



**Opinions of National Institution for Human Rights  
On Draft Law on amendment of some provisions of Decree-by-Law No. (18)  
of 1973 on public meetings, processions and gatherings  
(Prepared in light of draft Law "in the unified form thereof" submitted by  
the Council of Representatives)**

In recognition of the efforts exerted by the honorable Council of Representatives in relation to issues of Human Rights and with all due respect to the considerations sought by the draft law on amendment of some provisions of Decree-by-Law No. (18) of 1973 on the Public Meetings, Processions and Gatherings, (prepared in light of draft Law "in the unified form thereof" submitted by the Council of Representatives) and upon request of the Committee on Foreign Affairs, Defense and National Security at the Council; the NIHR hereby presents its opinions on the above-mentioned subject regarding:

- 1) **Substituting the stipulations of articles No. (2), paragraph (a), (3), paragraph (a) and (b) and the last paragraph and (4), (6), (9) and (11), second paragraph, (13).**
- 2) **Adding a new paragraph to article No. (7) under No. (e) and two new paragraphs to article No. (10) under No. (c) and (d).**
- 3) **Removing article No. (1, bis) of the decree by law No. (18) of 1973 on the Public Meetings, Processions and Gatherings**

Thereupon, this can be summarized as follows:

**First: Article (2), paragraph (a)**

**Stipulation as stated in the original law:**

Any person organizing a public meeting have to notify the Head of the Public Security in writing at least before three days prior to the meeting.

**Stipulation as stated in the draft law:**

**Each person organizing a public meeting shall notify the Head of Public Security in writing and such assembly shall be declared in clear place for those in the area determined for the assembly five days at least before the assembly. A financial guarantee shall be submitted to the State's treasury not more than twenty thousand Bahraini Dinars to be determined and organized by virtue of a resolution to be issued by the Minister of Interior or a Letter of Guarantee in the same value from any of the insurance companies operating within the Kingdom in favor of the State's Treasury so that a compensation will be released from the same in the damages to be determined by virtue of a court judgment for any damage resulting from the failure to conform to the provisions of the Laws, statutes and instructions**



**related to the same during the organization of the public assembly or due to the same. The guarantee shall be refunded to the persons entitled to the same sixty days after termination of the assembly without filing compensation cases or presenting reports due to commission of violation connected in undividable way to this assembly. The failure to present the determined guarantee will result in considering the notification as null and void.**

### **NIHR's Opinions:**

Regarding the amendment of the above stipulation as mentioned in the draft law by increasing the period of the prior notification to become five days instead of three days, the National Institution for Human Rights hereby finds that while this is apparently deemed as a procedural issue, it violates the international standards and ideal practices in this regard. It is recognized even in the countries that enforce the system of prior notification that there is an exception to the condition of prior notification for what is known as "Spontaneous Demonstrations", which occur due to a gathering not arranged for in advance in response to a sudden incident. Therefore, such exclusion should be stipulated expressly.<sup>1</sup>

In addition, obligating the assembly's organizers to present a financial guarantee or letter of guarantee represents a heavy restriction and contradicts the Kingdom's international obligations arising from its accession to the International Covenant for Civil and Political Right, to which the Kingdom of Bahrain became party to in accordance to Law No. (56) of 2006; especially article No. (21), which stipulates that:

**"The right to peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society ....."**

- In addition to this, both paragraphs No. (6 and 7) of article No. (24) of the Arab Charter on Human Rights acceded to by the Kingdom of Bahrain by virtue of Law No. (7) of 2006, which stipulates:

**"Every citizen has the right:**

**6. freedom of assembly and association in peaceful manner..**

**7. No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic**

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<sup>1</sup> Report of the reporter concerned with the right to the peaceful gathering and right to forming societies, (Maina Kiai), presented to the Human Rights Council at its 20<sup>th</sup> Round - May 21, 2012 - Document No. (A / HRC / 20/27) - the page number (11)



**society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others."**

- Moreover, the implementation of this condition may lead to discrimination in practicing the right to peaceful assembly because not everyone can provide and present such guarantee and nobody can practice it except those who are capable financially to present the amount of the guarantee. This will ostensibly violate the provisions of the law; especially article No. (18) thereof, which stipulates: **"People are equal in human dignity, and citizens shall be equal in public rights and duties before the law....."**

- In addition, the organizers of the peaceful assemblies should not incur the responsibility of illegal behavior committed by other persons. Consequently, they should not incur any financial expenses related to keeping security and other measures related to safety. Furthermore, this may be ostensibly unconstitutional as the penalty is deemed personal in accordance with stipulation of article No. (20), paragraph No. (b) of the Constitution as such violation may be committed by other persons not related to the organizers.

- If we assume the organizers are able to provide the guarantee amount but wish to hold another peaceful assembly during the sixty days period granted for recovering the amount, this will create hindrances and difficulties that prevent them from providing another amount. Eventually, this will affect the essence of their exercise of this right.

Therefore, the proposed amendment is an unjustified as no bureaucratic hindrances should be placed which restrict the capability to practice the right to peaceful assembly. In addition, the State should guarantee that the individuals practice such right by taking the reasonable and suitable measures and providing the necessary protection for the participants thereof. This is confirmed by the Constitution of the Kingdom of Bahrain in article (31), and of part three regarding public rights and duties, which stipulates:

**" ..... such regulation or definition shall not affect the essence of the right or liberty".**

Thereupon, the NIHR does not agree to the amendment mentioned in the draft law in this article and is of the view that the stipulation mentioned in the original law should be maintained.



## Second: Article (3), paragraph (a) and (b) and last paragraph:

### Stipulation as stated in the original law:

- a. The notification shall indicate the time, location and subject of the assembly and whether the purpose of the assembly is a lecture or general discussion.
- b. The notice shall be signed by three persons.

#### Last paragraph:

The head of public security or his representative shall be entitled to change the time and location of the assembly due to any reason violates the public order, provided that the assembly requesters shall be notified thereby within two days at most after the notification, provided that the delay may not exceed one week.

### Stipulation as stated in the draft law:

- a. The notice mentioned in paragraph No. (a) of article (2) hereof shall be signed by **five persons** at least and the time, place and subject matter of the assembly as well as the purpose thereof and **all data shown in such form allocated for such purpose shall be shown.**
- b. During the public assemblies no cheers or slogans breach the public order or the public morals, incite the sectarianism, or contempt for religions and sects may be raised. The face may not be hidden during the public assemblies, processions and gatherings in any whatsoever way. In addition, no person may participate in a public assembly while holding a weapon, even if he is licensed to carry such weapon.  
In implementing the provisions hereof, the following shall be deemed as a weapon; explosives, fire weapons, ammunition, knives, incendiary, flammable or explosive items and packages, as well as solid and sharp sticks and tools unusually carried in the ordinary cases.

#### Last paragraph:

**Shopkeepers and houses located in the area of the assembly shall be entitled to submit a written request to the head of public security or his representative for objection to the public assembly, if this damages their interests or affects the same negatively within three days at least as of date of declaring the assembly.**

Head of Public Security or his representative shall be entitled to change the time and place of the assembly for the **mentioned reason** or for any other reason violating public order or **public morals**. The assembly organizers shall be notified thereby in writing **two days at least** before the date determined for the assembly, provided that the assembly time postponement shall not exceed one week.



## NIHR's Opinion:

The National Institution for Human Rights finds **the amendment of the above stipulation as mentioned in the draft law in paragraph (a) to be just a procedural amendment not related to the essence of the right** because it concerns with changing the quorum of the signatories on the written letter to be subject to the head of public security to become **five persons** at least instead of **three persons**.

**Regarding the amendment mentioned in paragraph (b)**, the National Institution for Human Rights finds that it widens the scope of the acts banned to be committed while practicing the right of the peaceful assembly including the prohibition of hiding the face. However, the draft law imposes penalties that deprive from the freedom by imprisonment for period not less than six months in addition to the fine that is not less the five hundred Dinars or by either penalty. This is deemed as restriction on the personal freedoms of the demonstrators and deprives large section of the society from enjoying the practice of such right (for example, the veiled women); however, veiling the face may be legal method utilized by the demonstrators or the attendees, when they organize demonstration against the employer for fear of monitoring them and dismissing them arbitrarily later.

It seems that the amended stipulation departs form generality and abstraction and targeted specific categories with failure to assume the good faith in practicing such right.

**Regarding the amendment mentioned in the last paragraph**, the state incurs negative obligation regarding the right to the peaceful assembly through the unjustified intervention in way that affects the essence and practice of the right. The best practices that agree with the related international standards in this regard are avoiding the comprehensive banning of the place and time of the peaceful assembly. Furthermore, the right to the peaceful assembly shall not be subject to objection of those whose interests are suspended (owners of the shops and houses located in the surrounding area of the assembly). The freedom of the traffic flow of such category may not be granted priority over the assembly freedom, because these areas are not just commercial or residential places or for the traffic and walking movement only, but these areas are places for participation and expression of the opinion and the freedom of practicing the same.



**Thereupon,** The NIHR does not agree to the amendment mentioned in the draft law to paragraph (b) and the last paragraph of this article and finds it suitable to maintain both paragraphs as mentioned in the original law.

### **Third: Article (4)**

#### **Stipulation as stated in the original law:**

The Police Director General may not prevent a notified public assembly as set forth herein, unless such assembly may breach the public security, public order or the public morals due to the purpose thereof or due to the circumstances of the time and place related to the same or for any other dangerous reason.

The prevention resolution shall be notified to the assembly organizers or either of them personally or on his place of residence determined in the notice two days at least before the time determined in the assembly. The prevention resolution shall be hanged on door of the competent police station. The assembly organizers may challenge by the prevention resolution within period of fifteen days as of date of notifying them with the prevention resolution before the competent court, which shall decide the same urgently.

#### **Stipulation as mentioned in the draft law:**

**The Head of Public Security may prevent a notified public assembly** as set forth herein, if such assembly may breach the public security, public order or the public morals or **threatens or restricts the rights and freedoms of the others** due to the purpose thereof or due to the circumstances of the time and place related to the same or may **damage the economic interests of the country.**

**The Head of Public Security shall notify** the prevention resolution to the assembly organizers or either of them personally or on his place of residence determined in the notice two days at least before the time determined in the assembly. The prevention resolution shall be hanged on door of the competent police station. The assembly organizers may challenge by the prevention resolution within period of fifteen days as of date of notifying them with the prevention resolution before the competent court, which shall decide the same urgently.

#### **NIHR's Opinion:**

The National Institution for Human Rights finds that the above mentioned amendment as stipulated in the draft law widens the powers granted to the head of public security by preventing the public assembly, whenever the public assembly breaches the public security, public order or public morals or threatens or restricts the rights and freedoms of the others due to the purpose thereof or due to the conditions of the place and time related to the same or if such assembly



may damage the economic interests of the state. Thereupon, the legislator has restricted the practice of the peaceful assembly by restrictions that most thereof do not have legal clear legal concept and this prevents the competent authorities from applying the law through widening the same and prevents the misuse of the power. On the other hand, the current amendment causes the notice to be blank and converted it into system of the prior license and converted the security bodies from ensuring the safety and security of the demonstrators and protecting their other rights that may be affected as result of practicing their right to the assembly into power that grants and deprives the legality of the public gatherings according to wide standards, which are possible to be verified as stated in the stipulation (due to the purpose or due to the conditions of the time and place thereof), because the purpose is connected to the internal intentions and the hidden reasons and don't have any external appearance that can be used in the interference.

Regarding the **amendment mentioned in the second paragraph**, which cancelled the period that the head of public security shall commit thereto for reporting the prevention resolution of the public assembly; NIHR hereby finds that it is better to maintain such period with increasing the same to become five days at least, because the individuals may practice their right to the demonstration or assembly in relation to specific accident or occasion. Therefore, the cancellation of the period will lead to arbitrariness in using the right by the delay in reporting the prevention resolution few hours before the time of the assembly and this will, undoubtedly, lead to negative omissions represented in frustrating the participating public and unsettling their trust in the security body. In addition, the issue subject matter of the public assembly will be aggravated instead of curtailing the same. Moreover, the determination of the period sufficient for reporting the prevention resolution will be useful for the individuals to arrange their situations whether by resorting to the competent court to challenge the prevention resolution or by search for other options more feasible.

Although, article in the second paragraph thereof allows the organizer of the assembly to challenge the resolution issued by Head of the Public Security before the competent court; but this will result in lengthening the procedures of the assembly and the organizers will be involved in judicial complications in order to procure a court judgment, which enables them to practice their right in the peaceful assembly. Thereby, this leads us to the result mentioned above that the notice will be ineffective and will be converted at the practical level into permit from the Ministry of Interior.

Therefore, the National Institution for Human Rights does not agree with the amendment mentioned by the Draft Law in this article and it finds that the entire stipulation is not in agreement with the international conventions related to the peaceful assembly.



#### Fourth: Article (6)

##### Stipulation as stated in the original Law:

Each public assembly shall have a committee consists of a chairman and two members at least. If the attendees didn't elect the committee in beginning of the assembly, it shall be considered formed of the signatories on the notice mentioned in articles (2)and (3) hereof.

The assembly's committee shall keep the order thereof and prevent each breach to the laws or the capacity of the assembly shown in the notice. The committee shall prevent each speech or discussion that may violate the public order or morals or includes incitement on the crimes. In this regard, the committee may seek assistance of some police force members.

##### Stipulation as stated in the draft law:

Each public assembly shall have a committee that consists of a chairman and **four members at least**. If the attendees in a public meeting fail to elect the committee in beginning of the assembly, it shall be considered formed of the signatories on the notice mentioned in articles (2)and (3) hereof.

##### NIHR's Opinion:

The National Institution for Human Rights finds that the amendment of the above stipulation as mentioned in the draft law is just procedural amendment and it isn't related to the essence of the right to the peaceful assembly. Regarding the second aspect of the amendment by cancellation, which implies the cancellation of the paragraph related to the responsibility of the members of the organizing committee for maintaining the public security and the like; NIHR finds that this is fully in agreement with the international standards in this regard. While, the organizers of the assembly shall not incur any responsibility for the illegal behavior committed by other persons and they shall not incur the responsibility of maintaining the public security; therefore, it is logically required that such responsibility shall be incurred by the security member exclusively by protecting the participating individuals who aim at hindering or dispersing such assemblies.

Therefore, the NIHR hereby agrees with the amendment mentioned in the Draft Law in this article.





### **Fifth: Article (7):**

#### **Stipulation as stated in the original Law:**

The police force members shall be always entitled to attend the public assemblies as deemed necessary to maintain the security and the public order. They shall choose the place suitable for them in the assembly, provided that it shall be away from the place of speaking and they shall be entitled to break up the assembly in the following cases:

- a. If so required from them by the committee mentioned in article six.
- b. If the assembly exceeded its capacity mentioned in the notice.
- c. If severe disorder occurred, which breaches the security and public order.
- d. If any of the crimes stipulated in the Penal law or other applicable laws has been committed during the assembly.

#### **Stipulation as stated in the Draft Law:**

The police force members shall be always entitled to attend the public assemblies as deemed necessary to maintain the security and the public order. They shall choose the place suitable for them in the assembly, provided that it shall be away from the place of speaking and they shall be entitled to break up the assembly in the following cases:

- a. If so required from them by the committee mentioned in article six.
- b. If the assembly exceeded its capacity mentioned in the notice.
- c. If severe disorder occurred, which breaches the security and public order.
- d. If any of the crimes stipulated in the Penal law or other applicable laws has been committed during the assembly.
- e. **If the meeting exceeded the permitted time.**

#### **NIHR's Opinions:**

The National Institution for Human Rights hereby finds that the amendment mentioned by the draft law by addition of new paragraph allows the members of the police force to break up the public assemblies, when "the assembly exceeds the permits time" is in agreement with the public rules determined for the right of the peaceful assembly, which necessitated that holding such assemblies shall be for determined and temporary period.

Therefore, the NIHR hereby agrees with the amendment mentioned by the Draft Law in this article.



## Sixth: Article (9)

### Stipulation as stated in the original law:

Provisions of articles No. (1), (2), (3), (4), (6) and (7) hereof shall be applicable to the assemblies, processions and demonstrations to be held or move on road or in the squares for political purposes.

The head of public security or his representative may change the route of the procession or the demonstration, provided that the organizers shall be informed thereby according to article No. (4) herein.

If a procession is organized for political purpose on occasion of a funeral, the declaration issued by the public security on preventing the procession or determination of the route thereof shall be informed to the persons in charge of affairs of funeral from the deceased family.

### Stipulation as stated in the draft law:

Provisions of articles Nos. (1), (2), (3), (4), (6) and (7) hereof shall be applicable to the assemblies, processions and demonstrations to be held or move on road or in the public squares. **In implementation of provisions hereof, each general assembly to be held partially or totally in the empty squares, roads or public roads shall be deemed as an assembly.**

If a procession is organized for a political purpose on the occasion of a funeral, the declaration issued **by the head of public security** on preventing the procession or determination of the route thereof shall be informed to the persons in charge of affairs of funeral from the deceased family.

### NIHRs' Opinion:

The National Institution for Human Rights finds that the amendment mentioned in the draft law excludes the specialization addressed by it especially the processions and assemblies of the **political purposes**. Consequently, the article (9) including the indication thereof to provisions of article No. (1), (2), (3), (4), (6) and (7) is applicable to the processions and assemblies that are established or more on the roads or public squares considering that the procession applicable to provisions of the law is each public assembly to be held partially or totally in the **empty squares**, roads or public squares. Thereupon, the draft law allowed the special location and caused it within the scope of this law. Accordingly, each assembly held in special location and isn't limited to the personal invitation, for example, that the number of the attendees has exceeded, even in a little amount,



the area of the special place shall be deemed as public assembly which is subject of the organization thereof to all previous bureaucratic procedures including the notification condition. This contradicts with the constitution in article (28), paragraph (a) thereof, which stipulates that:

**"Individuals shall have the right of private assembly without permission or prior notification, and no member of the security forces may attend such private meetings."**

Thereupon, according to the draft law, each assembly held by the private legal persons like the associations, national institutions, parties, labor and professional unions and others to discuss the issues included in the competence thereof or a public issue shall be considered as general assembly. Although these headquarters are private, but the individuals may access to the same without invitation. Whenever, the number increases and part thereof became part of the public empty space, according to the current draft law, we will consider it as public assembly subject to all mentioned articles and this represents restriction on practicing the right to assembly.

Regarding the second paragraph of the amendment, the NIHR agrees with the government and the Legislation and Legal Opinion Commission that it is preferred to allocate a special regulation for the controls, conditions, procedures and times of allowing the organization of the processions on occasion of funeral and not to apply the controls that are suitable only for organizing the processions and ordinary assemblies, because such assemblies are religious and connected to the prevailing traditions and customs.

Thereupon, the National Institution for Human Rights, hereby agrees with the amendment mentioned in the draft law in this article except for the part related to the provisions of Articles No. (1), (2), (3), (4), (6) and (7) regarding the assembly that part thereof is held in the empty spaces.

Regarding the second paragraph of the article, the National Institution for Human Rights hereby finds that it is necessary to allocate special provisions related to the organization of the processions of funerals.



## Seventh: Article (10)

### Stipulation as mentioned in the original law:

- a. It is forbidden that the non-citizens participate in the processions, demonstrations or assemblies that are held for political purpose, because it is right for the citizens only.
- b. The demonstrations to be held for election purposes shall be prevented.

### Stipulation as mentioned in the draft law:

- a. It is forbidden that the non-citizens participate in the processions, demonstrations or assemblies that are held for political purpose, because it is right for the citizens only.
- b. Demonstrations to be held for election purposes shall be prevented.
- c. **It is forbidden in the general assemblies, processions and gatherings, to carry flags or raise or place any flags of logos for any state, institution, association, organization, authority, party or any other authority whatsoever the nature thereof or any images of persons, models or any other figures in any way, except by virtue of a special written permit to be issued by head of the public security or his representative before holding the assembly, processions or the meeting.**
- d. **The children may not be joined in the processions and assemblies in any way, except by special written permit to be issued by head of the public security.**

### NIHR's Opinion:

- The National Institution for Human Rights hereby finds that the amendment mentioned by the draft law implying the creation of paragraph (c) in article No. (10) is in contrary to the guarantee stipulated in the constitution of Kingdom of Bahrain in article No. (23) thereof which refers to the freedom of the Opinion and right of each person to express his opinion and spread the same orally, in writing or otherwise. This shall be restricted by the non-prejudice to the bases of the Islamic faith and in way that does not provoke division and sectarianism. In addition, article No. (19) of International Covenant on Civil and Political Rights:

- "1. Everyone shall have the right to hold opinions without interference.**
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**



**3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**

**(a) For respect of the rights or reputations of others;**

**(b) For the protection of national security or of public order, or of public health or morals."**

Therefore, the legislator isn't allowed to exceed in imposing the rights guaranteed by the constitution and international conventions approved by Kingdom of Bahrain to the extent to suspending the same or paralyzing the same. This shows clearly that the freedom is the basis and the restrictions imposed on the same are exclusion from such rule. In addition, any traditional measures shall be within the acceptable limits in the society. This article causes the right to the peaceful assembly ineffective, affects the essence thereof and converts it from permit granted by the constitution for the legal legislator into mean for restricting the right. Thereupon, this is deemed as violation to stipulation of article no. (31) of Constitution of Kingdom of Bahrain, which stipulates:

**" ..... Such regulation or definition shall not affect the essence of the right or liberty."**

- Regarding paragraph (d) created in article (10) which stipulates the provision that the children may not be joined in the procession and assemblies in any way except by special written permit to be issued by Head of Public Security; NIHR hereby confirms that this contradicts with the international commitments of the Kingdom created by its joining to the Convention on the Rights of the Child by virtue of the Decree-by-Law No. (16) of 1991. Article No. (15) of such Convention stipulates that:

**1. "States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.**

**2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others".**

In this regard, the National Institution for Human Rights confirms that it is necessary to differentiate between involving the children in the forms of violence and interactions of the political actions, which implies negative reflections on the material and moral behavior and at the same time endangers their present, future and safety and the children shall be excluded from all these processions and interactions and the right of the children to participate in the peaceful assemblies



according to the related international conventions for human rights; especially those conventions that the Kingdom of Bahrain has approved and joined thereto.

Therefore, the NIHR doesn't agree with the amendment mentioned in the draft law in this article and it thinks that the original stipulation mentioned in the original law shall be maintained.

### **Eighth: Article (11), second paragraph**

#### **Stipulation as stated in the original law:**

In addition, the demonstrations, processions or assemblies, which are held or move near the hospitals, airports, commercial complexes or the places of the security nature, may not be organized, provided that the Ministry of Interior shall determine and declare these places.

#### **Stipulation as mentioned in the draft law:**

Without prejudice to the right of the citizens to hold public assemblies and to organize the processions and gatherings according to the conditions and controls stipulated herein, no procession, assembly or demonstration may be held or organized near to the hospitals, airports, embassies, foreign consulates or in the commercial and vital places or which have security nature located in the capital governorate or the other governorates. The Minister of Interior shall be entitled to determine – in other than these areas – some public places within the Kingdom to hold the public assemblies or organize the notified processions, assemblies and demonstrations.

#### **NIHR's Opinion:**

With regard to the amendment mentioned in the draft law, the NIHR finds that the State has a positive obligation to facilitate the practice of the right to assembly and another negative obligation represented in abstaining from unjustified intervention to impede the right to assembly. The State shall refrain from a complete prohibition of the location where the assembly is intended to be held. The principle of rights is allowing public meetings because there is no justification in preventing public assemblies in the Capital Governorate or in front of embassies, consulates or such vital installations as long as the assembly is peaceful and the participants have expressed good intentions that should be assumed. In addition, the state shall take into its consideration that no restrictions shall be imposed on the location of the public assembly, if such restrictions may affect the mission of the demonstrators. The purpose of the assembly may be represented in inciting the embassy to take specific situation; at such time, it will



be more useful to hold the assembly in front of such embassy to be seen and heard by the targeted public. There is no doubt that the choice of a related assembly place by the assembly organizers is accompanied with their fixed belief that this will play role in achieving their targeted purposes. In this regard, the public order brigade shall be responsible for providing the comprehensive protection for the demonstrators in order to maintain the public security and to confront any excesses that may occur<sup>2</sup>.

In all cases, it is necessary to strike a balance between the right of the individuals in practicing this right and the safety of the other remaining individuals of the society and ensuring the minimum limit of the smooth flow of traffic; especially, some of these places that holding the assemblies before the same implies degree of the risk, because they are directly and closely related to the safety and health of the individuals such as the hospitals and their interests that can't be suspended such as the airports. Therefore, the absolute permission isn't preferred and the absolute restriction in the current case isn't rejected as well.

Thereupon, the NIHR doesn't agree with the amendment mentioned by the draft law in this article, because the principle in the rights is the absoluteness and not to restrict the same by such restrictions that invalidate and fabricate the rights and thinks that the original right stipulated in the original law shall be maintained.

### **Ninth: Article (13)**

#### **Stipulation as stated in the original law:**

**Without prejudice to any more severe penalty stipulated by Penal Law or any other law:**

- a. The advocates for or organizers and members of committees of the public assemblies, processions, demonstrations and gatherings that are held or move without notice thereof or although a resolution has been issued on prevention thereof shall be punished by imprisonment for period not more than six months or fine not less than one hundred Dinars or both penalties together. The same punishment shall be applicable to each person continued in advocating for or organizing the same, although they are prevented. The persons who participate in such assembly, procession or demonstration shall be punished by imprisonment for period not more than one month or fine not less than fifty Dinars or both penalties together.
- b. Each person, who participates in spite of warning of the public security in an assembly, procession, demonstration or gathering not have been notified or a

<sup>2</sup> Report of the reporter concerned with the right to the peaceful gathering and right to forming societies, (Maina Kiai), presented to the Human Rights Council at its 20<sup>th</sup> Round - May 21, 2012 - Document No. (A / HRC / 20/27) - the page number (14)



resolution of prevention thereof has been issued, or who disobeys the order given to the assembled person to be separated shall be punished by imprisonment for period not more than four months or fine not less than one fifty Dinars or both penalties together.

- c. Each person uses vehicle in a procession, demonstration or assembly without special permit from the head of public security or his representative shall be punished by imprisonment for period not more than one month or fine not less than fifty Dinars or both penalties together.
- d. Each person violates the third and fourth paragraphs of article (6) hereof shall be punished by imprisonment for period not more than one year or fine not less than two hundred Dinars or both penalties.
- e. Each person violates any of the other provisions stipulated herein shall be punished by imprisonment for period not more than one month or fine not less than fifty Dinars or both penalties.

#### **Stipulation as stated in the Draft Law:**

##### **Without prejudice to any more severe penalty stipulated by Penal Law or any other law:**

- a. The advocates for or organizers the public assemblies, processions, demonstrations and gatherings and the members of committees of the public assemblies, processions, demonstrations and gatherings shall be punished by imprisonment for period not more than six months or fine not less than two hundred Dinars and not more than five hundred Dinars or either penalty, if such public assemblies, processions or gatherings are held or moved without notice regarding the same or in spite of an order issued on prevention thereof.
- b. The advocates for or the organizers of the public assemblies, procession and gatherings, whether they have submitted notice regarding the same or not shall be punished by imprisonment for period not more than six months or fine not less than five hundred Dinars and not more than one thousand Dinars or either penalty, if they continued in the advocating and organizing the same, although they have been prevented. The persons who participate in such public assemblies, procession or gatherings shall be punished by imprisonment for period not more than four months or fine not less than two hundred Dinars or either penalty.
- c. Each person, who participates in spite of warning of the public security in an assembly, procession, demonstration or gathering not have been notified or a resolution of prevention thereof has been issued, or who disobeys the order given to the assembled person to be separated shall be punished by imprisonment for period not less than four months or fine not less than five hundred Dinars and not more than one thousand Dinars or either penalty.
- d. Each person violates the provisions of paragraph (b) of article (3) hereof shall be punished by imprisonment for period not less than six months or fine not





less than five hundred Dinars and not more than one thousand Dinars or either penalty.

- e. Each person who declares, publishes or broadcasts in any whatsoever way, whether internally or abroad any false or biased news, statement or rumors regarding public assembly, procession or gathering without notifying on the same as per this law shall be punished by imprisonment for period not more than one year or fine not less than five hundred Dinars and not more than one thousand Dinars or either penalty.
- f. Each person mention in the notice submitted for organizing the public assembly, procession or assembly any incorrect data or information regarding the data of the notice presenters or the subject matter thereof shall be punished by the same punishment mentioned in paragraph (e) of this article.
- g. Each person violates any of the other provisions stipulated herein or the resolution issued in execution thereof shall be punished by imprisonment for period not more than one month or fine not less than one hundred Dinars and not more than two hundred Dinars or either penalty.
- h. Each person uses vehicle in a procession, demonstration or assembly without special permit from the head of public security or his representative shall be punished by imprisonment for period not more than four months or fine not less than one hundred Dinars and not more than three hundred Dinars or either penalty.

In all cases, a court ruling should be made confiscate of the flags, notices, images, weapons or any other things that are used in violation to provisions hereof or any other law.

### **NIHR's Opinions:**

The National Institution for Human Rights finds that the amendment of the above-mentioned stipulation according to the amendment mentioned in the draft law reflects the legislation policy that adopted the strictness in imposing the penalties whether by increasing the minimum of the financial fines or the punishments that restrict the freedoms. In addition, no guarantees are provided for the individuals against such strengthening. The legal system in any state shall be based upon the balance between the rights and freedoms from one side and the public interest from the other side and the freedom of the individuals shall be restricted depending upon the policy of criminalization and punishment as required by the social necessity. In more accurate way, this means that the society shall be protected considering it as public interest. In addition, it isn't allowed in any way that the balance that shall be ensured by the legislator between the rights and freedoms from one side and the public interest from the other side shall not be method to prejudice the rights and freedoms or access for depriving the citizens from the same in any illogic way or in way prevailed by the arbitrariness and strictness. Therefore, the legislator shall create proportionality between prejudicing the protected rights, public freedoms and



interests that justify such prejudice. In addition, the determined punishments shall be in agreement with the purpose of the criminalization.

It is noted that the law imposed penalties that restrict the freedom and other financial penalties that exceed in value thereof such penalties before the amendment against acts that doesn't form independent crimes in them. For example, paragraph no. (a) of this article punishes the demonstration in itself without notice regardless accompanying the same with any crimes present violation to other rights or not. In addition, this article didn't stipulate the spontaneous gatherings. Therefore, NIHR hereby finds that the failure to notice shall not result in any penalties that restrict the freedom, financial penalties or administrative penalties, because the peaceful gathering may not be considered as a self-standing crime, if it is practiced without presenting the required notice.

In addition, paragraph No. (d) punishes the act of hiding the face during the public gathering by imprisonment for a period of not less than six months and a fine of not less than five hundred Dinars and not more than one thousand Dinars. In addition, the draft law stipulates penalty of the same kind for the failure to commit to the stipulated procedures or the violation thereof not for crimes punishable by the law during the demonstration or the public gathering. In fact, this is deemed as exceeding beyond the principle of the legitimacy of the crimes and punishments, which necessitates that the punishment shall be applicable only to the sinful act that is deemed as crime by virtue of the law. In this regard, the law means the Penal Law. In addition, the punishments shall not be included in a special law, which is supposed to organize the practice of the right and the punishment on committing the crimes on occasion of practicing the right to the gathering shall be up to the Penal Law.

Thereupon, the NIHR hereby doesn't agree with the amendment mentioned by the draft law in this article and thinks that the stipulation shall be repeated entirely in agreement with the international conventions related to the right of peaceable gathering.

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