 in terms of application. Article 3/b exempts any legal person functioning under the provisions of the private law from abiding by the provisions of the law on any legal person under the provisions of the private law, while Article 33/b/1 states that not-for-profit companies registered under the Companies Law and the Associations Law prior to the date the new comes to be enacted are to be considered registered and functional under the provisions of this law [which this? If the companies and associations, "this" should become "these two laws"]. Thus, the two articles are contradictory and will pose legal challenges when applied.

▪ **Third: Article (4/b/9):**

The bill requires the appointment of eight people to the higher council of associations experienced in charity and voluntary work. The text should elaborate on what “experience” may be considered, and criteria must be set to ensure the required number of years of experience, qualifications and others.

▪ **Fourth: Article (7/b/8):**

The article states that it is the responsibility of the secretary general of the council to set the requirements for registering an organization. These requirements must be published in the official gazette, detailing rules for different types of organizations, similarly to the regulations covering companies’ names.

▪ **Fifth: Article (10/a):**

This falls under the above-mentioned observations regarding **international confederations and not-for-profit foreign organizations**.

▪ **Sixth: Articles (12/a) and (19/c/2):**

The articles state that the absence of an answer to a registration application or foreign funding within the legally stipulated period is an automatic rejection. This amendment violates local regulations and international human rights law, and limits freedoms stated in the International Covenant on Civil and Political Rights, this violating this law. It unjustifiably restricts civil society organizations (The same comments are made regarding the amendment of Companies Law and foreign funding). Our comments are as follows:

1. The bill is unconstitutional and violates the freedom to form organizations within the legal framework set in Article 16/2, which stipulates that Jordanians have the right to form organizations, unions and political parties providing their aim is legitimate, methods are accurate and regulations do not violate the constitution.

The legal text of the bill is unconstitutional as legislation must uphold rights stipulated in the constitution as essential, inviolable and that must not be compromised. Legislation should not restrict rights unless it is for the better good of communities, as stated in the constitution. Legislation must reinforce the application of the constitutional laws, rather than restrict it.

2. The amendment contradicts Article 20/1 of the Universal Declaration of Human Rights, which stipulates that civil society organization play a role in guaranteeing public freedoms and rights. Restrictions on obtaining funding and rejection of registrations affects freedoms and rights in a country and the contribution of organizations, contradicting the United Nations Human Rights Council's resolutions 24/21 and 27/31 which recognize *"the crucial importance of the active involvement of civil society, at all levels, in processes of governance and in promoting good governance, including through transparency and accountability, at all levels."*
3. The two amended texts contradict the High Administrative Court's judgement that permissibility is the basic principle in acts. Thus, a funding application should be approved unless a legal justification exists, as justification is a main pillar of administrative decision making. Therefore, a decision based on an inaccurate justification contradicts the law and is illegal, according to the High Administrative Court's judgement (formerly, Ministry of Justice) in various decisions, including decision 125/2009.

Considering the above stated and reiterating our aspirations to promote the rule of law, we demand the cancellation of the amendment which says that if no decision is made within 60 days, the application is to be considered rejected. The same concerning the decision on funding -- if no decision is made within 30 days, the application is to be considered rejected. --We urge changing it, in view of the aforementioned comments, to read that the absence of an answer should be considered an implicit approval. Alternately, we suggest preserving the current law.

▪ **Seventh: Article (6/5,7,11):**

Article 16 lists actions organizations are prohibited from and liable for taking:

Providing educational or vocational certificates, conducting opinion polls, publishing, making available or conducting field research without permission, and carrying out any activities that use definitions or the names of coalitions and unions names and/or legal persons' names.

This article's text targets the work and goals of organizations, a limits their work and makes it compulsory to require approvals for certain activities. The question is, how could activities be carried out without field research and opinion polls that fulfill the requirement of scientific research? How can actual needs be identified, programs designed, and services provided without field studies? Why would a project require further approvals when it had been already approved as a whole? Why would studies about child right, agriculture or labor require specific approvals?

Additionally, how are organizations supposed to achieve their goals away from coalitions? The bill contradicts international standards such as the Universal Periodic Review (UPR) and human rights that call for the formation of coalitions by civil society organizations. Jordan follows UPRs, which demonstrates the country's stance on civil society organizations and commits the country to following international human rights standards.

Article 27/b allows for the formation of coalitions and unions, but gives them a legal person's status, requiring them to register officially, while according to the current law, a notice suffices. The amended bill is bound to raise additional barriers as most coalitions are formed temporarily for advocacy efforts and should not be required to follow such procedures, especially when there are no membership fees or funding involved, nor implementation of projects.

JONAF recommends that the provisions of this article be omitted due to their limiting and restrictive effect on organizations.

▪ **Eighth: Article (19/2):**

Article 19/2 states that bank accounts of organizations cannot benefit from the secrecy and permits the president or secretary general of the organization to access information, violating laws governing banks. JONAF stress the need to promote transparency, accountability and good governance and presents its comments on this text:

- We reiterate the observations presented in paragraph 4 under the General Comments section, regarding conflicting laws.

- Since organizations are legally bound to present annual budget reports produced by accredited auditors and/or through the council and council members and staff are granted police powers, what is the desired outcome of this text, or its purpose and justification, especially since it grants absolute, unrestricted and unjustified authority to the council. If necessary, such authority must be granted in specific cases (and we still object to this), as such authority is originally held by judicial bodies and is granted through a court order.

JONAF recommends the deletion of this text and ensuring that removal of banking secrecy may only happen through a court order and/or specific cases when the president may submit such an application with the council's consensus.

- **Ninth: Article (22/a/5)**

Article 22 states that an organization is dissolved in specific cases, including when an agreement with a foreign entity was reached without the council's approval.

What is the legal justification of the amendment? If an agreement does not entail funding, and focuses on collaboration, exchange of experience, capacity building and even reaching agreements with non-Jordanian entities, why is an approval required and why would the penalty be so harsh?

The text restricts civil society organizations' work, and the penalty envisaged has no justification, especially since no such punishment applies to obtaining funds, a much riskier activity, which entails a series of different procedures and penalties. Moreover, why should organizations have to obtain approvals for foreign funding when one of the application requirements is to have signed agreements with donors, usually foreign entities?

As such, we recommend the deletion of this amendment.

- **Tenth: Article (24):**

The text of Article 24, which states that "funds of organizations are considered public funds and are collected in line with the Public Funds Collection law, is unconstitutional. A private entity's funds cannot be considered public funds, especially when it is subject to the Audit Bureau.

JONAF once again reiterates its commitment to transparency, integrity, and good governance. However, treating organizations' funds as public funds will affect the organizations' independence and burden them with numerous requirements and authorities with whom to



follow up, such as pertinent ministry, the Tax Department, the Social Security Corporation, the organizations' councils, the Audit Bureau and other entities that might request annual audits which only add expenses most organizations cannot afford. Considering organizations' funds as public funds will limit their financial and legal freedom, affect their work relations and their ability to obtain funding.

Accordingly, we recommend the deletion of this amendment.

▪ **Eleventh: Article (30)**

Article 30 grants the council police authority, contradicting the constitution and relevant laws. Criminal Procedure Code defines the authority of judicial police and limits it to the executive authority, i.e., security apparatus, and prohibits the search of private properties without a warrant except for cases of serious crimes. If the security services themselves cannot search a place without a warrant, how can the council be given such authority, even though organizations are legally required to provide annual budget auditing reports issued by_ and monthly and annual reports? The amendment unjustifiably grants council staff powers that only judicial bodies should have.

In view of the above comments and reiterating our commitment to promoting the rule of law, JONAF calls for the cancellation of the amendments and is willing to discuss the comments and wishes to keep the communication channel wide open with the ministry of social developments and the committee.

The amendments suggested are extremely important so our recommendations should be given serious consideration. JONAF believes it is imperative that the tools and mechanisms of the law be promoted and designed scientifically to promote monitoring, preserve the work and sustainability of civil society organizations, clarify the relationship among international donors, government institutions and non-governmental institutions, as well as promote the localization of humanitarian work and focus local organizations' work on research, planning, development while working hand in hand with the Jordanian government to serve the community.