



සිංහල භාෂාවේ දියුණුව

සිංහල භාෂාවේ දියුණුවේ පිටුවහල්

පිටුවහල් 8 වර්ෂයේ සිංහල භාෂාවේ දියුණුව

13 ජූනි 2014

...
...
...
...
...

Chris Perhaps you can share the similar main findings that you found in the associations frame work

Mr. Christopher Roberts:

Sure. First of all thank you all very much for having us today it's a distinct honor to be able to address you with our findings just to the association legal frame work. I think, Iman introduced me, but I just to talk about myself I have been in Cairo past several years and working on various issues of legal reform throughout the Arab world. I am international lawyer and especially on issues that the association laws. So I have a lot of experience working laws in this area. So I think the chief issue that we think needs to be addressed with 2003 law and law. So underline issue is philosophy of the law. Currently and this is something that actually is seen in the number of association laws throughout the world. The underline approach seems to be won that civil society is an issue of concern and that something that needs to be you know to be carefully controlled somehow. In contrast of cause there is right to association right to association included in the constitution of the Maldives included in international law such as article 22 of international covenantal of civil and political rights to which the Maldives is a party and which is also incorporate in to the constitutional frame work the article 68. Once you reorganize association is a right the fundamental approach to several societies I think has to change. And that means that law should go from having a strict and controlling underline philosophy to a philosophy of enabling civil society allowing it to drive recognizing the right and allowing the civil society to provide benefits to the society as whole. So there are three underline areas I think that we wanted emphasize. There is the number emphasize comments we might be able to give. But there are three underline areas that need to change in order to reflect this conception of the right this fundamental philosophy. First it's important that the law not prohibit unregistered associations. Now first of all this is simply because there is a right to freedom of association so this right is held by all people at all times to attempt to prohibit association would be to invent that right. Secondly I think once you start to think logically about this issue this only makes sense in current 2003 act we can see that association are in fact find as associations as registered under the act. And once you and then the prohibition say any associations

which are not registered under the act shall be penalized. But since you committee find associations that things are registered under the act it actually starts to create a legal problem there. And this isn't just a quite issue drafting in this particular piece. This is because it is very hard to define an association in some absolute way. We associate, everyday associate this simply when we come together with other people to pursue a common purpose without seeking perfect. So and to clarify of course the types of associations that we mean in the sense are small informal associations it is reasonable for the law to require any association that utilizes a certain amount of resources that's taking and spending a large amount of money to be registered under the act. This is primarily a concern relative to small informal associations that they not be penalized by the law. Secondly it's important that the framework in the 2003 law be change to ensure independent oversight of this civil societies fear. So, this again is in according to international stranded and there is variety of ways all sorts of mechanisms that can be put in place to achieve this. First of all ensuring that the process of appointment to the oversight body uses consensus, secondly by ensuing that the people on that body are inflated political concerns, third by ensuring that there is some degree of public inputs and transparency to the appointment of that body and also in fact by making it a body of individuals rather than simply one individual. Because once you have a body you have more checks. You simply have more different voices included and I think that would actually lead to better outcomes in terms of regulations and over sight on a whole. Third the 2003 associations act allows excessive discretion in a number of areas. So, this happens in a number of different ways. The law frequently simply refers to such discretion. In addition it allows for decisions to be made in instances when it is necessary and frequently allows those decisions to be made on the basses of factors that are either openly broad and waig or that are not in complaint with international standards. This is the case of two associations' names and symbols. This discretion is on the part of registers to names and symbols are acceptable. Changes regulations in cases where there is no need for the register to review those changes, the reasons registration can be refused, alterations of regulations, fire approval of funding, issues of public support how public support is distributed is not sufficiently laid out by the law to ensure that its distributed in a way that's equal and non political and in the imposition of penalties. So, and I think we on the line think about mind when thinking about removing discretion from this areas that actually this on the one hundred of course it will help civil society to fly by respecting the principle of fatality and allowing to look at the law clearly to see what exactly they have to do and the standards by which they will be bound. But they will also help the governing body because by simplifying and clarifying the procedures the governing body won't be involved in this sort of a more of a wide spread sets of concerns. It, the governing body too would have much better define precisely what its responsibilities are.

And this actually is also a positive in terms of governance because once you remove all of these various concerns from the shoulders of governing body that constantly checking every little detail of the associations regulation for example; they can focus on issues that I think we all agree are in fact of concern potential impalement fraud or these sort of abuses that might occurred. So, that is the basically with you and I am happy and I'm sure we are happy to take any questions you may have. Thank you.

Mr. Chair:

Honorable member Rifaaq.

Maafannu dhekunu constituency member Abdullah Rifau:

Thank you very much for coming and sharing this information with us. I have this concern that even the AG did support your idea of the right of freedom of associations without the registering. But I'm concerned that who will take the responsibility of any misconduct according to our experience especially in Male' there are small groups of young people gathered on corners where they called themselves some name which is considered I mean that is what I think you are mentioning here, unregistered organization or groups. If something happens by that brand or name who will be the responsible person. If there is a registered there definitely will be somebody whom we can take the action against. Also the funds or sponsorships which they take how they can manage the transparency for how this funds are utilize and who will actually be responsible if the funds they take is not given for the right purpose. Thank you.

Mr. Christopher Roberts:

Thank you for the question. I think the core point to bear in mind I think this comes up very frequently relative to association laws is that an associations law is of course not only tool of governance. So, you have the entire, you have all of them that the resources of the criminal system for example if there is a particular criminal conduct begin perpetrated by that particular group than the criminal system is the one that is appropriate to adjust it and that would be the case where there are not the association with registered. And I don't think we will ever expect such groups to register. So, the problem in the sense is the same in that way. I think on the other hand the association's law you know so those are problems. But those problems to the address separate legal... Was association's law should be focus on promoting the existence of association and on these issues. And the problem of course is that for you know for that one maybe problematic entity you have an other dozen entities which are positive and simply people coming together to

support that community so you need to craft a way of dealing with them which doesn't bring in you know and penalize good along with the bad. I think certain criminal obligations you know just a particular problematic actively on the way to adjust things.

میرا سٹیوٹس اور انڈیا ایکٹ:

ہم نے انڈیا ایکٹ کے سیکشن 10:15 کے تحت ایک کوآپریٹو ایسوسی ایشن کے ساتھ ساتھ اسے
تعمیر کرنے اور انڈیا ایکٹ کے تحت اسے قائم کرنے کی اجازت دی ہے اور اسے
درجہ اول سٹیٹس دے گا، اس کے ساتھ ساتھ اسے ایک کوآپریٹو ایسوسی ایشن

Maafannu dhekunu constituency member Asma Rasheed:

Notification there are some points I would like to get more clarification on that. Like notification rather than an authorization regime govern by a notification rather than an authorization regime. Then the second one is granting legal status to associations'. Then granting excessive discretion to authorities and the law should stipulate that following number of days without receiving comments from the authorities, that's 30 days at maximum with the smaller time period portable association will be, will obtain legal status.

Mr.Christopher Roberts:

Sure. So thank you for the question. So the first issue that you raise the question of notification other than authorization actually links up to the, I think another point that you mention which is the stipulation of certain time requirement. So this is some one of the things that I think is most emphasize with in international law and standards which is the shift firm and I think it goes to the fundamental shift. I was talking about from a discretionary so the controlling approach to an enabling approach that recognizes the association of right. So, one thing is simply just using the word notification which indicates a great degree of a presumption that legal status will be achieved. But then of course you need various precious mechanisms to make that affective in the reality and of the most affective of these or important is this time limit. So for example in Egypt there is no associations have to gather the documents and submit them to authorities and many associations submit the documents and they won't hear response for years. And so they are force to exist in a kind of legal mumble. Tunisia recently pass very positive new legislations on associations which speculated that if you don't hear back from the authorities within 21 days then you have legal status. So this I think you know it, it helps to avoid that situation of legal empower and also it gives the authorities of default position if they you know, they might simply, you know they might not see no problems

and they might now they don't have to necessary response to the association because they will obtain legal status after that amount of time. There are other important elements to ensuring a notification frame work. For example I am ensuring that, you know first of all that if the registrar has some issues of the governing documents of the association they should sit down with the association or communicate with them and provide assistance to them in getting the government, governing documents in good shape and meeting all the requirements of the law. They should also always be the, if they do check the association they should provide within these things provide why they are doing so based upon the law and they should always be the possibilities of court view for any such decisions. Now could you remind me of the other particular points because I didn't have the developing document that you are, sure? So the issue of this, yeah. Yes, ok. So I think there are 3 co ways that you address this decision. First the certain things shouldn't infect need any decision at all, whether they might be a decision. Small changes to the governing regulations of an association currently such changes need to be with you, also changes need to be with you by the authorities. This is not necessary, it's actually just going to add increase burden on the authorities and without any increase the governments benefit. If there are changes to name or if there is changes to the purpose of an association these are things which are more significant and which would be refuse. So one is when decisions are taking. Two is the standards by which such decisions are taken and two has two parts that means standard should comply with international standards and also, it also means generally that standard should be quiet for size. Precise for example relative to name of the association, it should only be an issue if the association is taking a name that is completely confusing, if it is trying to take the same name of another association for example that then should be rejected. It shouldn't be a question of the registrar being able to decide if they like a certain name or not. Which this is sort of the what would be excessive discretions I that instance relative to questions purpose the law should lay out quick clearly several, several purposes that are prohibited and be very precise about this purposes, because unfortunately what we see all over the world in associations law and other laws is very broad statements of the purpose that they can be used to you know, statements of prohibited purpose that can be used by the authorities to selectively choose which ever association they want to prevent acting involve that doing so and clearly defined vary government law. So this is how you reset these sorts of ways that you remove excessive discretions. (After sometimes) Yes, I think the co-point is that if the discretionary elements means that they are just make them making decision based on judgment is supposed to base upon the law. So the idea is that the law would be very crisp and clear as to the prohibited activities and then those things are occurring then the authorities of course should step in and prohibit that activity. Yes exactly it would be, it

would be in the discretionary sort of a broad heading for variety of very particular things you can do in the course of the tax of a... Yes, exactly. Thank you.

Mr. Chairman:

Bari, after that I will get chance to Shameem.

Kurendhoo constituency member Abdulbari Abdullah:

Thank you chair. I would also like to highlight on the discuses which we had yesterday at the symposium; I had the opportunity to attend the symposium. One of the issues that we are talking about all the registration, on the registration of cause the, from the constitution it allow freedom of association. But I would like to highlight that in the registration process there is a from governess point of view, there is an importance of coordination, monitoring and regulation. Now we are talking about institutions. Now if it is, when it is an institution once it is registered or not registered there is a role of the state, there is role of the public, NGO's and there is a; I am talking from right basis approach from a righter's point of view and bearers point of view. So the bearers also must have certain responsibilities and therefore I would like to highlight these two words. The coordination and monitoring and this two functions bring some sort of control either by the government or by the NGO. So I am not advocating either to make it mandatory to register or not to make register. But the point I am highlighting is there has to be a mechanism in which the NGO's are coordinated. The NGO's are monitored and from a good governess point of view they are also responsible from a bearer point of view. So I hope that should be highlighted in the law. Because we should remember that we cannot compare America, UK because we are still a very young democracy. So we should not be trying to plant the same hand to Maldives. We should also check the blood group. We should also check other things how the status of the patient if we want to justify. So I would urge that, when we get this bill reviewed that we look at from two points, from a right base point and from a right base point of view and the bearer and the cord. So that's one point. Second point is if it is not registered, as you have just mentioned, if it is not registered then there is an element of a governess which goes out of hand which is not coordinated, which is not monitored. So it is up to the government to decide to leave it in default not monitored, not coordinate and yet they are applied. So I think it is time that both the government and the NGO's sit separately and discuss this governance issues and reflect this in the bill. That is the point which I would like to highlight today. Once the bill comes into the parliament, of course we will be looking at from a good governance point of view. We will also be looking at these two points that I have highlight, the coordination's, the monitoring and how the control is negotiated between the government and between NGO's. So thank you.

