

SPECIAL SECTION: THE MIDDLE EAST

NGO Laws in Selected Arab States

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I. Civil Society Organizations in the Arab World

In the last two decades, much has been written about the emergence of civil society organizations and the important role that they can play in a country's economic and political development. Broadly speaking, civil society organizations are the charitable foundations, civic associations, non-governmental organizations, volunteer groups, trade unions, professional organizations, and social movements—everything from medical charities, sports clubs, and environmental groups to women's and human rights groups—that make up the “third sector” of modern life, separate from both the government and the marketplace.² Civil society organizations work on an array of causes and issues and appear in many different forms, but they all share the attributes of being private, non-profit, self-governing organizations that individuals are free to join or support voluntarily.³

Civil Society in the Arab World

Although a great deal of work has analyzed the impact and nature of civil society in Eastern Europe and Latin America, comparable analysis covering the Middle East has been lacking. In the West we often tend to think of the Middle East as a monolithic block of ruthless, repressive, and authoritarian governments. But though the modern Middle East has been cursed by awful governance and hereditary autocrats, this “Orientalist” point of view obscures both the Arab-Islamic past and the many recent reforms and developments that give reason to feel optimistic about the future. The Middle East is not monolithic: there are a wide variety of laws and practices throughout the region, and there is an enormous difference between a country such as Egypt, with 16,000 registered NGOs, and a country such as Saudi Arabia, which bans almost all forms of private association.⁴

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² For more information on civil society organizations and civil society generally, see Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY.

³ Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, pp. xxi - xxii

⁴ “Saudi Reformers: Seeking Rights, Paying a Price,” Neil MacFarquhar, *The New York Times*, June 9, 2005.

This article briefly introduces the contours of civil society organizations and the laws that affect them in the Middle East. It profiles ten major Middle Eastern countries, whose laws span the gamut from extremely repressive to excessively liberal. Though the term “civil society organization” ordinarily includes professional organizations, trade unions, and religious trusts, in the Middle East these groups are by and large controlled by the government or subject to substantial governmental interference. Because of their deep association with the government, these groups cannot be considered part of the private, non-governmental “third sector.” This article will therefore be limited to an examination of secular non-governmental organizations, associations, and foundations. For simplicity, these are referred to throughout the article as “NGOs.”

Each country profile briefly examines the state of the domestic civil society sector and then identifies the applicable NGO legal structure and analyzes it in terms of global “best practices.”⁵ Particular attention throughout has been paid to licensing and registration requirements, legal rights and obligations, and government supervision and enforcement; other important or oppressive clauses have been highlighted as well. It is my hope that this survey provides an introductory resource for those studying civil society in the Middle East, those working on the task of Middle Eastern legal reform, and donors and international NGOs interested in expanding their activities in or to the region.

II. Country Profiles

Algeria

Algeria has only recently emerged from a long history of occupation, military dictatorship, and bloody civil war. Although first elected in April 1999 amidst widespread electoral fraud, President Abdelaziz Bouteflika has embarked on a somewhat successful program of national reconciliation and political modernization. Parliamentary elections held in 2002 were judged “free of systemic fraud and vote rigging,” but they were nonetheless criticized by Freedom House because of the government’s refusal to allow candidates from Islamist parties to seek offices.⁶ In 2004, President Bouteflika was reelected with almost 85 percent of the vote, in what the U.S. State Department said was Algeria’s first presidential race since independence that “was democratically contested to the end.”⁷ Since then, Bouteflika’s government has continued a program of modernization and liberalization.

Algeria today enjoys a print media that Freedom House judges “among the most vibrant in the Arab world”⁸ and a reenergized and increasingly active civil society sector. Unfortunately, the main law governing NGOs in Algeria is the **Associations Act of 1990**

⁵ Many of the laws referred to in this survey are available in Arabic and English in the Online Library section of the International Center for Not-for-Profit Law’s website (<http://www.icnl.org>). For a more comprehensive treatment of NGO law “best practices,” see *Guidelines for Laws Affecting Civic Organizations* (Open Society Institute, 2004).

⁶ Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

⁷ U.S. State Dept. Background Note: Algeria. <http://www.state.gov/r/pa/ei/bgn/8005.htm>

⁸ Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

(Act 90-31), a highly restrictive law adopted shortly before the military coup and Algeria's long decade of violence and terrorism. Although the Bouteflika government has not indicated any intention to include the Associations Act in its campaign of legislative modernization, Act 90-31 is a prime candidate for reform and liberalization.

Licensing

Act 90-31 defines associations as "individuals or legal entities" that "form a group on a contractual basis for non-profit purposes," and requires them to obtain a license from the government prior to formation.⁹ This type of mandatory licensing is an unnecessary and discouraging burden for NGOs, the vast majority of which are informal organizations with no need for legal personality or government supervision. Mandatory licensing is common in the Middle East, typically justified by government fear of Islamic fundamentalist and terrorist groups. However, such groups will operate underground with or without mandatory licensing requirements, so the practical effect of such laws is to discourage the establishment of peaceful and moderate organizations while doing little to prevent the spread of more radical groups.

Fortunately, Algeria's actual process of licensing is not overly burdensome or expensive, at least in comparison to regional standards. NGOs need only file a "Declaration of Incorporation" that includes the names, professions, and addresses of each founding member; two certified copies of the NGO's statutes; and the minutes from the NGO's founding meeting. This "declaration" must be filed with the governor of the province in which the NGO is headquartered (the "*wali*" of the "*wilaya*"), and in the case of associations that operate in more than one *wilaya*, with the Ministry of the Interior as well.¹⁰ The local agency (and, if applicable, the Interior Ministry) has 60 days to approve or deny the application, and if no answer is received within that time period, the application is considered approved.¹¹ Upon approval, the NGO must publish a notice of its incorporation in a nationally distributed daily newspaper at its own expense.¹²

If the government agency rejects the application, the matter is automatically referred to an Administrative Court, which must affirm or reverse the agency's decision within 30 days of referral.¹³ In theory, automatic referral to court offers protection against unjust or arbitrary decisions, but in Algeria the agency enjoys so much discretion that the judicial role is limited. The law gives government agencies the right to deny a license if any founder has "demonstrated conduct contrary to the interests of the fight for national liberation," or if the association was "founded for a purpose contrary to the established institutional system," "public order," or "public decency."¹⁴ These terms, further undefined in the law, are so vague that in practice the courts are unlikely to reverse an agency decision. The government has not hesitated to use its broad powers to deny licenses to NGOs that it finds embarrassing or otherwise irritating, most recently the Association of

⁹ Act 90-31 (Algeria): Art. 1.

¹⁰ *Id.*, Art. 45.

¹¹ *Id.*, Arts. 7-8.

¹² *Id.*, Art. 8.

¹³ *Id.*, Art. 8.

¹⁴ *Id.*, Arts. 4-5.

Families of the Disappeared of the *Wilaya* of Constantine, a group focusing on human rights abuses committed by Algerian security forces.¹⁵

Foreign NGOs that wish to establish offices in Algeria are not subject to any explicit extra requirements, but their licenses must be approved by the Ministry of the Interior regardless of the geographic scope of their operation.¹⁶

Legal Rights and Obligations

Once an Algerian NGO obtains a license, it acquires judicial personality and legal capacity, meaning the right to bring suit as a plaintiff, enter into contracts, and acquire real property.¹⁷ No practical restraints are placed on the NGO's ability to raise funds domestically, but any foreign donations must be pre-approved by the Ministry of the Interior.¹⁸ The criteria under which the Interior Ministry can deny approval are not specified, and an NGO that wishes to appeal an adverse decision has no recourse to the courts. This clause essentially allows the Interior Ministry to starve NGOs of a major source of funding (in some cases the only source) at will. Similarly restrictive is the law's requirement that the Interior Ministry give approval before any NGO can join an international association or federation, a provision that does nothing but prevent NGOs from meeting with their peers in the international community to compare ideas and learn from groups with more expertise and experience.¹⁹

In contrast to the laws of most Middle Eastern states, Algerian law does not impose a specific governing structure on NGOs, though it does require compliance with certain minimum guidelines.²⁰ However, NGOs must report basic information regarding their workforce, source of funds, and financial position to their local *wali* on a regular basis.²¹ NGOs are also prohibited from having any "institutional or structural relations" with political associations, but the rights of NGOs to participate in public policy debates, comment on political developments, and endorse candidates are not abridged.²²

Notably, the law does not encourage the formation of NGOs by providing any direct or indirect financial benefits, such as tax exemptions or public utility discounts. Even in the Middle East, most states now recognize the importance of civil society and seek to expand NGO operations by providing such incentives – but not Algeria.

Supervision and Enforcement

Act 90-31 allows the government to dissolve or suspend any NGO, but in order to do so the Interior Ministry must first obtain a court order stating that the NGO has vio-

¹⁵ Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

¹⁶ Act 90-31 (Algeria): Arts. 39-44.

¹⁷ *Id.*, Art. 16.

¹⁸ *Id.*, Art. 28.

¹⁹ *Id.*, Art. 21.

²⁰ *Id.*, Art. 23.

²¹ *Id.*, Art. 18.

²² *Id.*, Art. 11.

lated a major provision of the law.²³ The fact that the Interior Ministry cannot simply dissolve an NGO on its own may appear positive, but again the law is so broad that the Interior Ministry can ordinarily obtain the necessary court order with ease. In any case, the Algerian judiciary is not quite an independent branch of government; it is largely dependent on the Ministry of Justice, which can remove judges at any time.²⁴ Algerian judges are thus unlikely to challenge the assertions of the executive branch. Even worse, Act 90-31 provides for between three months' and two years' imprisonment and a fine for any individual who "directs, administers, or promotes" or "encourage[s] the meeting of members" in "a non-accredited, suspended, or dissolved association."²⁵ Rather than encourage the formation of NGOs, provisions such as these seem specifically designed to discourage NGOs and the civil society sector in general.

A Continuing Process

Although Algeria has made progress since the end of its civil war, there is still much to be done. NGOs can play an important role in the continuing modernization and development of the country, but they cannot do so without a regulatory and legal environment that encourages their formation.

Egypt

Egypt is the most populous country in the Middle East, a major United States ally, and regional power whose laws, courts, and social norms often serve as models for emulation by other Arab states. Cairo's decisions influence those taken in capitals throughout the Arab region, and it is no coincidence that the Arab League is headquartered in Egypt's capital city. Although several other Arab states provide a more liberal environment for the operation of civil society groups, Egypt's influence and status as a trendsetter for the Arab mainstream suggests the particular importance of its civil society sector, laws and practices.

Civil society in Egypt is governed by the provisions of the **Law on Non-Governmental Societies and Organizations (No. 84 of 2002)** and the **Executive Statute on Law 84 of 2002 (Ministry of Insurance and Social Affairs Decree No. 178 of 2002)**, which implements and clarifies the provisions of the parliamentary law. Despite the highly restrictive nature of its civil society laws, Egypt has one of the largest and most vibrant civil society sectors in the entire developing world. A 1999 survey undertaken by the Arab NGO Network for Development found that Egypt's civil society sector employed the equivalent of 629,223 full-time workers, accounting for \$1.5 billion in expenditures (approximately 2 percent of Egypt's GDP)—and this survey did not take into

²³ *Id.*, Arts. 32-38.

²⁴ Freedom House, *Freedom in the World 2003* (Algeria Country Report), <http://freedomhouse.org/research/freeworld/2003/countryratings/algeria.htm>.

²⁵ Act 90-31 (Algeria): Art. 45.

account the substantial impact of religious-based groups.²⁶ *Al-Ahram*, Egypt's official newspaper of record, estimated that in 2003 more than 16,000 NGOs were registered.²⁷

It may seem incongruous that so many NGOs and civil society groups can exist in a country whose NGO law has been called "one of the most restrictive in the world,"²⁸ but Law 84 / 2002 is not so much restrictive as it is discretionary. Law 84 / 2002 gives enormous discretionary powers to the Ministry of Insurance and Social Affairs (MOSA). In practice, however, the full weight of this authority is brought to bear only against organizations and individuals that cross the government's "red lines" in pushing for social reform and political liberalization. The vast majority of Egyptian NGOs, consciously apolitical and primarily concerned with issues such as the environment, education, and welfare, are generally left to operate without substantial government interference.

Licensing

As with most Middle Eastern states, licensing of NGOs in Egypt is mandatory. Law 84 / 2002 requires any "group whose purpose includes or that carries out any of the activities of associations and institutions, even if it assumes a legal form other than that of associations and institutions" to operate with a permit from MOSA.²⁹ This provision effectively precludes informal, unlicensed groups. Its emphasis on activities rather than legal forms similarly precludes NGOs from incorporating as civil companies or law firms (as many did before the law's enactment) in an attempt to avoid the more onerous provisions of the NGO law. The licensing process itself is time-consuming and tedious, requiring NGOs to submit to MOSA two copies of the society's bylaws; two copies of a list of the founders, including their names, ages, nationalities, professions, and addresses; a declaration from each founding member that no criminal judgment has ever been made against him or her; a document listing the founding member who will represent the founders in any administrative or legal matter; an occupancy deed demonstrating that the NGO has a physical headquarters; and finally a £E 100 deposit into the account of the government-run "Fund for Support of Non-Governmental Societies and Associations." The mandatory deposit and occupancy deed requirements can pose major obstacles to licensing new NGOs, many of which start out in a founder's home and lack the resources to obtain real estate for separate headquarters.

Foreign NGOs are not allowed to operate in Egypt without securing the permission of the Ministry of Foreign Affairs. The Ministry's decision is based on unspecified factors and not subject to any court appeal.³⁰

Once all of the necessary paperwork has been submitted, MOSA is required to accept or reject the application within 60 days; otherwise, the application is considered ac-

²⁶ Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, p. 217.

²⁷ "Judges rule out compliance," Mariz Tadros, *Al-Ahram Weekly Online*, 12-18 June 2003 (Issue No. 642), <http://weekly.ahram.org.eg/2003/642/eg12.htm>.

²⁸ "The Impact of NGOs on the State & Non-State Relations in the Middle East," Peter Gubser, *Middle East Policy*, March. 2002, Volume 9, Issue 1, p. 141.

²⁹ Law 84 / 2002 (Egypt): Preamble, Art. 4

³⁰ *Id.*, Art. 1

cepted. This is a substantial improvement over the previous associations and foundations law (Law 32 of 1964), which set no limit on how long MOSA could take in considering an application, thus enabling MOSA to “process” an application for years. If MOSA rejects an application, it must do so in writing and provide substantiated reasons for its decision. Associations have the right to appeal a rejection in court.

All of these positive aspects of Law 84 / 2002, unfortunately, do not herald a new attitude on the part of the Egyptian government toward civil society groups. Although Law 84 requires MOSA to respond to an application for a license within 60 days, even the state-run press has reported both MOSA’s tendency to return applications as incomplete rather than accept them and be bound by the 60-day time limit; and instances of groups having to wait “more than three months” without receiving an acknowledgment that an application has been filed, in contravention of Law 84’s clear instructions otherwise.³¹ In any case, Law 84 / 2002 gives MOSA so much discretionary leeway that it can reject applications arbitrarily while technically complying with the law. MOSA has the right to refuse the application of an NGO that is threatening to “national unity” or might violate “public order or morals.”³² Nowhere are these vague terms clarified, and so, as with the Algerian case, Egyptian courts are unlikely to reverse Ministry decisions. MOSA thus effectively has the authority to prevent the licensing of any group it perceives as a threat to the government, simply by grounding its decision in the language of morality or security.

Legal Rights and Obligations

If an NGO does obtain a license under Law 84 / 2002—and at least 10,000 groups have done so³³—its legal rights remain constrained. Law 84 / 2002 repeatedly takes the sort of narrow, focused restrictions most countries put in place to prevent fraud or corruption and converts them into standards that are broad, vague, and sometimes virtually incomprehensible. For example, the law prohibits “unionist activity,” which seems sensible given that unions are regulated by a separate law. But the actual language of the prohibition – NGOs are banned from “claiming specific professionals’ rights vis-à-vis employers”³⁴ – is difficult to parse. Nasser Amin of the Arab Centre for Independence of the Judiciary and the Legal Profession puts it succinctly: “Our center concerns itself with violations committed against lawyers and judges. [What happens when] a low-level civil servant interprets that as taking the side of the legal profession, causing obstacles to our registration?”³⁵ Similarly, the Egyptian law prohibits NGOs from engaging in any “political activity,” including “advocating the program of one of the parties,” contributing money to support an electoral campaign, spending money in support of party activity or a

³¹ See “Matters of permission,” Mariz Tadros, *Al-Ahram Weekly Online*, 5-11 June 2003 (Issue No. 641), <http://weekly.ahram.org.eg/2003/641/fr2.htm>.

³² Law 84 / 2002 (Egypt): Art. 11(2), Art. 6, Art. 42.

³³ See “Matters of permission,” Mariz Tadros, *Al-Ahram Weekly Online*, 5-11 June 2003 (Issue No. 641), <http://weekly.ahram.org.eg/2003/641/fr2.htm>.

³⁴ Ministry of Insurance and Social Affairs Decree 178 / 2002 (Egypt): Art. 25.

³⁵ “Regulating or restraining?” Mariz Tadros, *Al-Ahram Weekly Online*, 7-13 November 2002 (Issue No. 611), <http://weekly.ahram.org.eg/2002/611/eg4.htm>.

candidate, or endorsing or “putting forward candidates in the name of the society.”³⁶ NGOs have an important role to play in public policy debates, and they should not be so thoroughly silenced.

In addition to these restrictions on the outside activities of NGOs, Law 84 / 2002 prohibits NGOs from making many internal decisions without first obtaining government approval. The law mandates the organizational structure of each NGO to a high degree of specificity, and requires all of them to join regional, state-level, and national umbrella organizations.³⁷ NGOs are not allowed to expand their work into any new “project areas” that were not a part of their original charter, and they are prohibited from collecting funds from abroad or affiliating with foreign or domestic groups or unions without MOSA permission.³⁸

Law 84 / 2002 does, however, confer many benefits on the NGOs that manage to obtain a license and comply with its regulations, including a reduction in telephone, water, electricity, and gas charges; a 25 percent discount on railway shipments; and an exemption from stamp taxes, customs duties, and contract registration fees.

Supervision and Enforcement

As with much of Law 84 / 2002, the provisions dealing with supervision of NGOs and enforcement of the law are vague, arbitrary, and unnecessarily severe. MOSA has the authority to dissolve any NGO at any time if finds that the organization is “threatening national unity” or “violating public order or morals.”³⁹ And although any MOSA dissolution order is appealable to the administrative courts, an appeal can take several years in Egypt’s backlogged court system. As an example, the Egyptian Organization for Human Rights fought MOSA in court for more than *ten years*.⁴⁰ Although it ultimately prevailed, the well-respected human rights group wasted enormous amounts of time and money in its decade-long fight for legal recognition.

More worrisome, from the standpoint of encouraging civil society, Law 84 / 2002 imposes severe *individual* penalties for non-compliance with the law.⁴¹ These penalties include up to one year in prison and a fine of up to 10,000 Egyptian pounds for establishing an association that threatens “national unity” or violates “public order or morals”; up to six months in prison and a fine of up to £E 2,000 for conducting NGO activity “without following the provisions prescribed” by the law, conducting activity despite a court ruling dissolving or suspending an association, or collecting or sending funds abroad without MOSA permission; and up to three months in prison and a fine of up to £E 1,000 for conducting NGO activity without a license from MOSA, affiliating with a foreign

³⁶ Ministry of Insurance and Social Affairs Decree 178 / 2002 (Egypt): Art. 25.

³⁷ *Id.*, Chapter 9.

³⁸ Ministry of Insurance and Social Affairs Decree 178 / 2002 (Egypt): Art. 48; Law 84 / 2002 (Egypt): Arts. 16-17.

³⁹ Law 84 / 2002 (Egypt): Art. 11(2), Art. 6, Art. 42.

⁴⁰ “Braced for new challenges,” Gihan Shahine, *Al-Ahram Weekly Online*, 10-16 July 2003 (Issue No. 646), <http://weekly.ahram.org.eg/2003/646/eg2.htm>.

⁴¹ Law 84 / 2002 (Egypt): Art. 76.

NGO network or association without MOSA permission, or merging with another association without MOSA approval.

Restrictions such as these throw cold water on the entire concept of civil society. Laws should, of course, be enforced, but violations of civil society laws are best punished with fines and administrative penalties. Criminal sanctions should be used only in the most exceptional cases. Making prison terms the standard punishment discourages individuals from forming NGOs, lest they risk their personal freedom and livelihood—in marked contrast to the Egyptian government's self-proclaimed "commitment to supporting voluntary civic work."⁴²

The Role of the Judiciary

Egypt's judiciary is admired and well-respected as one of the most independent and fair institutions in the entire Middle East. Although the Egyptian executive branch exerts an inordinate amount of influence over the judiciary, the judiciary has nonetheless protected the rights of NGOs in a noteworthy manner (and more importantly, the executive branch has complied with its rulings). Perhaps with this history in mind, Law 84 / 2002 gives MOSA the power to dissolve civil society groups, refuse their applications, and imprison their members, all without first making a case in court. Only after MOSA has acted and the damage has been done can an NGO lodge an appeal—and, as discussed above, appeals can take months or even years. But unless and until Law 84 / 2002 is revised, the Egyptian judiciary, overwhelmed as it is, will remain the only protection for NGOs against the abuses of the Ministry of Social Affairs.

Iraq

It goes without saying that Iraq is a country in a major state of flux, struggling to leave behind instability and insecurity and transform itself into what the world hopes will be a secure, modern, and democratic state. Because of ongoing military operations and a general lack of security, it is difficult to measure the size and scale of NGO operations in Iraq today. What is clear is that in the immediate wake of the war, many international NGOs set up operations in Iraq, but as security conditions continued to deteriorate, a significant proportion of them ceased operations and left the country. Nevertheless, a significant foreign and domestic NGO presence remains. The importance of these groups cannot be overstated: not only are they helping to alleviate the major humanitarian crisis that looms over the country, they are also laying the groundwork for Iraq's eventual democratic transition.

The NGO law in force in Iraq today, which supersedes the older NGO laws of the Ba'athist regime (No. 34 of 1962 and No. 13 of 2000), is, perhaps surprisingly, comparable to the more restrictive NGO laws of the Middle East. Government officials justify **Coalition Provisional Authority Order Number 45**'s restrictions as necessary to establish a safe and secure Iraq, but in practice the law inhibits the groups that have been

⁴² Statement of Minister of Social Affairs Amina El-Guindy, as quoted in "Regulating or restraining?" Mariz Tadros, *Al-Ahram Weekly Online*, 7-13 November 2002 (Issue No. 611), <http://weekly.ahram.org.eg/2002/611/eg4.htm>.

called “among the most important contributors to reconstruction” while doing little to stop illegitimate groups, which operate underground in any case.⁴³

Licensing

All NGOs wishing to operate in Iraq are required to obtain a license from the NGO Assistance Office, a subsidiary of the Ministry of Planning and Development (soon to be the Ministry of State for Civil Society). Licensing is mandatory and informal groups are explicitly prohibited from operating any “programs.”⁴⁴ The law is unclear on the status of foreign NGOs, with some provisions indicating that they need only be accredited by the Minister of Foreign Affairs and others indicating that they are also subject to the requirements placed on domestic NGOs.⁴⁵ What is clear is that domestic NGOs must provide the NGO Office with a mass of information: a “complete statement of revenue and expenses and assets and liabilities for the current year and the previous three years” or, if the NGO has existed for less than four years, “financial data for the current year and projected budget for the next two years”; a list of the names and addresses of any donors or non-bank lenders of funds to the NGO; and “a report on [the] proposed program [of the NGO] prepared in consultation with the Relevant Ministry and budget for the first year of its activities.”⁴⁶ These requirements impose a major burden on new NGOs, most of which lack the operating experience necessary to provide this type of information.

Once all of the required documents are submitted, the NGO Office has 45 business days to grant or deny the license. However, if the NGO Office requires more information, the 45-day period starts anew from the date that it receives the additional information. Unlike some other Arab countries, Iraq does not provide for automatic licensing if the responsible office fails to respond by the deadline – so if the NGO Office takes longer than the statutory 45-day period, there are no practical consequences and the NGO has little recourse. In any case, the NGO Office can deny licensing to any NGO that would “constitute a threat to the public order, safety, stability, or security of Iraq,” a provision that, though perhaps understandable, is nonetheless open to abuse—especially given that the law provides no opportunity to appeal a refusal to any court or higher administrative authority.⁴⁷

Legal Rights and Benefits

The legal rights of NGOs in Iraq are not as severely limited as they are in other Middle Eastern countries. Iraqi NGOs are free to merge, dissolve, and divide without government approval, though they are required to notify the NGO Office of these types of actions.⁴⁸ Although NGOs have the explicit right to raise funds within Iraq, the statute

⁴³ “Comments on the Regulation of Non-Governmental Organizations Issued by the Coalition Provisional Authority, Order Number 45,” Cathy Shea, ICNL, p. 1.

⁴⁴ CPA Order 45 (Iraq): Section 2(3).

⁴⁵ Compare CPA Order 45 (Iraq), Section 2.2 (“International Organization shall be accredited by the Minister of Foreign Affairs, or his or her designee, and are not required to register as NGOs.”) with, for example, Section 2.4(b)(ix) (“Foreign NGOs must provide the name of the head of mission in Iraq....”).

⁴⁶ CPA Order 45 (Iraq): Section 2.

⁴⁷ *Id.*, Sec. 3.

⁴⁸ *Id.*, Secs. 8, 4.

is silent about foreign donations.⁴⁹ Iraqi NGOs are free to establish their own governing structures, though perhaps here CPA Order 45 falls a bit short by failing to set minimum standards of good governance.

A major shortcoming of the law is the requirement that all NGOs be “non-political.”⁵⁰ It is often sensible to restrict NGOs from directly funding candidates or political parties; if that is all that is meant, this clause should be made more specific. As written, the prohibition is too broad. Similarly, though NGOs have the right to appeal most administrative actions taken against them by the NGO Office, this appeal is not to an independent court but the NGO Office itself, which again increases the likelihood of abuse of government discretion.

Supervision and Enforcement

CPA Order 45 gives the government the right to “suspend or revoke a registration of an NGO if the NGO violates any provision” of the Order.⁵¹ If an NGO continues to operate after suspension or revocation of its license, the government can confiscate all of its property.⁵² In other words, the government has the authority to impose drastic sanctions on NGOs regardless of how minor the violation may be. The law would be much improved if it imposed sanctions tailored to the severity of violations. Another shortcoming is that the law does not provide for judicial supervision of executive actions—NGOs cannot appeal adverse decisions made by the government, and they generally have no recourse if they feel that a decision has been taken in error. Although the Iraqi judicial system is not yet operating at full capacity, neither are any other Iraqi institutions, so that fact cannot justify the failure to provide for judicial oversight. Even the most highly restrictive laws generally provide for appeal to a judicial authority.

Transition to Democracy

As Iraq continues its democratic transition, NGOs will no doubt play a major role. NGOs help to build a pluralistic society from the ground up, and many serve as watchdogs of efficient, transparent government. The new Iraq should encourage the formation of a wide variety of NGOs, rather than imposing a difficult licensing process and providing little incentive to form NGOs. Encouragingly, the new transitional Iraqi government has indicated that review of the NGO law is among its top legislative priorities.

Jordan

The outbreak of the Palestinian intifada in 2000 led to massive instability in Jordan, where Palestinian refugees constitute the majority of the population. Faced with a stagnating economy and mass demonstrations protesting Jordan’s peace treaty with Israel, King Abdullah dissolved parliament and began to rule by decree, reversing what had been a positive trend toward political liberalization begun by his father, King Hussein, almost a decade earlier. In 2003 the King allowed parliamentary and municipal elections, which according to Freedom House were “reasonably free and transparent, though not

⁴⁹ *Id.*, Sec. 7.

⁵⁰ *Id.*, Sec. 2.3(e)(iii).

⁵¹ *Id.*, Sec. 3.6.

⁵² *Id.*, Sect/ 1(6).

fair,” and abolished many of the restrictions on personal liberties instituted during the previous two years.⁵³ King Abdullah has since made a concerted public effort to guide Jordan to a new era of political and civil liberty, and Jordan today is unquestionably among the more liberal and modern states of the Middle East region.

Much like Egypt, Jordan has both a very large and vibrant NGO sector made up of hundreds of organizations and, counter-intuitively, a very restrictive NGO law. The **Societies and Social Bodies Law (No. 33 of 1966)** is one of the oldest and most arbitrary NGO laws in the Middle East, but the government generally does not enforce the more unreasonable provisions, choosing instead to “routinely license” NGOs, “dozens of [which] address numerous political and social issues.”⁵⁴ A 2001 survey counted at least 2,000 civil society groups working on issues ranging from women’s rights and the environment to health and political reform.⁵⁵ Many foreign NGOs conduct operations in Jordan, including Caritas, Care International, and Save the Children. The vibrancy of the NGO sector testifies to the restraint of the Jordanian government in generally abstaining from exercising its extensive powers under Law 33 / 1966.

Licensing

No NGO can form or conduct operations in the Kingdom of Jordan without express written permission from the Minister of Social Development.⁵⁶ The process of obtaining this permission is excessively long and complicated. First, an NGO must submit ten copies of an application for registration to the Director of the regional Office of Social Development in the district in which the NGO will be located.⁵⁷ The application itself must include a substantial amount of information, including articles of association, financial procedures, principal objectives, and the names, professions, ages, and addresses of the founding members (all of whom must be at least 21 years old).⁵⁸ The District Office Director must then send the application, along with his comments, to the National Director General of Social Development within 30 days. The Director General must then attach his comments to the proposal before forwarding the entire package, within 15 days, to the Minister of Social Development. Finally, the Minister of Social Development has the power to “issue the decision which he sees proper in respect from the application within a period not exceeding three months from the date of sending to him.”⁵⁹ If each official takes the maximum amount of time allotted by statute, an NGO can wait up to 135 days for a decision on its application. Worse still, the law gives the Minister of Social Development the right to reject an application for any reason the Min-

⁵³ Freedom House, *Freedom in the World 2004* (Jordan Country Report), <http://freedomhouse.org/research/freeworld/2004/countryratings/jordan.htm>.

⁵⁴ *Id.*

⁵⁵ *Directory of Civil Society Organizations in Jordan*, Hani Hourani, Edited by Ica Wahbeh, Sinbad Publishing House, Amman, Jordan, 2001 (Al-Urdun Al-Jadid Research Center), p. 10.

⁵⁶ Law No. 33 / 1966 (Jordan): Article 5.

⁵⁷ *Id.*, Art. 7(1).

⁵⁸ *Id.*, Art. 6.

⁵⁹ *Id.*, Art. 7.

ister sees fit, and there is no mechanism for judicial review of the Minister's decision, or indeed appeal of any sort whatsoever against an adverse decision.

There is a default registration provision, whereby if no response is received from the Minister of Social Development within 30 days from the date that the application has been forwarded to that office, an NGO can "start working as if [it has] been duly registered."⁶⁰ However, this is not quite an automatic licensing provision, because it does not extend to NGOs a presumptive license. Instead, it allows them to commence work until further notice from the Minister; but if the Minister decides to deny the application six months or six years down the line, the NGO has no recourse.

Foreign NGOs may be authorized under the same licensing procedures, but they face the added imposition of any "conditions and restrictions which [the Minister of Social Development] imposes."⁶¹ Again, the Minister's decisions in this realm are unrestrained; he or she can "refuse to allow any foreign body or society to work in the Kingdom [or] impose on it any conditions which he sees proper."⁶²

Legal Rights and Obligations

Short of a ban on "fulfilling any political objectives,"⁶³ the law provides no explicit list of the types of activities that a licensed NGO can engage in. This may appear to be a positive aspect of Law 33 / 1966, but that is not necessarily the case. The unrestrained powers granted to the Minister of Social Development throughout the licensing process do not disappear once an NGO has been licensed. The Minister of Social Development can order the dissolution of any licensed NGO essentially at whim—without judicial oversight and without an appeals process. Technically, the Minister of Social Development must first become "satisfied" that the NGO has violated any of a long list of conditions, including "not achiev[ing] the purposes provided for in its articles of association"; "refus[ing] to allow [government representatives] to attend its meetings, examine its premises, registers, or documents"; "deal[ing] with its funds in a way other than the way specified for it"; or "generally contraven[ing] any of the provisions of this law."⁶⁴ The Minister must notify the NGO in writing of his or her intention at least one month before actually dissolving the organization.⁶⁵ But when the decision is left to the Minister of Social Development's personal discretionary judgment, and when no mechanism allows an NGO to appeal a dissolution order, a notification requirement provides limited procedural protection.

Reflecting a similar disregard for the autonomy of NGOs, the Ministry of Social Development is free to send representatives to observe any meeting or election, and to inspect any and all records kept at the NGO at any time.⁶⁶ The Ministry of Social Devel-

⁶⁰ *Id.*, Art. 12.

⁶¹ *Id.*, Art. 19(a).

⁶² *Id.*, Art. 19(3).

⁶³ *Id.*, Art. 2.

⁶⁴ *Id.*, Art. 16(1).

⁶⁵ *Id.*, Art. 16(2).

⁶⁶ *Id.*, Art. 16(1)(c).

opment also takes an active role in NGO internal governance and organization, requiring NGOs to notify the Ministry of any election at least 15 days in advance and reserving the right of Ministry officials to attend the election “to be certain that [it] goes on in compliance with the [NGO’s] Articles of Association.”⁶⁷ If quorum is not met at the election meeting, or if the Minister of Social Development believes that the board of directors has violated any provision of the law, the Minister is free to appoint a temporary board of directors to run the NGO and call a new board election within 60 days.⁶⁸

Licensed NGOs can merge or dissolve without seeking official permission, but no NGO can affiliate with any foreign or international body without the express permission of the Minister of Social Development.⁶⁹ There are no explicit limitations on the right of NGOs to raise funds, but the ban on foreign affiliations presumably implies a ban on foreign funding.

Supervision and Enforcement

As discussed above, Law 33 / 1966 is a highly draconian statute that empowers the Ministry of Social Development to license and de-license NGOs based on the arbitrary and subjective personal judgments of ministry officials. Law 33 / 1966 also provides for individual criminal punishments for any “person who contravenes, alone or together with any other person or persons, any of the provisions” of the law. The punishment is a fine of 50 Jordanian dinars, up to three months in prison, or both, for any violation of Law 33 / 1966 – no matter how small.

Jordan’s Continuing Reform

Jordan’s process of reform has, for the most part, been ably led, first by King Hussein and now by his son, King Abdullah. However, the fact remains that the NGO law, like many other laws in Jordan, gives the executive branch the power to act as it pleases without interference from the legislative or judicial branches. And though the Ministry of Social Development does not often use its powers under Law 33 / 1966, the fact remains that it *can*. A reminder of this reality came recently, when, amidst strong international criticism, the Ministry moved to shut down the Jordanian Society for Citizen’s Rights for an alleged violation of Law 33 / 1966. It was the first NGO to be closed by the government since 1989.⁷⁰

This unfortunate trend has continued, with the introduction in March 2005 of a draft law that would severely restrict the rights of professional associations, requiring these groups to “obtain prior written approval from the Interior Ministry to hold a public gathering or meeting,” and further “limit[ing] topics of discussion at any of their professional meetings, councils, and committee meetings exclusively to ‘professional mat-

⁶⁷ *Id.*, Art. 17.

⁶⁸ *Id.*, Art. 18.

⁶⁹ *Id.*, Arts. 8, 16, 9(2).

⁷⁰ See Amnesty International Press Release, <http://web.amnesty.org/library/Index/ENGMDE160202002?open&of=ENG-JOR>.

ters’.”⁷¹ The Jordanian parliament has not yet voted on the law, but the vote will be an excellent barometer of the Jordanian government’s commitment to continuing political liberalization.

Lebanon

Lebanon’s early 2005 “Cedar Revolution” has provoked enormous global interest and attention. The tens of thousands of Lebanese who took to the streets in the wake of Rafik Hariri’s assassination have given hope to many that democratization and government reform are possible in the Middle East. But though a new parliament dominated by reform and anti-Syrian parties has now been seated, serious obstacles remain before the Lebanese democratic movement is consolidated and reinforced. Particularly problematic are the racial, ethnic, and religious fault lines that still run through Lebanese society, and in fact are so central to Lebanese government and politics that they are written into the Constitution and other core governing documents. Lebanon’s 15-year-long civil war ended only in 1990, and the years of relative stability that followed were due in large part to the domination of the Syrian military and security apparatus. It is an open question today whether, in the absence of Syrian control, Lebanon will be able to maintain calm, stability, and a functioning political system.

Although exact information about the size and scope of Lebanon’s NGO sector is lacking, it is clear that Lebanon enjoys one of the largest, most active, and least restrained civil societies in the Middle East. More than 1,000 NGOs are registered in Beirut alone, and the Ministry of Health estimates that 60 percent of all Lebanese health centers are run by non-profit groups.⁷²

The strength of Lebanon’s NGO sector stems from the major role NGOs played during the 1975-90 civil war, as organizations fulfilled what are typically state responsibilities such as education, healthcare, and emergency relief. Reflecting the sectarian nature of Lebanese society, most NGOs are organized by religious affiliation, but they often reach across these lines to provide services for many outside their confessional communities.

NGO Law in Lebanon

Technically speaking, NGOs in Lebanon are subject to the **1909 Ottoman Law on Associations**, a statute that predates the emergence of the modern Middle East and even Lebanon’s 1926 Constitution.⁷³ The law is highly anachronistic, with repeated references to imperial authorities and ministries that no longer exist. In reality the Lebanese

⁷¹ “Jordan: Draft Bill Would Muzzle Civil Society,” *Human Rights News*, Human Rights Watch, New York, April 7, 2005, <http://hrw.org/english/docs/2005/04/06/jordan10430.htm>.

⁷² United Nations Development Program – Program on Governance in the Arab Region. “State-Civil Society Relations: Lebanon,” <http://www.pogar.org/countries/civil.asp?cid=9>; Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, p. 227

⁷³ United Nations Development Program – Program on Governance in the Arab Region. “State-Civil Society Relations: Lebanon,” <http://www.pogar.org/countries/civil.asp?cid=9>.

government takes a *laissez-faire* approach to NGO regulation and ignores most provisions of the 1909 Law.⁷⁴

The 1909 Ottoman Law requires only that any “association” (defined as “a group composed of several individuals who unite their information and efforts in a permanent fashion and the goal of which is not to divide profit”) inform the Ministry of the Interior of its existence. No permits or licenses are needed to form the association.⁷⁵ Associations for the “promotion of Arab nationalism” are illegal, but this provision, like many others, is clearly a holdover from the imperial (Turkish) Ottoman Empire, and it is not enforced by any Lebanese authority.⁷⁶ Police are given the right to attend the meetings of any association so long as they have an official order from the Ministry of Police in Istanbul; this provision may sound problematic, but Lebanese authorities never use it and, indeed, the imperial Ministry of Police no longer exists.⁷⁷

Lebanon’s hands-off approach is preferable to that of the vast majority of Arab states, which interfere with and deny full rights to the NGOs that operate within their borders. Some have argued, however, that NGOs need “active state intervention in providing clear legislation and institutional mechanisms which provide the framework of rights and obligations for these spheres.”⁷⁸ If so, the Lebanese approach, while an improvement on regional standards, is nonetheless open to improvement.

Libya

While the Libyan government has made some efforts to modernize and reform in recent years, it is still effectively an absolute dictatorship with few civil or political rights. The Libyan Constitution contains no guarantee of a right to association. The sole statutory right of association comes from **Law 71 of 1972**, which grants individuals the right to associate only through institutions run by the government, such as the National Trade Unions’ Federation.⁷⁹ Any NGO or otherwise independent organization is “contrary to the revolution” and therefore illegal; members are subject to extreme criminal punishments, including execution.⁸⁰ Libya, along with Saudi Arabia, has the dubious distinction of having the most extreme and restrictive NGO law in the Middle East and perhaps in the entire world.

⁷⁴ Email to author from Lebanese Embassy in Washington, D.C., 3 June 2005.

⁷⁵ Ottoman Law (Lebanon): Arts.1-2.

⁷⁶ *Id.*, Art. 6.

⁷⁷ *Id.*, Art. 18.

⁷⁸ “Islam, the State, and Democracy: Contrasting Conceptions of Society in Egypt,” Sami Zubaida, *Middle East Report*, No. 179, Nov.-Dec. 1992, p. 3.

⁷⁹ United Nations Development Program – Program on Governance in the Arab Region. “State-Civil Society Relations: Libya,” <http://www.pogar.org/countries/civil.asp?cid=10>.

⁸⁰ “Libya: Military – Opposition” GlobalSecurity.org, <http://www.globalsecurity.org/military/world/libya/opposition.htm>; United Nations Development Program – Program on Governance in the Arab Region, “State-Civil Society Relations: Libya,” <http://www.pogar.org/countries/civil.asp?cid=10>.

Morocco

King Mohammed VI came to power in Morocco in July 1999. Much like King Abdullah of Jordan, King Mohammed took control of a country that had been led by his father through several years of slow political and social liberalization, yet one that also faced major economic and social problems. Mohammed has since taken many steps to further the development of Morocco, embarking on a major anti-corruption drive and overseeing parliamentary elections in 2002 and 2003 “that were widely considered to be the most representative in the country’s history.”⁸¹ Unfortunately, Morocco’s moves toward wider political participation and social liberalization were interrupted by a series of five suicide bombings in May 2003, which precipitated a tightening of laws and a major crackdown on Islamist elements in the country.

The NGO law in Morocco is **Decree No. 1-58-376**, promulgated as part of the 1958 Code of Public Liberties, but subsequently amended by a 1973 decree. At the time, the Code of Public Liberties was one of the most liberal statutes in the Middle East; today the Code would be considered somewhat harsh, and the 1973 amendment was designed to restrict NGOs even further.

Licensing

It is not clear from the language of the statute whether registration is mandatory. Decree No. 1-58-376 begins by proclaiming “the right to establish associations,” and goes on to identify an association as any “agreement for achieving ongoing collaboration between two or more persons in order to use their information and activity for a goal other than the distribution of profits amongst themselves”—what we would call an NGO.⁸² The law then indicates that the act of “founding associations of persons is allowed with complete freedom and without prior permission on the condition that the requirements of Section 5 are heeded.” But Section 5 states that “every association must submit a prior declaration to the headquarters of the local administrative authorities ... and the agent of His Majesty the King.” Sections 4 and 5 thus seem to contradict each other as to whether prior permission is required. Vague as the statute may be, in practice the Moroccan government requires all NGOs to obtain government permission before beginning their activities.⁸³

The licensing process itself is relatively easy: an NGO must submit, to the local district attorney as well as the local branch of the Interior Ministry, a declaration with the name and goals of the association, information on its founders and officers, the location of its headquarters, and its internal operating statutes.⁸⁴ Once this paperwork has been filed, the NGO technically assumes legal status without having to wait for any kind of response from the Interior Ministry. However, as discussed below, Decree No. 1-58-376

⁸¹ Freedom House, *Freedom in the World 2004*, (Morocco Country Report), <http://freedomhouse.org/research/freeworld/2004/countryratings/morocco.htm>.

⁸² Decree No. 1-58-376 of 1958 (Morocco): Preamble, Sec. 2.

⁸³ Freedom House, *Freedom in the World 2004*, (Morocco Country Report), <http://freedomhouse.org/research/freeworld/2004/countryratings/morocco.htm>; CEIP http://www.carnegieendowment.org/files/Morocco_APS.doc.

⁸⁴ Decree No. 1-58-376 of 1958 (Morocco): Preamble, Sec. 5.

makes it so easy for the Interior Ministry to dissolve associations that in practical terms the ministry can prevent any unwanted organization from operating as an NGO. The law does not provide for any right of appeal to the courts, and the Interior Ministry's decision is not required to be made in writing. Notably, any NGOs that "are incompatible with the law or good morals or which might aim to tamper with the unity of the national soil or the royal system of government are null and void."⁸⁵

Legal Rights and Obligations

Moroccan NGOs have somewhat limited rights. For example, while NGOs can comment on public policy, "associations ... which in any way pursue a political activity" are subject to special requirements, including being composed of only Moroccan citizens and being run only with domestically earned assets.⁸⁶ There are no restrictions on the sources of income for Moroccan NGOs, but foreign NGOs (defined as any NGO in which half the members, or any of the officers, are non-Moroccan) are subject to several additional rules and regulations, and "the government is allowed to object to the founding of [any] foreign association."⁸⁷ NGOs can merge without government permission, but must seek permission to divide.⁸⁸ An adverse decision made by the Interior Ministry cannot be appealed.

Supervision and Enforcement

Decree No. 1-58-376 is notable for the sheer number and severity of the criminal punishments it provides. Almost every section contains a criminal punishment. Any founders, managers, or treasurers who change the NGO charter without informing the Interior Ministry can be imprisoned for from three months to two years and fined 10,000 to 50,000 Moroccan dirhams,⁸⁹ for example; any participant in an NGO that provokes armed demonstrations in public faces from one to five years in prison and a fine of MD 20,000 to 100,000.⁹⁰ Further, the government has almost unchecked power to dissolve any NGO at will.⁹¹

Morocco at a Crossroads

Morocco has been in the news lately as the kingdom has made several stymied attempts at reform. The regime cannot seem to make up its mind about whether to encourage a fully pluralistic, democratic system or to crack down on dissent and religious elements. The Moroccan government thus has been sending a mixed message, and though

⁸⁵ *Id.*, Sec. 3.

⁸⁶ *Id.*, Section 17.

⁸⁷ *Id.*, Part 5 (Sections 21-28).

⁸⁸ *Id.*, Section 14, 7.

⁸⁹ *Id.*, Section 8.

⁹⁰ *Id.*, Section 30.

⁹¹ *Id.*, Section 7.

“the Moroccan civil society sector is rich and complex,” it “remains institutionally weak.”⁹²

Palestine

In any comparative study of Arab governments and laws, Palestine represents an exceptional case for a host of reasons. But Palestine’s unique history has in many ways proved conducive to the development of a vibrant and active civil society, by both regional and global standards.

The earliest Palestinian NGOs formed during the British mandate and focused generally on grassroots promotion of the nationalist struggle.⁹³ After 1948, a large variety of organizations were formed on behalf of women, students, doctors, and others. Though formed earlier than the Palestinian Liberation Organization (PLO), many of these organizations worked with it or on its behalf in the project of building the state of Palestine. Because the PLO did not constitute a fully sovereign state, Palestinian NGOs were able to operate with a relatively free hand in seeking funding from regional and international donors, such as the wealthier Arab states and the World Bank. By 1994, when the Palestinian National Authority (PNA) began operation, these NGOs had a long history of providing many essential social services and working in the absence of the kinds of restraints typically imposed on NGOs in the Middle East.

But the PNA immediately attempted to assert the heavy-handed control over NGOs that was common in most Arab states, especially the neighboring states of Egypt and Jordan. Relations between the PNA and Palestinian NGOs declined precipitously.⁹⁴ When the PNA produced a draft NGO law modeled on the highly restrictive Egyptian law, the reaction of Palestinian NGOs was swift and well-organized. Palestinian NGOs mounted a successful campaign domestically and, perhaps most effectively, used the international connections made in their long history to get donor states and international agencies – which provided the bulk of the PNA’s funding – to pressure the PNA. After a protracted struggle between the PNA, which was rapidly developing a reputation for authoritarian excess, and the highly organized and well-connected Palestinian civil society sector, the NGOs won what has been termed “a near total victory.”⁹⁵

The NGO law, finally passed in 2000, was and remains by a wide margin the most liberal and least restrictive NGO law in the Middle East. Despite certain shortcomings, the **Law of Charitable Associations and Community Organizations (No. 1 of 2000)** could serve as a worthy model for other Arab states.

⁹² Lester M. Salamon, S. Wojciech Sokolowski, et. al., *Global Civil Society: Dimensions of the Nonprofit Sector* (Vol. 2), 2004: Kumarian Press, NY, p. 233.

⁹³ *Palestinian Civil Society in Theory and In Practice*, Nathan J. Brown, Paper for the Annual Meeting of the Structure of Government Section, International Political Science Association, May 2003, p. 4.

⁹⁴ *Id.*, p. 5.

⁹⁵ *Id.*, pp. 9-10.

Licensing

Even the liberal Law 1 / 2000 cannot escape what appears to be a regional propensity to require the licensing of all groups, formal and informal. NGOs that operate in Palestine, regardless of their need or desire to seek formal legal incorporation, must obtain a license from the Ministry of the Interior (MOI) before they can “practice any of their activities.”⁹⁶ Fortunately, the procedure for licensing is the easiest in the Middle East, requiring only that the applicant submit three copies of the association’s bylaws along with an application form provided by the MOI. The MOI then must issue a decision accepting or denying the application within two months. If no decision is made within that period, the association is considered licensed by law.⁹⁷

By contrast to most Middle Eastern countries, the MOI does not have the explicit right to reject associations for being contrary to vague principles such as “public morals” or the “national interest.” Rejections of a license application must be made in writing and must specify the reasons. However, the statute does not stipulate the grounds on which an application can be rejected, which is a shortcoming. An applicant has the right to contest a rejection before a court, but it is unclear under what grounds a court would reverse a rejection on the part of the MOI.⁹⁸ Nonetheless, because the law requires the MOI to keep a public log of rejected applications, including the reasons for their rejection, it appears unlikely that the MOI would act in a totally arbitrary manner without eliciting a major outcry from the ever-vigilant Palestinian NGO sector.

Legal Rights and Obligations

Unlike the rest of the Middle East, Palestine’s NGO law places virtually no limitations on the rights of an NGO. NGOs are free to engage in public policy debates, raise funds from foreign and domestic sources, and merge and dissolve without government interference. NGOs can affiliate with foreign or domestic organizations without seeking MOI permission, and foreign NGOs are free to establish branches in Palestine so long as approval is given by both the MOI and the Ministry of Planning and International Cooperation.⁹⁹ The law also encourages the formation of NGOs by providing several economic incentives, including an exemption from tax and customs duties.¹⁰⁰ Finally, any actions taken against an association by the MOI can be appealed in court.¹⁰¹

Supervision and Enforcement

In keeping with the liberal nature of the Palestinian law, the MOI is prohibited from unilaterally dissolving an association or seizing its assets. Instead, the MOI must first secure a court order before taking action against an NGO.¹⁰²

⁹⁶ Law 1 / 2000 (Palestine): Art. 7.

⁹⁷ *Id.*, Art. 4.

⁹⁸ *Id.*, Art. 4.

⁹⁹ *Id.*, Ch. 7, Ch. 6, Ch. 8, Art. 28.

¹⁰⁰ *Id.*, Art. 14.

¹⁰¹ *Id.*, Art. 38.

¹⁰² *Id.*, Art. 41, Art. 38(2).

Law 1 / 2000 provides no individual criminal sanctions – the norm in most states, of course, but not in the Middle East. In Palestine, violations of the NGO law are punished through administrative mechanisms, as they should be.

Palestine in Perspective

In many ways, Law 1 / 2000 is an ideal NGO law. But as Nathan Brown of the Carnegie Endowment for International Peace puts it, “Palestine is, in short, a model democracy. Its most significant flaw is that it does not exist.”¹⁰³ The tragedy of Palestine is that on paper it has many of the institutions and procedures of a democratic sovereign state, but in reality it remains caught between the intifida, crippling unemployment and insecurity, and Israeli occupation. Palestine is almost a photographic negative of its Arab neighbors: whereas most Arab states have overwhelmingly dominant state institutions but no democracy, Palestinians are well-versed in the methods and procedures of democracy, but their institutions have not been able to take root “in the midst of one of the world’s most intractable conflicts.”¹⁰⁴ Thus, as with many Palestinian laws, the civil society statute is on paper very close to a model of good governance; but the practical realities of life in the highly unstable, occupied country make it difficult to ascertain just how relevant the law actually is.

Encouragingly, the evidence indicates that both the PNA and most Palestinian NGOs comply with Law 1 / 2000. The Palestinian NGO Network, one of the oldest and most well-respected NGOs in Palestine, is licensed and complies with the law, and requires each of its 92 affiliated NGOs to do the same.¹⁰⁵

A Major Setback

In May 2005, the Palestinian Legislative Council introduced a bill to amend Law No. 1 / 2000. Passage of this amendment would represent a major blow to the Palestinian NGO movement by converting the Middle East’s most liberal NGO law into one of its most restrictive. The amendment would insert a new article into Law 1 / 2000, banning NGOs from “engaging in any political activity.” Most Arab NGO laws contain similar provisions, which have been criticized several times throughout this article as both unnecessarily vague and susceptible to major abuse by enforcement authorities. Furthermore, in the context of the Palestinian-Israeli conflict, it is difficult to envision an NGO whose work would not constitute *some* kind of political activity or statement. Nonetheless, the amended law would impose severe criminal punishments on any violation of the ban on political activity. The proposed amendment would also create a government “Commission for Non-Governmental Organizations and Human Rights” with the power to supervise, monitor, and direct all NGO activity, which could entail increased government interference in the daily affairs of NGOs.

Needless to say, this amendment has been greeted by vociferous condemnation and resistance from the Palestinian NGO community. Thanks to the work of groups such

¹⁰³ Nathan Brown, *Evaluating Palestinian Reform*, Carnegie Endowment for International Peace Democracy and Rule of Law Project, Number 59, June 2005, p. 3, <http://www.carnegieendowment.org/files/CP59.brown.FINAL.pdf>.

¹⁰⁴ *Id.*

¹⁰⁵ Email to author from Palestinian NGO Network, 26 May 2005. See also www.pngo.net.

as the Palestinian NGO Network, the amendment has currently been placed on hold, but not, as of this writing, totally rejected by the Palestinian Legislative Council. Just as it did when the PNA first attempted to impose a restrictive NGO law in 1994, the international community should work with domestic Palestinian NGOs to oppose this amendment.¹⁰⁶

Saudi Arabia

As a result of international (to a large degree, American) pressure, Saudi Arabia has lately begun to enact a series of political and social reforms. Modified provincial elections were held in 2005, but women were not allowed to vote, and at least half the seats on each provincial council were to be appointed by the royal court. Many analysts, both inside and outside the Middle East, have criticized these reforms as superficial at best. The king, though nominally required by *Shari'a* law to seek the consensus of senior princes and religious officials on decisions, nonetheless remains the sole and absolute source of authority in Saudi Arabia. Saudi Arabia remains at the bottom of the Freedom House survey of Political Rights and Civil Liberties for the eleventh consecutive year.¹⁰⁷

The 1992 Basic Law (*Nizam*) serves as an informal constitution, but it fails to guarantee any basic human rights; it makes no mention of freedom of expression, religion, or association. The very few NGOs that do exist were established by separate royal decrees; otherwise, no legal framework exists for establishing new NGOs. The government also allows some professional associations to form, but they too are subject to absolute government control.¹⁰⁸ The recent death of King Fahd has given hope to many that his successor, King Abdullah, will embark upon more ambitious political liberalization, but the pace of reform in Saudi Arabia is likely to remain slow.

Yemen

Since the reunification of North and South Yemen in 1990, the Republic of Yemen has made many strides toward modernization and liberalization. But even though the situation of most Yemenis has continued to improve, Yemen remains among the least developed and most repressive nations.

Since 1998 Yemen has closely cooperated with the International Monetary Fund and the World Bank to implement economic and political reforms, and as of 2004 the World Bank operated more than 22 active projects ranging from water purification to education and civil service reform.¹⁰⁹ As part of its ongoing cooperation with the World Bank, the Yemeni government recently passed a new NGO law, the **Law Concerning Associations and Foundations (No. 1 of 2001)**. The law is a definite improvement over

¹⁰⁶ Palestinian NGO Network, "Letter by Palestinian civil society organizations to Palestinian Legislative Council members," 28 May 2005, http://www.pngo.net/NGOlaw_en_Letter_PLC_28_05_05.htm; "Memorandum to the Palestinian Legislative Council Members from Palestinian Non-Governmental Organizations," 9 June 2005, http://www.pngo.net/NGOlaw_en_memorandum.htm.

¹⁰⁷ Freedom House, *Freedom in the World 2004* (Saudi Arabia Country Report) <http://freedomhouse.org/research/freeworld/2004/countryratings/saudi-arabia.htm>.

¹⁰⁸ Carnegie Endowment for International Peace, "Arab Political Systems: Baseline Information and Reforms: Saudi Arabia," <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=16918>.

¹⁰⁹ U.S. State Dept. Background Note: Yemen, <http://www.state.gov/r/pa/ei/bgn/35836.htm>.

its predecessor; indeed, in many ways, it is among the most progressive in the Middle East. The Yemeni NGO sector has flourished since its passage: according the Ministry of Foreign Affairs and Labor, 2,941 NGOs were licensed under the law by mid-2004.¹¹⁰

Licensing

In a refreshing departure from the norm among Middle Eastern states, Law 1 / 2001 does not require NGOs to obtain mandatory licenses. Associations and foundations are free to decide whether they wish to receive the legal benefits and protections that come with formal registration, or whether they prefer to remain an informal, unlicensed group.¹¹¹ The registration process is quick and easy, requiring only that the NGO submit to the Ministry of Pensions and Social Affairs (MPSA) a written application, including copies of the articles of association and organizational regulations of the NGO.¹¹² MPSA then has one month to rule on the application. If no action is taken by the end of the month, the application is considered accepted.¹¹³ Rejections must be made in writing, and all rejections must be posted by MPSA on a public bulletin board.¹¹⁴ Rejected NGOs are entitled to appeal the decision to an independent court within 60 days.¹¹⁵

Legal Rights and Obligations

Yemeni NGOs are prohibited from engaging in “any partisan activity,” including taking part “in any election campaign or [allocating] any ... funds for such purposes directly or indirectly.”¹¹⁶ This restriction is not as problematic as the restrictions on “political activity” found in many other Middle Eastern NGO laws; “partisan activity” suggests a narrower prohibition, one that permits discussion of public policies and political topics. However, adding a list of restricted acts to the law would represent an improvement over the current ban on “partisan activity.”

Other than this restriction, Yemeni NGOs are generally allowed to operate freely. They can merge, dissolve, and divide without government approval.¹¹⁷ NGOs can accept money and assistance from foreign sources without government permission, though they are required to inform the government that such assistance has been given. However, before undertaking an activity “based on a request or assignment from an external [foreign] entity,” an NGO must obtain approval of MPSA.¹¹⁸ Internal governance of NGOs is sub-

¹¹⁰ Mohammed bin Sallam, “The Future of NGOs in Yemen – More NGO Accountability Needed,” *Yemeni Times*, Vol. 784, Issue 13, 25-27 October 2004, <http://www.yementimes.com/article.shtml?i=784&p=community&a=2>.

¹¹¹ Law 1 / 2001 (Yemen): Art. 2.

¹¹² *Id.*, Art. 8.

¹¹³ *Id.*, Art. 9.

¹¹⁴ *Id.*, Art. 10.

¹¹⁵ *Id.*, Art. 11.

¹¹⁶ *Id.*, Art. 19.

¹¹⁷ *Id.*, Art. 47, Art. 44(4), Art. 48.

¹¹⁸ *Id.*, Art. 23.

ject to many requirements, but these seem intended to ensure good governance and lack of corruption. They do not impose overly onerous conditions on NGOs.¹¹⁹

Foreign NGOs can be formed so long as they do not violate “Islamic values” or the Yemeni Constitution.¹²⁰ What, exactly, constitutes “Islamic values” is left unspecified.

In recognition of the important role that NGOs play in development, the Yemeni government extends substantial benefits to NGOs, including exemption from all taxes on income and imported goods and supplies, exemption from customs duties on overseas gifts and grants, and a 50 percent reduction on electricity and water utility fees.¹²¹

Supervision and Enforcement

In keeping with the protections against government interference built into Law 1 / 2001, no NGO can be terminated by MPSA without a court order. MPSA has only the right to “sue for the dissolution” of an NGO in court, and then only if the NGO has committed “a serious breach of the provisions of this Law.”¹²² In addition, MPSA cannot file suit unless it has given the NGO notice at least “three times within six months to remedy the violation” and the NGO has still not complied.¹²³

Even so, Law 1 / 2001 does contain a handful of draconian punishments, which seem out of place given the law’s overall liberal thrust. For example, individuals who are not members of an NGO but participate in the management or discussions of an NGO’s General Assembly without express approval of the NGO’s Board of Directors are subject to up to six months in prison and a fine of 50,000 Yemeni rials.¹²⁴ Further, any violation of Law 1 / 2001, no matter how small, can be punished by three months in prison and a fine of YR 30,000.¹²⁵ Such severe penalties can do nothing but discourage the formation of NGOs and the participation of individuals in NGO activities.

Aside from its overly severe criminal sanctions, Yemen’s NGO law is basically a well-written example for other Middle Eastern states, one that both complies with most international standards and exhibits an admirable level of liberality. Yemeni NGOs are lucky to operate within one of the most permissive environments in the Middle East.

III. The Importance of Continuing Reform

While there is much variation among the ten countries surveyed in this article, several underlying themes emerge. Most important, Middle Eastern NGO laws tend to suffer from over-breadth. The laws are often vague and unclear, especially the sections specifying the circumstances under which the government can dissolve or ban an NGO. Many of the laws surveyed are very old and do not reflect a modern understanding of the

¹¹⁹ *Id.*, Arts. 24-43.

¹²⁰ *Id.*, Art. 79.

¹²¹ *Id.*, Art. 40.

¹²² *Id.*, Art. 44.

¹²³ *Id.*, Art. 44.

¹²⁴ *Id.*, Art. 69(1).

¹²⁵ *Id.*, Art. 70.

importance of NGOs as partners for the development of society. And generally speaking, the NGO laws surveyed here tend to reflect government's desire to control rather than regulate the NGO sector. But as Middle Eastern governments liberalize and modernize, there is reason to believe that the NGO laws will be among the first to change.

It is noteworthy that the two most liberal and generally admirable NGO laws, those of Yemen and Palestine, are among the most recently enacted NGO statutes. Both Yemen and Palestine wrote their NGO laws amidst substantial international pressure for reform (the former from the World Bank, the latter from most of the international community). Such pressure can often backfire in the Middle East, where sensitivity to perceived interference from former colonial powers is always high, even more so in the wake of the Iraq war. In other words, although the international community can play an important role in strengthening civil society in the Middle East, any actions must be taken with a keen awareness of regional sensitivities, strengths, and weaknesses.

Most encouraging is the sheer number of NGOs currently operating in the Middle East, in all but a small minority of especially authoritarian states. The incredible proliferation and endurance of NGOs, in countries with liberal NGO laws and even in countries with very repressive laws, is a testament to the strength and power of the domestic "third sector." The Middle East is not so different from other areas of the world that have undergone recent major change, and if history is any guide, we should not underestimate the power of the domestic civil society sector to help produce positive and lasting change in the region.

SPECIAL SECTION: THE MIDDLE EAST

NGO Regulations in Iran

By Negar Katirai*

I. Introduction

With respect to the development of civil society, Iran's political landscape has provided cause for optimism in recent years. The initial harbinger of this optimism was the election of President Mohammad Khatami in 1997 on a platform of greater freedoms, respect for human rights, political pluralism and citizen participation.¹ The subsequent elections of reformists to parliament in 2000 provided further cause to rejoice. Although the balance of power has since shifted back into the hands of conservatives, the reformist movement remains active in advocating for social and political change.²

Current laws within the Islamic Republic of Iran have enabled NGOs to form and pursue a variety of non-profit and non-political objectives. Charity and relief aid organizations have been especially successful in achieving their humanitarian goals.

In several respects, however, the laws governing the registration and operation of NGOs in Iran have been criticized as over-complicated and cumbersome. First, the legal structure involves multiple and uncoordinated decision-making centers. Second, the process of registering and regulating NGOs often differs in practice from what is provided in the law, adding unnecessary burdens to the administration of permits and financial grants as well as the annual and periodic regulation of NGOs. Third, judicial review of administrative decisions pertaining to NGOs has been inadequate. In addition, NGOs could benefit from greater government programs and subsidies to build capacity, provide resources, and generally facilitate their endeavors. These shortcomings have led NGOs to concentrate in Tehran, where proximity to the locus of power makes abiding by the bureaucracy of NGO registration and supervision less complicated.

Recognizing the need for law reform, the Ministry of Interior and the NGO community in Iran gathered in November 2003 to draft a new law on the establishment and

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¹ Baquer Namazi, *Iran NGO Situation Analysis*, January 2000, available at www.iranngos.org.

² Since 2003, the Guardian's Council, a twelve-member body capable of vetoing parliament's enactments, has taken advantage of the sweeping powers granted to it by Iranian election laws and disqualified most reformist and moderate candidates for both Parliamentary and Presidential elections. Due to these disqualifications as well resulting public dissatisfaction with the political process, conservatives won control of parliament in February 2004. More recently, ultra-conservative Tehran mayor Mahmoud Ahmadinejad was elected President on June 25, 2005. The consolidation of conservative power in all three branches of government could spell the downfall of Iran's fragile social reforms, though many Iran-watchers believe that even the most hardline conservatives would not dare take such an unpopular step. Human Rights Watch, *Access Denied: Iran's Exclusionary Elections*, available at www.hrw.org.

activities of NGOs. A group of NGO, civil society groups, and governmental delegates met at the Ministry of Interior's civil society office and drafted a comprehensive law to provide greater clarity and support to NGOs.³

The proposed law suggested several important reforms. First, it envisioned the establishment of a supervisory committee to oversee the activities of local NGOs operating in the provinces. Second, the draft opened the way for NGOs to gain access to additional resources, including financial aid and assistance from government organizations and a subsidy service with the Islamic Republic's broadcasting organization. Third, the law improved upon current procedures for appealing decisions regarding NGOs permits and other administrative matters.

After two attempts at passage, the Iranian Parliament has approved numerous aspects of the draft law, improving the legal framework governing NGOs in several ways.⁴ The new regulations create a more streamlined and representative body to oversee the activities of NGOs, and improve procedures for appealing decisions regarding permit applications. Most remarkable, the new law grants standing to NGOs to pursue legal remedies on behalf of the public interest. Thus, not only do the new regulations address long-standing problems in NGO oversight and supervision, but they also empower NGOs to take on a new role in advancing public causes.

II. Provisions of the General Laws

A. Consistency and Clarity of the Laws

Iranian laws governing NGOs are complex and difficult to understand and follow. The laws and regulations that affect the NGO sector are numerous, unclear, and contradictory. In addition, current practice often diverges from the law. As this article will explain, the new regulations address many but not all of the current legal structure's shortcomings in regard to NGO law.

Iran does not have a federal system, so NGOs must abide only by national laws and regulations. Then again, the Iranian government is organized as a hierarchy. The central government has the power of legislation, administrative oversight, and theoretical power over how laws are to be enforced. In practice, however, local authorities often diverge from the central government's advisements and enforce laws in a different manner. This disconnect can prove confusing and wearisome for NGOs trying to abide by the law.

³ The (Draft) Law on Establishment and Activities of Non-Government Organizations (NGOs). This draft law was rejected by parliament in 2004, but numerous aspects of the draft have been incorporated into recent executive regulations.

⁴ Although the draft law was rejected by parliament in 2004, many of its provisions have been passed into law by the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted June 19, 2005. ("Executive Regulations 2005".)

B. Constitution

The Constitution of the Islamic Republic of Iran, which was approved by the Assembly of Experts in November 1979 and ratified by a referendum in early December 1979 (the “Constitution”), recognizes the rights of NGOs to assemble and associate. Article 26 of the Constitution specifically allows parties, conventions, trade associations, Islamic associations, and associations of recognized religious minorities. This Article provides:

Political parties, groups and associations, as well as guilds and Islamic associations or associations of recognized religious minorities, are permissible, provided that they do not violate the principles of independence, freedom, national unity, Islamic standards and the basis of the Islamic Republic. No one can be forbidden to participate in them, or be forced to participate in one of them.

Thus, Article 26 qualifies the rights of NGOs and other organizations by stating that these groups may operate only as long as “they do not violate the principles of independence, freedom, national unity, Islamic standards and the basis of the Islamic Republic.” There are no restrictions on who may join such organizations or associations, except that only Zoroastrians, Jews, and Christians are recognized as religious minorities under Article 13 of the Constitution.⁵

C. Types of Organizations

In Iran, NGOs fall under the general definition of non-commercial organizations.⁶ The Iranian legislature has recognized non-commercial organizations as including, but not limited to, NGOs as of the date they are registered with the appropriate authorities.⁷ Such entities may choose to be called associations, clubs, institutions, or similar terms, but not titles that are allocated to government or state organizations.⁸ Non-commercial organizations are in turn divided into profit-making organizations and non-profit-making organizations.⁹ Thus, Iran has non-commercial, non-profit organizations such as chari-

⁵ See also the Constitution, Articles 6, 7, 56, 58, 59, 62, 100, 107, 114.

⁶ Commercial organizations are in turn defined as organizations that have been formed in order to engage in commercial activities, such as trade, industrial activities, and distributing profit among members. *See* Commercial Act of Iran, Article 2.

⁷ The Commercial Act of Iran, Article 584 provides: “Concerns and establishments which have been or shall be created for non-commercial purposes acquire juridical personality from the day they are registered in a special register established by the Ministry of Justice.”

⁸ The Regulations Concerning the Registration of Non-Commercial Organizations and Concerns, enacted on May 3, 1958, provide further definition of non-commercial organizations. Article 1 of these regulations provides: “Non-commercial organizations and concerns set forth in Article 584 of the Commercial Act refer to all organizations and concerns that are formed for non-commercial purposes such as scientific or literature matters or charity affairs and the like, whether or not their founders intend to make profits.”

⁹ Amended Regulations for Registration of Non-Commercial Organizations and Entities, enacted in the year 1337 [March 21, 1958- March 20, 1959], Article 2.

ties, as well as non-commercial organizations formed to engage in non-commercial activities in order to earn and distribute profits among their members.

Generally, NGOs fall into two broad categories: public interest organizations and professional organizations. Public interest NGOs are those whose members conduct activities in pursuit of the public interest, such as non-profit and charity organizations. Professional organizations are those formed in order to pursue activities for the mutual benefit of the organization's members. This category includes guild organizations, such as the teacher's guild, and specialists' associations, such as the sociologist's association. Both public interest NGOs and professional organizations are subject to the Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted June 19, 2005 ("Executive Regulations").

More specifically, the Law Concerning the Activities of Parties, Associations, Political Associations and Guild Associations, Islamic Associations or the Associations of Recognized Religious Minorities, enacted on August 29, 1981 (7 Sharivar, 1360) ("Law Concerning the Activities of Political Parties"), defines several types of non-governmental organizations:

1. Political Parties, Associations, and Organizations. Political parties, associations, and organizations are defined as those that have been formed by a group of persons who believe in a certain ideal and political policy. The law requires that the purpose, plans, and activities of the entity are related to the rules of administration and general policy of the Islamic Republic of Iran. (See *Law Concerning the Activities of Political Parties, Article 1.*)
2. Guild Associations. Guild associations are defined as organizations that have been formed by the members of a trade, profession, or occupation. The law requires that their purposes, plans and activities are geared to achieve benefits for the trade, profession, or occupation. (See *Law Concerning the Activities of Political Parties, Article 2, Executive Regulations Concerning Guild Units Referred to in the Law Concerning the Activities of Parties, enacted on 13 Farvardin 1368 (April 3, 1989) ("Guild Regulations"), Article 1.*)
3. Islamic Associations. Islamic associations are defined as organizations that consist of volunteers and whose purposes consist of understanding and educating others about Islam and advancing the goals of the Islamic revolution. These associations can engage in any type of activity as long as their purposes fall within those listed above. Administrative, educational, guild, industrial, or agricultural activities are all permitted. (See *Law Concerning the Activities of Political Parties, Article 3.*)
4. Associations of Religious Minorities. Associations of religious minorities are defined as organizations that consist of volunteers from Iran's recognized minorities, and whose purposes consist of addressing the religious, cultural, and social issues facing the minority. (See *Law Concerning the Activities of Political Parties, Article 4.*) Article 13 of the Iranian Constitution recognizes Christians, Jews, and Zoroastrians as religious minorities.

D. Purposes

Iranian law allows an NGO to define its purpose in its articles of association and to take any action necessary to pursue that stated purpose. (See *Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted June 19, 2005*, (“*Executive Regulations*”), *Article 1*.) NGOs can provide assistance, consultation, or advice to other NGOs or governmental organizations, and publish papers. (*Id.*, *Article 4*.) Furthermore, an NGO can arrange gatherings and demonstrations in order to advance the organization’s stated purposes. (*Id.*, *Article 4*.)

By definition though, NGOs are not permitted to engage in profit-making or political activities, and guild organizations are specifically prohibited from engaging in political activities or from being affiliated with political parties or groups. (See *Executive Regulations, Article 1*¹⁰ ; see also *Guild Regulations, Article 5*.) The newly passed Executive Regulations clarify that NGOs are permitted to engage only in the political activities identified in Political Party Act.¹¹ (See *Executive Regulations, Article 1, Note 3*.) In addition, as mentioned above, the Constitution prohibits NGOs from engaging in any activity that violates “the principles of independence, freedom, national unity, Islamic standards or the basis of the Islamic Republic.” (Constitution, *Article 26*.) Furthermore, the legislature has reiterated the Constitution’s prohibition of these activities and added that NGOs may not engage in any activity that breaches the freedom of others or creates or increases divisions among various members of society. (See *Law Concerning the Activities of Political Parties, Article 16*.¹²) An NGO’s articles of association and activities may not be inconsistent with the Constitution. (See *Executive Regulations, Article 8*.) Thus NGO activities generally have been limited to charitable works, with the support of reformist candidates marking the boundaries of what is considered acceptable political activity.

However, the new regulations may significantly change the role of NGOs in Iranian society by providing NGOs with the standing to pursue legal action on behalf of the public interest. The new law provides that an NGO may pursue legal action to advance the NGO’s stated purpose and protect the public interest. (See *Executive Regulations, Article 16*.) This provision not only provides NGOs with a new venue through which to pursue their goals, but it also stands to transform the role of NGOs in Iran.

E. Registration or Incorporation Requirements

In submitting an application, an NGO must include its policy letter (*maram-nameh*) as well as the articles of association. (See *Executive Regulations, Art. 20*.)

¹⁰ Article 1 of the Executive Regulations defines NGOs as those organizations formed on a voluntary basis for “non-profit and non-political purposes.”

¹¹ Article 1 of the Law Concerning the Activities of Political Parties requires that the purpose, plans, and activities of the political parties must be related to the rules of administration and general policy of the Islamic Republic of Iran

¹² This law restates the prohibitions of the Constitution by prohibiting any actions that violate Iran’s independence; jeopardize the freedom, independence, national unity, or interests of Iran; or violate Islamic standards or the basis of the Islamic Republic of Iran.

NGOs can be formed by either natural persons or legal entities. Legal entities are defined as those included in a special register established by the Ministry of Justice. (See *the Commercial Act of Iran, enacted on April 2, 2000 (13 Farvardin 1368)* (“*Commercial Act*”), *Articles 584 & 585.*) Government employees are qualified to join NGOs as long as the NGO’s activities are not related to the employee’s official duties. (See *Executive Regulations, Article 1.*) There is no minimum of base capital required to form an NGO, but the NGO’s declared capital determines the organization’s registration fee.

Two founders of each NGO must be specialists in the field in which the NGO is to engage. (See *id.*, *Article 18.*) NGOs may organize into networks, including international organizations, subject to some regulations. (See *Executive Regulations, Article 19.*) First, the NGOs that form the network must have been registered for at least two years. Second, there must be five founding NGOs to form a network. And third, the network of NGOs must obtain a permit from the appropriate supervisory board.

F. Registration or Incorporation Procedures

The old regulation process has been criticized as disorderly and unclear. The new regulations simplify and improve upon it in two ways: creating a streamlined supervisory board to oversee the activities of NGOs, and improving procedures for appealing the rejection of permit applications.

Previous laws required that those desiring to form an NGO apply for a permit with either the Ministry of the Interior or the governor’s office within their province. (See *Executive Regulations Concerning the Formation and Activities of Non-Governmental Organizations, enacted January 15, 2003*, (“*Previous Executive Regulations*”) *Article 12.*) In contrast, individuals working with NGOs in Iran have reported that in practice, both the Ministry of Labor and the Chamber of Commerce also issued permits to NGOs, though nowhere in the old laws were these ministries given this authority.

The new regulations do away with the previous confusion and create a three-tiered supervisory board, made up of government officials and NGO representatives, to review applications for permits. (See *Executive Regulations, Article 5, Para. d.*) At the province level, the supervisory board consists of the governor of the province, a representative of the Islamic Council, and a representative from the NGOs in that province. At the state level, the supervisory board consists of the state governor, a member of the Islamic Council, and a representative from the NGOs in that state. At the national level, the supervisory board consists of a deputy from the ministry of interior affairs, a representative of the high council of states, and a representative from the NGO community. Which supervisory board an NGO must apply to is determined by the proposed region and scope of the NGO’s activities. Local NGOs apply with the province or state supervisory board, whereas NGOs that wish to operate on a national basis must apply with the national supervisory board.

The procedures for appealing the rejection of permit applications also rely on this three-tiered system. If an application is denied by the supervisory board of the province, the NGO can appeal first to the state and then to the national supervisory board. (See *Executive Regulations, Article 22, Note 4.*) If the state supervisory board first denies the application, the NGO can appeal to the national supervisory board. (*Id.*) And finally, if the national supervisory board is the first to deny the application, the NGO may appeal to the

administrative justice tribunal. (*Id.*) In all cases, the NGO has one month to file an appeal. (*Id.*)

This hierarchical structure is an improvement upon the old system, in which NGOs were permitted to apply to the governor general or to the Ministry of Interior Affairs. (See *Previous Executive Regulations, Article 16.*) By instituting regional supervisory boards that include an NGO representative from that region, the new law makes it more likely that NGOs will receive prompt and fair review of their applications for permits.

Though the improvements outlined above are commendable, the new regulations do not solve all the problems of the current system. Despite attempts to expedite the overall process of applying for a permit, the law fails to address the unnecessary and time-consuming involvement of multiple agencies in reviewing permit applications. The new regulations provide that the supervisory board must approve or reject an application within two weeks after receipt. (See *Executive Regulations 2005, Article 22.*) If the application is rejected, the issuing body has two weeks to state its reasons. (See *id., Article 22, Para. 1.*) This is a shorter time period than that provided by the previous Executive Regulations, which allowed the issuing body one month to review applications for permits. (See *Previous Executive Regulations, Article 6.*)

By reducing the time limit, the new Executive Regulations seem designed to accelerate the process of applying for NGO permits. Still, if the NGO's purpose coincides with the activities of any government agencies or ministries, the approval of those agencies must also be obtained. (See *Executive Regulations, Article 22, Note 3.*) The issuing body must seek the approval of pertinent government agencies within one week of receipt of an application, and the government agency must issue an opinion within one month. (*Id.*) This process of external review exists currently and has resulted in complications and delays in the review of NGO applications for permits; the new regulations do not improve on the old law in this regard. More troublesome is the provision that special authority may be provided to authorities other than the supervisory board to review applications by certain NGOs, thus creating an additional loophole in the otherwise straightforward new structure. (See *id., Article 17.*)

In conclusion, despite the improvements made by the introduction of a tiered supervisory board, procedural inefficiencies may still hamper the process of registration. First, there still exists the problem of redundancy and uncertainty, due to the ability of multiple agencies to involve themselves in the process of reviewing NGO applications for permits. Second, provisions detailing the specific reasons on which an application may be rejected or the standard of review for appealing rejections remain lacking.

G. NGOs Register

All NGOs, after obtaining the necessary permit from the appropriate supervisory board, must register with the Registration Office of Companies and Industrial Units, Bureau of Non-Commercial Organizations (See *id., Article 25.*) This bureau is a department of the Ministry of Justice and maintains the NGO registry, which provides the name, purpose, founders, and addresses of all registered NGOs. Defunct organizations are purged from the registry, but the registry does not list organizations which have been denied the right to register or which have been sanctioned or disciplined. This, in part, is due to the

fact that the bureau that maintains the registry differs from the authorities responsible for issuing permits (previously the Ministry of Interior Affairs and provincial governor's offices and now the three-tiered supervisory board.)

Although the registry is considered accurate and up to date, it is difficult if not impossible for the public to access it. The law requires records of private and public corporations to be available to the public (see *Regulations Concerning the Enforcement of the Companies Registration Act, Article 26*); it should follow that NGO records are made available as well. However, the government in practice does not make the records of either private and public corporations or NGOs accessible.¹³

H. General Powers

NGOs can exercise the general rights and powers of juridical entities, such as owning real property and entering into contracts.¹⁴ Iran's Commercial Act defines the rights of juridical entities as follows:

A juridical person may have all the rights and assume all the obligations granted by law to natural persons, except rights and obligations peculiar to man by his very nature, such as rights and obligations resulting from paternity, affiliation and other similar rights or obligations.¹⁵

Any interested party may raise issues about the failure of NGOs to comply with the legal requirements. Such issues may be raised by filing legal action with the public courts. A possible or intended beneficiary of an NGO, for example, has the right to go to court and seek action against an NGO if the beneficiary is considered to have a direct interest in the outcome of the case.

I. Membership Organizations

There must be at least five founders to form a membership organization, and at least two of the founders must be specialists in the field of the activities of the NGO. (See *Executive Regulations, Article 18*.) In addition, the founders must be of Iranian nationality, at least 18 years old, and without criminal records (including violations against the strict social code enforced by the morality police). Furthermore, founders may not belong to an organization that has been recognized as a hostile group by court.¹⁶ (See *id.*, *Article 18, Para. D.*) Beyond these restrictions, the law is silent as to whether membership organizations may exclude or remove members. Thus, the procedures for a member to resign from an organization are established by the NGO itself.

¹³ Information gathered through Iranians active with NGOs in Iran.

¹⁴ See *Commercial Act, Article 588*.

¹⁵ *Id.* See Sabi, *Commercial Code of Iran*, English translation, at 89-90.

¹⁶ The law does not specify which courts have this authority.

III. Governance

The law does not provide detailed guidance regarding the governance of NGOs. Article 589 of the Commercial Act provides that “[j]uridical persons take decisions by means of such authorities as are competent, in conformity with the law or their articles of association, to do so.”¹⁷ Similarly, Article 23 of the Executive Regulations provides that the board of directors or the board of trustees, as the case may be, is the highest organ of the organization, and must meet the qualifications set forth in Article 18.¹⁸ Thus, NGOs are normally managed according to their articles of association by a board of directors or a board of trustees elected by the general assembly of the members.

The governance rules for NGOs do not differ. The rules allow assembly of members in the form of a board of directors or board of trustees, as well as executive committees and officers such as president, vice chairman, etc. The powers of these assemblies and officers, as well as the rules for voting, are determined by the NGO’s charter, articles of association and bylaws. The law is silent as to the duties and responsibilities of governing bodies in terms of budget review and signatory powers. Practically speaking, however, major decisions, such as approving the budgets or financial statements of the NGO, are left to the assembly of members. The board of directors, subject to the articles of association or bylaws, may delegate signing powers to a manager or management committee. Foundations are normally managed according to the deed of endowment by a board of directors or trustees elected by the donors or their appointees.

Because an NGO has juridical personality, the members of its governing bodies may not be held personally liable for harm caused by third parties unless they have committed fraud or wanton action. But NGO members can be held liable to NGOs in cases of contractual liability, for example by breaching an agreement to pay membership fees, and to third parties in case of fraud. The law is silent as to conflicts of interest and self-dealing; such issues may be resolved by referring to provisions in the Commercial Act and its 1969 Amendment concerning joint stock companies, though it is not clear how the provisions would be enforced in the context of NGOs.

IV. Dissolution, Winding Up, and Liquidation of Assets

The law is silent as to who is permitted to initiate the voluntary or involuntary dissolution of an NGO. Thus, dissolution is subject to the provisions of the articles of association or bylaws. The general assembly of members may vote to dissolve the NGO, either on their own initiative or at the request of the board of directors or board of trustees. Based on principles of Iranian commercial law, involuntary dissolution may occur in the following instances:

- (1) when the NGO’s term of existence has expired;
- (2) when the NGO has achieved its purposes;

¹⁷ Sabi, *Commercial Code of Iran*, English translation, at 90.

¹⁸ Article 18 of the Executive Regulations provides that the founders must be of Iranian nationality, at least 18 years old, agree to be bound by the Constitution, have no criminal records, and not belong to a group declared hostile to the government.

- (3) when it becomes impossible for the NGO to pursue the purposes it was formed to pursue, or when the purposes of the NGO become illegal;
- (4) when a court judgment has been entered for the dissolution of the NGO; or
- (5) when the NGO becomes bankrupt.¹⁹

The procedures for dissolution are determined by the articles of association or by-laws of the NGO. Ordinarily, the board of trustees or the board of directors proposes the dissolution to the general assembly of members, who approve the proposal and appoint a liquidator or a board of liquidators. The law specifies that upon dissolution, assets may not be divided among the founders, members, board of directors, board of trustees, or employees. (See *Executive Regulations, Article 7*.) Beyond that prohibition, the NGO's articles of association and bylaws determine how assets are disassembled. Creditors of an NGO have the same claims as the creditors of a commercial company, such that the NGO must pay creditor claims before its assets are allocated to others. (See *Commercial Act, Article 584*.) Any interested party may file action with the courts seeking the reversal of either the voluntary or involuntary dissolution of an NGO.

V. Regulations

Every NGO is required to file an annual report of its activities and financial operations to the appropriate supervising board.²⁰ (See *Executive Regulations 2005, Article 5*.) If the supervising board requires, the NGO may be required to submit periodic reports as well. (*Id.*, *Article 26*.) NGOs are also required to make their records available at the supervisory board's request for inspection at the NGO's office. (See *id.*, *Article 9*.) The law requires that submitted reports must include information on operations as well as financial statements, but does not provide further detail. The law is also silent as to whether these reports become a matter of public record, but it does provide that NGOs are entitled to access the records of public organizations as long as they are not classified. (See *id.*, *Article 12*.)

If an NGO fails to file its annual or periodic reports, it can suffer severe penalties. The supervising board can revoke the NGO's permit or seek the NGO's dissolution from the judicial authorities. (See *Executive Regulations, Article 28*.) These penalties are regularly enforced.²¹

¹⁹ This list is based on principles of Iranian law codified in the Commercial Act and reflected in current practice regarding commercial organizations in Iran.

²⁰ As mentioned above, NGOs that operate on a national level should report to the national supervisory board, whereas local NGOs should report to the supervisory board for their state or province, depending on the regional scope of their activities.

²¹ Those familiar with NGOs in Iran have indicated that government officials are diligent about enforcing regulations. In the words of one attorney consulted, officials are quite zealous about enforcing laws, even when there is no law to enforce.

VI. Foreign Organizations

A. Registration, etc.

The new regulations establish a special board for granting permits to international NGOs that wish to work in Iran. (See *Executive Regulations, Article 29.*) The board is to consist of representatives from the Ministry of Foreign Affairs, Ministry of Internal Affairs, the Ministry of Intelligence, and when relevant, representatives of pertinent government agencies. This is an improvement over the old system, where international NGOs wishing to formally register within Iran were to sign a Memorandum of Understanding (MOU) with the Ministry of Foreign Affairs, without which they had to sign a Letter of Agreement for each project they planned to implement. The time and energy required to obtain the MOUs and Letters of Agreement has been criticized for discouraging international NGOs from beginning projects in Iran and impeded international NGOs currently operating in Iran from expanding their projects.²² Other problems reported by international NGOs include difficulties funding their projects, as they are not provided a clear set of rules for setting up bank accounts.²³

B. Foreign Grants

If an NGO wishes to receive funds from a foreign organization, the NGO must notify the appropriate tier of the supervisory board. The supervising board must in turn report that information to relevant government ministries for their opinion. The new regulations shorten the time limits. (See *Executive Regulations, Article 6, Note 1.*) The supervisory board has one week to approve the funding and one week to seek information from relevant government ministries. But the relevant ministries have up to one month to declare their opinion, and the new regulations do not clarify what impact this would have on the grant application.

Even so, the new regulations do provide that grants from United Nations organizations as well as certain other international organizations will not require pre-approval. The Ministry of Finance is to publish a list of the other international organizations exempt from approval procedures. (*Id.*, Note 2)

NGOs wishing to partake in international gatherings and trainings must notify the appropriate supervisory board in writing. (See *id.*, Article 10.)

VII. Miscellaneous

- A. Mergers and Divisions. The law is silent as to rules and procedures for the mergers and split-ups of NGOs. Generally speaking, mergers of legal entities have not been provided for in Iranian laws.
- B. Investment and Endowment. There are no special rules for investing the property or endowment (patrimony) of an NGO. In addition, the law is silent as to whether NGOs may invest abroad. Thus, NGOs can legally undertake legal investments, subject to any limitations provided in their articles of association.

²² Baquer Namazi, *Iran NGO Situation Analysis*, January 2000, available at www.iranngos.org.

²³ *Id.*

- C. Political and Legislative Activities. As mentioned above, NGOs are by definition prohibited from engaging in political activities. (See *Executive Regulations, Article 1*.²⁴) In addition, guilds are specifically prohibited from engaging in political activities or from being affiliated with political parties or groups. (See *Guild Regulations, Article 5*.)

VIII. Tax Laws

Registered public interest NGOs enjoy tax-exemption with respect to the financial aids and gifts (cash or in kind), membership dues, and other contributions, provided that such sources are used for the various purposes set forth in the Direct Taxation Act. These purposes must be in accord with “Islamic standards”; they include culture, research, science, invention, exploration, training, and health. (See *Direct Taxation Act of Iran (“Direct Taxation Act”), Article 139, para. G, as amended by Article 64 of the Law Concerning Certain Articles of the Direct Taxation Act, enacted on February 16, 2002 (27 Bahman 1380)*.²⁵ Contributions by estates or under a last will and testament are also deductible. (See *Direct Taxation Act, Article 24, para. 3*.) There are no special laws on endowments, and gifts in the form of endowments are treated as tax-deductible contributions. The Direct Taxation Act provides no limits on contributions by either businesses or individuals to NGOs. There are no special state or local tax laws. Any ambiguity in the Direct Taxation Act is resolved by the High Taxation Council or the Just Administrative Tribunal, which are the highest authorities on tax issues.

Iran has no consumption tax, so NGOs need not file for exemption from VAT. NGOs importing products must pay duties, custom exercises, and the like.

A. Commercial/Business/Economic Activities

NGOs are explicitly permitted to conduct business activities directly, though the law is silent as to the extent to which they may engage in commercial, business, and/or economic activities. Any such activities undertaken by an NGO are subject to taxes. The profits an NGO earns through establishing educational seminars, publication of books and periodicals, etc., are exempt from taxation, provided such activities are aimed at achieving the NGO’s purposes.²⁶ Iranian tax law does not distinguish between “related” and “unrelated” commercial/business/economic activities.

²⁴ Article 1 of the Executive Regulations defines NGOs as those organizations formed on a voluntary basis for “non-profit and non-political purposes.”

²⁵ Before the 2001 amendment to the Direct Taxation Act, professional NGOs formed under certain designated laws, such as the bar association, were also granted tax exemption with the approval of the Council of Ministers. See *Direct Taxation Act, enacted on April 27, 1992 (Ordibehesht 7, 1371)*, published in the Collection of the Laws of the Year 1380 (March 21, 2001- March 20, 2002), vol. 2, at 1719.

²⁶ See the *Direct Taxation Act, Article 139, Note 1, as amended by Article 64 of the Law Concerning Certain Articles of the Direct Taxation Act, enacted on February 16, 2002 (27 Bahman 1380)*.

B. Reporting

Annual tax returns must be filed with respect to profit-making activities of NGOs. There are no substantiation rules for contributions, but any donation must be supported by a receipt issued by the NGO.

C. Miscellaneous

The law places no limits on NGOs' administrative expenses or salaries, and there are no special accounting rules for NGOs.

IX. Compliance

A. General

In general, the rules applicable to NGOs are considered complex and difficult to understand. As a result, NGOs find it difficult to comply, though no studies have been done on compliance specifically. Enforcement of the rules is not considered knowledgeable, fair, or effective.

B. Specific

There is a perception that some of the NGOs in Iran are under the Government's control and are used for improper economic as well as political purposes. In addition, the perception exists that government officials use NGOs to extract money and resources from private businesses, individuals, and international sources, either for their own purposes or for those of the government.

C. Sanctions

If an NGO has violated the law, there are provisions for suspending its operations, freezing its bank accounts, and appointing officers or directors to act for it. In some instances, these sanctions are not self-executing and the supervising agency must apply to court for them to take effect.

X. Government Funding

NGOs are permitted to compete for government funds in free and open competitions for which there are set bidding rules, and they can gain access to government funds through unsolicited proposals for grants and contracts. The government permits NGOs to bid and become the recipients of certain assets it is seeking to privatize, but does not recognize the need to continue to support privatized services. There have been reports that government assets and funding disproportionately go to NGOs formed or controlled by the government or particular officials.

XI. Privatization

The legislature has declared its support for the privatization of government duties and services to the NGO sector. (See *The Third Economic, Social, and Cultural Development Plan, enacted on 18 Farvardin 1379 (April 6, 2000.)*) Special legal forms and procedures have been created to shift state assets or programs, such as cultural, educational, or health programs, to NGOs. But to date the government has not made a serious effort to privatize state activities by outsourcing to NGOs.

The new regulations, however, provide several further specifics on how the government can involve, cooperate with, and outsource duties and services to NGOs. community, providing encouragement that some privatization may in fact take place. First, the new regulations require government and public organizations to take relevant NGO reports into consideration in their decision making, as well as to invite NGOs to meetings when necessary. (See *Executive Regulations, Article 13.*) Second, the government is required to identify functions and activities that could be assigned to NGOs and take the necessary action to assign them. (See *id., Article 14.*) And third, NGOs are entitled to report to the appropriate government and public organizations regarding what activities and functions they have the capacity to accomplish.

XII. Conclusions

The most important legal problems that have faced NGOs in Iran have been, first, the absence of comprehensive, accurate, and effective laws on NGOs, and, second, the lack of support for NGO activities on the part of the government. Present laws have been criticized as both inconsistent and outdated in terms of diverging from current practice. Consider the present process for obtaining a permit to operate an NGO. Whereas the *Law Concerning the Activities of Political Parties* stipulates that only natural persons can obtain a permit to form a political organization, the previous *Executive Regulations* allowed natural persons *and* legal entities to form an NGO. And whereas the previous *Executive Regulations* required that the application be submitted to either the Ministry of Interior or the governor's office of the province, applicants were able to obtain permits from the Ministry of Labor and the Chamber of Commerce as well.

The *Executive Regulations* recently passed by parliament make numerous improvements on the current legal structure. First, they create a three-tiered supervisory board featuring representatives of the NGO community, with the capacity to facilitate and oversee the activities of local NGOs operating in the provinces and larger states, thereby demystifying and to some extent democratizing the permit application process. The supervisory board system also provides a meaningful structure for appealing the judgments of the supervisory boards. Second, the new law makes it easier for NGOs to take advantage of international resources. Third, the regulations provide for greater cooperation between the government and NGOs. Finally and most notably, the new law grants NGOs the standing to pursue legal remedies on behalf of the public interest.

Conversely, certain problems with the legal framework governing NGOs remain unaddressed. Most unfortunately, the new structure, despite probable intent to the contrary, perpetuates the problem of multiple supervisory bodies. The three-tiered supervisory board was conceivably created to streamline procedures. But other government institutions will continue to possess overlapping authority when an NGO's work coincides with that of a government agency, or when special authority is provided to authorities other than the supervisory board. In addition, the Bureau of Non-Commercial Organizations will continue to have responsibility for maintaining the NGO register, and nothing in the new law suggests that coordination between the supervisory board and this body will improve on the status quo. Also troubling is the fact that the new law does not provide the criteria upon which NGO applications will be approved and disapproved, and thus the threat that NGO applications will be decided in an arbitrary manner remains.

Nevertheless, the new law is an improvement upon existing practice, and the NGO community in Iran remains active in its efforts to improve the legal atmosphere governing NGOs. Those at the forefront of the NGO movement in Iran have called for independent action from the NGO community in the form of an “NGO Code of Ethics” that embodies the principles of accountability, transparency, and good faith necessary for the execution of their mandate.²⁷ Groups such as the Iranian NGO Initiative and Hamyaran are working to analyze and build the capacity of NGOs active in Iran. Furthermore, organizations such as the Peyvand Institute are developing ways to connect to the Iranian Diaspora community, which is one of the most educated and financially successful in the world.²⁸ The new regulations will undoubtedly contribute to the development of a vibrant civil society within Iran. But the future success of Iran’s growing civil society will most likely continue to rest on the shoulders of Iranians who work within the boundaries of an ever-changing and less-than-perfect legal structure.

²⁷ Golzar Kheiltash, *The Rule and Role of Law in Iranian Civil Society*, December 2003, available at www.hamyaran.org.

²⁸ The Iranian-American community in the United States ranks second highest among 67 ancestry groups in educational attainment. Per capita income among Iranian-Americans is 45 percent above the national average in America. Ali Mostashari, Fact Sheet on the Iranian-American Community, Iranian Studies Group Research Series, updated February 2004.