

CIVICUS Comments on Iraq Draft Law

Johannesburg 29 August 2009. The Iraq draft Law of Non Governmental Organizations which is currently under consideration by the country's Parliament has been the subject of severe criticism by civil society. Enactment of the draft Law in its present form will severely curtail the activities of NGOs providing substantial support to the people of Iraq and assisting in the achievement of Millennium Development Goals.

A number of provisions of the draft Law fail to comply with freedom of association guarantees contained in the Constitution of Iraq, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

In the interests of the protecting constitutional freedoms and upholding the obligations of the Government of Iraq to its people under international law, CIVICUS urges that the following areas of concern with regard to the draft Law be addressed:

Registration process based on executive discretion

In order to register, the founders of an NGO must first undertake the preliminary step of presenting an 'establishment application' to the NGOs Department in the Secretariat of the Council of Ministers. The government has complete discretion to refuse the application at this stage without an obligation to provide reason for its denial. Also, there is no provision for filing an appeal against rejection of an establishment application. A formal registration application can only be presented upon approval of the establishment application. Although, the government is obliged to state the reasons for rejection of a registration application and an appeals process is also prescribed in this respect, the international law principle of prescribing well defined grounds to refuse registration has been ignored. Article 22 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Iraq explicitly states that no restrictions may be placed upon the freedom of association "except those which are prescribed by law and 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".

CIVICUS recommends that the requirement to present an establishment application is removed and the grounds to reject a registration application are well defined, and are in accordance with international law provisions.

Denial of freedom of association to non-citizens, youth and children

The draft law discriminates against non-citizens, the youth and children by stipulating that in order to found an NGO, one must be a citizen of Iraq and at least 20 years of age. Furthermore, in order to be a member of an NGO, one must be a citizen of Iraq and at least 18 years of age. Foreigners are not permitted to head NGO networks, individual NGOs or any of their bodies. These conditions are in breach of international law provisions. Article 22 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Iraq states that "everyone shall have the freedom of association with others, including the right to form and join trade unions for the protection of his interests". Article 15 of the Convention on the Rights of the Child ratified by Iraq obligates states parties to "recognize the rights of the child to freedom of association and to freedom of peaceful assembly".

CIVICUS recommends that age and citizenship bars to being a founder, member or head of an NGO or NGO network be removed.

Excessive state regulation

The draft law imposes excessive state regulation and controls on NGOs by subjecting them to burdensome bureaucratic requirements, which could have negative impact upon their operations and ability to

formulate positions independent of the government in public debates. Three provisions which could be used as a tool to harass NGOs critical of official policies are (i) the requirement to apply for renewal of registration every two years, which keeps NGOs in a permanent state of uncertainty regarding their legal status, (ii) the requirement to take prior approval from the government before receiving funds from abroad which constitutes an unnecessary bureaucratic impediment for NGOs to obtain funds particularly as all financial transactions of NGOs are to be routed exclusively through public banks or through private banks with the prior permission of the government and, (iii) the requirement to receive prior approval from the government before establishing a branch, which constitutes an impediment to NGOs from expanding their regional outreach through branch offices. Additionally, the requirement for all donors to notify the government in advance constitutes an unnecessary hurdle for NGOs to obtain funds particularly from individual donors. Annual reports to be submitted by NGOs to the government already specify inclusion of a detailed description of the sources of their funds and financial transactions. According to Article 13 of the UN Declaration on Human Rights Defenders, "everyone has the right individually and in association with others, to solicit, receive and utilize resources for the express purposes of promoting and protecting human rights and fundamental freedoms through peaceful means...". Article 3 of the Declaration places a responsibility on UN member states to enable the "effective realization" of the rights included in the Declaration through domestic legislation.

CIVICUS recommends that the principle of perpetual succession for legal entities is upheld and NGO registration is a one-time activity; and the requirement to take prior approval from the government before receiving funds from abroad or establishing branches is removed along with the requirement for prospective financial contributors to NGOs notify the government in advance.

Restrictions on foreign NGOs and employing foreign staff in local NGOs

The draft law imposes unwarranted restrictions on foreign NGOs and employment of foreign staff in local NGOs. Local NGOs are not permitted to employ more than 25% foreign staff. Foreign NGOs cannot make up more than 25% of the membership of an NGO network. It is submitted that across the world, professional foreign staff and foreign NGOs make significant contributions to national life through exchange of technical expertise and best practices in respect of civil society activities. Placing caps and limits upon their participation only serves to impede the free flow of constructive ideas and concepts across frontiers. According to Article 1 of the UN Declaration on Human Rights Defenders, "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

CIVICUS recommends that limits on the number of foreign staff in NGOs and limits on membership by foreign NGOs in networks are removed.

Excessive penalties and unclear application

Up to three years imprisonment is prescribed for (i) membership of an NGO that was established in violation of the draft law, or (ii) conducting an activity in an NGO that was denied establishment approval or was dissolved according to the draft law. The above provisions are problematic in two aspects. One, the excessive nature of punishment may serve to deter participation in NGOs. Secondly, an impression is created that unregistered NGO activity is a criminal offence. Under international best practice, the decision to register should be the prerogative of an NGO, and organizations that choose not to register should not be deemed illegal. According to Article 2 of the UN Declaration on Human Rights Defenders, "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

CIVICUS recommends that criminal penalties for establishing NGOs in violation of the draft law be removed and a provision that specifies that registration of NGOs is not mandatory be included in the draft law.

CIVICUS: World Alliance for Citizen Participation is a global movement of civil society with members and partners in over a hundred countries. The Civil Society Watch (CSW) programme of CIVICUS tracks threats to civil society freedoms of expression, association and assembly across the world. In 2008, CSW tracked threats in 61 countries across the globe.