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RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

ASSESSMENT REPORT

FREEDOM OF ASSOCIATION in the euro-mediterranean region

A THREATENED CIVIL SOCIETY

2007 2008 2009 2010



Cover Photo: *Striking workers of Algerian automotive company SNVI hold a protest to demand better wages in Rouiba, a heavily industrial suburb east of the capital, Algier, January 2010- by AP*

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EXECUTIVE SUMMARY

A close examination of recent developments in the Euro-Mediterranean region reveals that freedom of association has experienced setbacks in the past few years and there has been very little positive development worth mentioning. Since 2007, some countries have amended their laws on NGOs (Jordan) or have announced changes (Egypt, Syria), while others have recast their legislation in ways that have a direct impact on NGO activities (Israel, Tunisia)¹. The trend observed in the past three years is that new restrictions have been put in place in the name of public order, security and the fight against terrorism. These restrictions have led to arbitrary denials of registration for many organisations, in particular those active in the human rights field (Libya, Syria, Tunisia), including in promoting diversity and minorities (Greece, Morocco, Syria, Turkey). The restrictions have also taken the form of ever-growing interference in NGO activities by the authorities, for example by impeding their right to peaceful assembly (Algeria, Israel, Egypt), intervening in the affairs of their boards (Syria, Tunisia) or dissolving organisations on arbitrary grounds (Palestine). These measures contradict both the spirit and the letter of Article 22 of the International Covenant on Civil and Political Rights.

These developments have left human rights activists in a deplorable situation, marked by physical and psychological attacks, smear campaigns and restrictions on the freedom of movement of many activists in a number of countries of the Eastern and Southern Mediterranean. Sentences imposed on NGO activists, in some cases by military tribunals, also provide distressing evidence of the trend towards more restrictive policies observed over the past three years.

While there are some positive developments (Lebanon, countries of the European Union), concerns still remain in some of those countries. For instance, the fundamental recognition of the right to freedom of association for all without any exception – including, for example, members of sexual minorities – has yet to become a reality in some countries.

In light of these and other developments that have taken place in the past three years, both in the legislative domain and with respect to the tight controls imposed by administrative authorities, it is more imperative than ever that the recommendations set forth by the EMHRN in its annual reports be implemented, including those recommendations aimed at the institutions of the European Union in the context of their relations with states of the Eastern and Southern Mediterranean.

The freedom of association project of the Euro-Mediterranean Human Rights Network (EMHRN), funded by the European Commission since 2007, monitors the evolving situation of NGOs, in law and in practice, throughout the Euro-Mediterranean region, on a daily basis. This activity, which has already given rise to three annual reports on freedom of association since 2007², continues this year with a fourth report documenting both the developments related to freedom of association that have taken place since the publication of the last report in December 2009, as well as analysing the broad patterns of progress and setbacks that have emerged since the publication of the first report in December 2007.

Similarly to the previous reports, this fourth report also includes two thematic chapters encompassing the whole Euro-Mediterranean region. This year, the subjects are the funding of associations and the right of non-nationals to form associations.

¹ In the spring of 2010, the Tunisian government adopted a law amending Article 61bis of the Criminal Code, which provides for a lengthy prison sentence for anyone who, directly or indirectly, establishes contacts with agents of a foreign state, institution or organisation with a view to threaten the vital interests and economic security of Tunisia.

² See the EMHRN website <http://en.euromedrights.org/>

Introduction



*The wall of International Peace - 2009
by Jeff Bauche*

INTRODUCTION¹

An examination of the last few years reveals that freedom of association has suffered hugely as the time passes, and there has been very little positive development worth mentioning. Many similarities emerge in countries covered by this report². However, while there are several inter-governmental mechanisms in place to address human rights concerns and has repeatedly raised concerns over individual cases and situations in general, most violating states have almost completely turned a blind eye to their calls, conclusions and recommendations.

The Euro-Mediterranean Human Rights Network (EMHRN) places great importance on monitoring and intervening in cases of violations of freedom of association, because the EMHRN believes that respect of this is a cornerstone to respect for many other human rights. The degree to which freedom of association and the related freedoms of expression and assembly are respected normally constitutes a very good indication to the level of democracy and respect for human rights in any country.

This report aims to identify the patterns in relation to the protection and respect of the right to freedom of association in the last three years, illustrated by selected examples, building on the information that was presented in the last three annual reports of the Freedom of Association Working Group of EMHRN³, and other documents and reports by the EMHRN and other bodies and organisations including the UN, as well on a series of interviews of activists involved in associations⁴. This introduction does not aim to be a comprehensive review. Such a task will indeed be impossible.

1. The Main Trends

The Special Rapporteur on the situation of human rights defenders explains that freedom of association means the right of the individual “to found an association with like-minded persons or to join an already existing one. At the same time, it also covers the collective right of an existing association to perform activities in pursuit of the common interests of its members. States cannot therefore prohibit or otherwise interfere with the founding of associations or their activities”⁵.

It is clear therefore that freedom of association relates to different stages of the life of an organisation or an association: the ability of the organisation to raise funds to enable it to function without interference, including the freedom of its members from arbitrary interference and threat to their rights; the ability of the organisation to raise funds to enable it function; and freedom from arbitrary dissolution or other such interference of the work of the organisation. These are the main components of the systematic methodology developed by the Freedom of Association Working Group of EMHRN to measure compliance with international law and standards. The five-part criteria, which examines how national law and practice deal with freedom of association, focuses on the prior authorisation to register an association, dissolution, interference, access to foreign funds, and other such elements impacting freedom of association.

As will be shown in this introduction and the rest of the report, restrictions imposed are indeed imposed at these different stages and on the conditions that enable these stages. An in-depth analysis on the improvement of the situation over the past three years in both law and in practice shows that violations take place mainly in the following trends:

¹ Mervat Rishmawi is an independent human rights consultant with a special interest in human rights in the Middle East and North Africa region. She was previously the Legal Advisor to the Middle East and North Africa at the International Secretariat of Amnesty International.

² Algeria, Egypt, Jordan, Israel, Libya, Lebanon, Morocco, Occupied Palestinian Territories, Syria, Tunisia, Turkey

³ The annual reviews are available at: <http://en.euromedrights.org/index.php/themes/4561.html>

⁴ For security concerns, the names of the people interviewed have been taken out.

⁵ Report to the General Assembly of the Special Rapporteur on the situation of human rights defenders, A/64/226, 4 August 2009, para 22.

2.a Restrictions in the name of public order, security or combating terrorism

Protection of national order or security and use of combating terrorism and other such laws or pretexts continue to be one of the main tools used by governments to suppress associations and their activities.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism is of the opinion that “it is permissible to take measures such as criminalising preparatory acts of terror planned by groups, which in turn implies the need to take measures that interfere with the freedom of peaceful assembly and the freedom of association. States must not, however, abuse the necessity of combating terrorism by resorting to measures that are unnecessarily restrictive of human rights”⁶. He raises concern that in counter-terror legislation, the terms “terrorism” and “terrorist acts” are often vaguely or broadly defined. He also raises concern over the use of pretexts like protection of public security, public order, etc. He clarifies that the onus is on the Government to prove that a threat does in fact exist and that the measures are taken to deal specifically with the threat.⁷ In the Special Rapporteur’s opinion, “this means that the limitations must meet the test of necessity and the requirement of proportionality”⁸.

Therefore, while international law does not make the right to freedom of association absolute, the only limitations that are allowed, as clarified by Article 22 (2) of the International Covenant on Civil and Political Rights (ICCPR), are those “which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” Any such restrictions are only permissible when all these conditions are met⁹. The Human Rights Committee, which oversees the implementation of the ICCPR, explains that where restrictions are made, “states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of

a Covenant right”¹⁰.

Therefore, as the Special Rapporteur on the situation of human rights defenders clarifies, restrictions that are introduced through government decrees or other similar administrative orders are not permissible as they fail to fulfil the requirement “prescribed by law”. Furthermore, laws which contain vague and broadly defined provisions that easily lend themselves to misinterpretation or abuse are not permissible. The Special Rapporteur on the situation of human rights defenders clarifies that the condition of “necessary in a democratic society” requires guarantees of functioning of “plurality of associations, including those which peacefully promote ideas not favourably received by the government or the majority of the population... [and that] the prohibition of the association and the criminal prosecution of individuals for membership in such organisations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose”¹¹.

This means that measures which are not necessary or are disproportionate; which do not deal with specific threat as clearly prescribed, identified and defined by law; and which will effectively have a negative impact on the enjoyment of freedom of association and other rights and freedoms, are not permissible. Limitations are allowed only if there is specific threat to national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

The definition of terrorism or other related offences in many countries subject to this report, in the Southeast of the Mediterranean as well as in EU countries, is so broad that it can be subject to abuse and misinterpretation. Many such laws have been subject to constant criticism of several UN human rights mechanisms¹².

In several countries covered by this report, including Syria, Egypt, Algeria, Tunisia, Jordan, Palestinian Authorities and Israel, authorities rely on broad provisions in the law related to terrorism or public order or security, for example, for stifling the work of an organisation without showing any specific threat, and without demonstrating how less intrusive measures would have not been sufficient. By doing so, states therefore fail to meet the essential test of necessity and proportionality to make any interference

6 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/61/267, 16 August 2006, para. 11, available on <http://www2.ohchr.org/english/issues/terrorism/rapporteur/reports.htm>

7 Ibid, para. 20

8 Ibid, para. 21

9 SR HRD Ibid, at para. 27.

10 Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004 (CCPR/C/21/Rev.1/Add.13), para. 6

11 Ibid, at para. 27 and 28.

12 See Susie Alegre: “The impact of counter-terrorism policy on freedom of association in the Euro-Mediterranean region”, in EMHRN: Freedom of Association in the Euro-Mediterranean region, 2008.

with the enjoyment of freedom of association lawful. The broad definition in the law in France, the UK, and Spain, for example, allows for interference in freedom of association and expression.

In Syria, Egypt and Algeria, the existing or modified provisions in the emergency regulations have provided the state authorities with adequate grounds to restrict freedom of association. In these same states and others, restrictions are imposed on basis of very broad and vague provisions in the law, often using existing, modified or new counter-terrorism legislation or provisions in the penal code that criminalise activities in the name of “public order”, “national interests”, “national unity”, and such similar overly broad provisions. Terrorism is defined in very broad terms that encroach on many rights and freedoms, including freedom of association.

For example, several organisations have been closed by the Israeli authorities on the pretext of “security threat”, and their assets confiscated under terrorism-related charges. Since August 2001, the Israeli occupation authority has closed around 26 organisations including the Orient House, the Jerusalem Chamber of Commerce and the Arab Studies Society. Furthermore, since the beginning of 2009, the Israeli occupation authorities also banned, and physically prevented, numerous peaceful, cultural and educational activities organised as part of the Palestinian activities to marking the declaration of Jerusalem as the ‘Capital of Arab Culture 2009’¹³.

The Ministry of Labour of the Palestinian Authority has dissolved a large number of associations throughout the last three years. In 2007, a total of 123 charitable organisations were ordered to dissolve in the West Bank in addition to another 98 charitable organisations in the Gaza Strip. In 2008, at least 59 associations were dissolved in the West Bank and 171 in the Gaza Strip respectively. The Director General of the Department of Non-Governmental Organisations at the Ministry of Labour in the West Bank is said to have stated that the closure of some associations had been based on “national security” considerations. Dissolution continued throughout 2009 as well¹⁴.

The state of Emergency in place in Syria since 1963 is often used to clamp down on freedom of expression and association. The State of Emergency Law and the Penal Code impose prison punishment for the gathering of more than seven people in public places and meetings that “cause disturbance”. The Supreme State Security Court (SSSC), whose procedures are in gross violations of

international fair trial standards, was created according to the Emergency Regulations, and is routinely used to try human rights defenders and critics of the government as the many examples below will show.

In Algeria, Ms. Louisa Saker was tried in 2008 under charges of disturbing public order, organising an “unauthorised unarmed march”, contempt of and attacks on civil servants with the use of weapons and theft, charges which relate to her participation in a peaceful demonstration in 2004 by families of victims of enforced disappearance in Constantine¹⁵.

Moreover, the Israeli authorities detained Mr. Amir Makhoul, a Palestinian Arab citizen of Israel, and a political reform leader, on 6 May 2010¹⁶. He was charged with “assistance to the enemy in a time of war”, “conspiracy to assist an enemy”, “aggravated espionage”, and “contact with a foreign agent”, which he strongly denies.

In May 2010, Egypt renewed its state of emergency for an additional two years, which has been in place for almost 29 years. Accordingly, security forces, especially the State Security Investigations (SSI) officers, will have extensive powers, for example to order the detention without charge or trial of any suspected person on the basis of the mere suspicion of endangering “national security” or “public order”. These powers are not used against a handful of individuals; the problem is far more severe. While the government announced on 11 May, 2010 that it would limit administrative detention under the emergency law to persons suspected of involvement in “terrorism” or drug-related crimes, human rights organisations and Egyptian lawyers estimate that between 5,000 and 10,000 people are currently in long-term detention without charge or trial under the emergency law. Some have been held for more than a decade, including many whose releases have been repeatedly ordered by courts. Several UN expert bodies have expressed concern over the continued use of administrative detention in the manner it is in Egypt, and over the continuation of the State of Emergency. The government continues to detain people under the emergency regulations for their expression of opinion, peaceful activism, and other activities which are unrelated to either terrorism or drug-trafficking. This includes the blogger Hany Nazeer, as well as human rights defenders Mus’ad Abul Fagr and Yehia Abu Nassira, who have been put under successive emergency law orders since 15

¹³ The Civic Coalition for Defending Palestinian Rights in Jerusalem: “Socio-Cultural Repression Continues Unabated in East Jerusalem”, Press Release 003, 16 July 2009.

¹⁴ The Palestinian Independent Commission for Human Rights: “Freedom of Association in the Palestinian-Controlled Territory During 2008”, p. 36 available on <http://www.ichr.ps/pdfs/eSP66.pdf>

¹⁵ For further details about harassment faced by associations of families of the disappeared in Algeria, see Amnesty International: “Algerian Human Rights Lawyer Convicted for Denouncing Violations”, 26 November 2008.

¹⁶ Mr. Makhoul is the General Director of Ittijah - the Union of Arab Community-Based Associations, and Chairman of the Popular Committee for the Defence of Political Freedoms in the framework of the High Follow-up Committee for the Arab Citizens of Israel.

February 2008¹⁷. More than 18 court orders to release Abul Fagr were ignored by the Egyptian authorities, until he was finally released in July 2010.

2.b Restrictive legislation, arbitrary denial of registration

In many countries that have gone through legislative changes and reform, the trend has been towards more restrictions in the registration and functioning of civil society organisations as is the example of Jordan, and most recently Egypt and Tunisia. In the other countries it seems that the existing laws are restrictive enough to serve the purpose. Therefore, no further restrictions were introduced in the period under review. States do not only rely on associations' laws, but penal codes, press codes, and other legislations are used to punish associations and interfere with their work. The power to dissolve associations is often placed in the hands of the executive authorities as is the example of Egypt, Jordan, Libya, and Syria. In Lebanon, despite the liberal nature of the law, it gives the executive authority the right to dissolve associations. In Turkey, the power of the courts in relation to suspension or dissolution of associations can be moved to another authority designated by law in cases that are said to "endanger national security" or "public order", and in cases where it is necessary to prevent the perpetration or the continuation of a crime.

There are generally two types of systems applied to civil society organisations wishing to obtain legal personality; the so-called "notification" and "registration" regimes that require the authorities' prior approval to establish an association. Some countries in the region require registration, but often applications are rejected. In some cases such rejection is based on unspecific security reasons. Activities of unregistered organisations are prohibited. Such countries include Egypt, Jordan, Syria and Libya. Most frequently, such decisions are not subject to judicial review. Consequently, associations which continue to operate without legal registration face many restrictions, rendering their activists vulnerable to intimidation and harassment. This also has the effect of intimidating and possibly deterring human rights activists from establishing or joining human rights organisations or activities.

In other countries, notification or declaration is adequate, but instead other restrictions are imposed. Most require

that the government has to issue receipt of the notification, and that it issues a registration document. Such countries include Algeria, Lebanon, Morocco, Tunisia, the Palestinian territories, Turkey, and the European Union countries. However, in practice in some cases, like Tunisia, and Algeria, the authorities ignore the application and do not issue such receipts or registration¹⁸. In Tunisia, Algeria, Jordan, Egypt, Lebanon, and Libya, the law clearly prohibits and punishes "secret" or "undeclared" associations and gives the government the right to dissolve them.

In the opinion of the Special Rapporteur, registration should not be compulsory and associations should be allowed to exist and carry out their activities without having to register. Furthermore, in the systems that require registration, the relevant legislation should clarify the status of organisations in the period between the request for registration and the final decision, and that pending such a final decision, organisations should be free to start their activities. NGO laws containing lists of permitted or prohibited activities for civil society organisations are extremely problematic. Also, access to funding, and the ability of organisations to solicit, receive and use funding, including from abroad, is an inherent element of the right to freedom of association¹⁹.

For example, since their inception, associations of families of victims of enforced disappearance in Algeria have been reporting difficulties in obtaining legal registration. The Algerian authorities refused to acknowledge receipt of the application for registering of SOS Disparus in 2004. Officials from the Ministry of Interior did not even agree to the request to meet with representatives of the association in February 2009 to submit another application. Similarly, the authorities did not officially respond to the Association of the Families of the Disappeared of the Province of Constantine's application for registration. The Algerian League for the Defence of Human Rights (Ligue de Defense des Droits de l'Homme, LADDH), one of the most prominent Algerian human rights organisation, sent a registered letter with a request for acknowledgement of receipt, and then had a bailiff deliver it, in November 2007. Despite this, the organisation has yet to obtain a receipt confirming that it notified the authorities of the new composition of its board of directors, a requirement in the law.

In Tunisia, not a single independent human rights association has been granted registration for almost 20 years now. The authorities have also prohibited chapters of the country's oldest, and legally recognised, human rights organisation, the Ligue Tunisienne des Droits de l'Homme (LTDH), from conducting internal meetings. Equally, in Syria, it is common practice that organisations are not granted

17 For a list of examples of people placed under administrative detention under the emergency laws and for an analysis of the issue see Joint Press Statement by 12 Egyptian and International human rights organisations "Egypt: Keep Promise to Free Detainees by End of June. May 11 Emergency Law Revisions Mean No Legal Authority to Keep Hundreds of Prisoners", 29 June 2010, available on website of these organisations, for example <http://www.hrw.org/en/news/2010/06/29/egypt-keep-promise-free-detainees-end-june>

18 For details on each of the countries, please see the previous annual reports of the Freedom of Association Working Group.

19 Ibid, at para. 59, 60, 66, 70, 79, 91.

registration. The Human Rights Association of Syria, the Syrian Organisation for Human Rights (Sawasiyah), and Committees for the Revival of Civil Society (which works on Kurdish rights), to name just three prominent human rights organisations, have been denied official registration. Members belonging to these organisations are frequently under attack, as is shown below.

Even when the law is favourable, the authorities do not always respect it. In Morocco, the authorities in Al Ayoun have continued to refuse accepting the submission of documents by the Sahrawi Association of Victims of Grave Violations Committed by the Moroccan State. In 2006, the administrative tribunal of Agadir ruled that the authorities' administrative decision had been illegal because it had not respected the relevant legal provisions.

Egyptian law is often used to close organisations. The Centre for Trade Union and Workers' Services (CTUWS), which was established as a non-profit civil company in the late 1980s, pursued its activities and defended labour rights until Law No. 84/2002 was issued, which required all organisations to register under that law. The CTUWS unsuccessfully tried to register in accordance with this NGO Law. The application was rejected on "security reasons". In March and April 2007, the authorities issued decisions to close the CTUWS offices in three cities. On 30 March 2008, the Administrative Court ruled in CTUWS' favour. The Association for Human Rights and Legal Aid was dissolved by an administrative decision in early September 2007. However, a decision by the Administrative Court in Egypt, on 26 October 2008, allowed the association to continue its activities.

In Libya the government does not allow the establishment of independent human rights NGOs. One of the rare national organisations permitted to address human rights is the Human Rights Society of the Gaddafi International Charity and Development Foundation. An effort by a group of lawyers, journalists and writers to register a new NGO in 2008, the Centre for Democracy, was nipped in the bud. The authorities objected to 12 of those named as founders of the organisation and one of the group's founders was abducted and assaulted in June 2008 by three unidentified assailants who warned him against the establishment of the NGO.

In Egypt a draft bill that was published by the media, and which is said to amend the current law on Associations (Law 84 of 2002) would grant the Egyptian authorities broader powers for the suppression of civil society organisations. It is not yet clear if the text published in the press is the official one. However, if it is, its effects would limit the activities of organisations or shut them down completely by criminalising all forms of unregistered organisations. According to a number of Egyptian NGOs, the role of the Ministry of Social Solidarity and the Ministry of Interior as well as various security services will be strengthened.

New powers will be added to the supervisory; the General Federation of Civic Associations and regional NGO federations. NGOs seeking to be established must submit their papers to the appropriate regional federation for approval before being referred to the administrative body, which, after consulting with the security apparatus, can refuse to register the NGO. Further, the bill restricts an association's freedom by prohibiting association to work in more than two fields, while maintaining a general restriction that an association cannot pursue activities that "threaten the national unity, violate public order or ethics"²⁰.

In Jordan as well, a new law allowing the executive authorities larger monitoring power on associations' activities was adopted in 2008, and then amended in 2009. The Law of Societies provides for a continuation of the previous requirement that registration of an association depends on the authorities' approval. Grounds to deny approval are not clarified. Additionally, the authorities would retain wide powers over an association's activities, including delegating a representative to attend the association's General Assembly meetings; requiring an association to submit its annual plan of activities in advance to the authorities; and allow associations to receive foreign funds only following prior approval.

Often, harsh punishment is prescribed for activities that are in line with international standards for free association and expression on basis of provisions in national laws. For example, in Libya, death penalty can be imposed for loose terms in the law related to forming, joining, financing or supporting groups based on a political ideology opposed to the principles of the al-Fateh Revolution of 1 September 1969, and for "encouraging that [the Revolution] by whatever means". Articles of the Penal Code also prescribe capital punishment for those who call for "the establishment of any grouping, organisation or association prohibited by law", and for those who spread "theories or principles aiming to change the basic principles of the Constitution or the fundamental structures of the social system". Peaceful critics of the Libyan political system have been convicted on vaguely worded charges such as "attempting to overthrow the political system" or "spreading false rumours about the Libyan regime".

In Tunisia, a very recent law adopted in June 2010, which amends the current penal code, criminalises any "persons who establish, directly or indirectly, contact with officials of a foreign state, institution or foreign organisation with the aim of inciting them to harm Tunisia's vital interests and its economic security." Anyone found guilty of this crime will

²⁰ See EMHRN: EU-Egypt Association Council: The EU Should Call on the Egyptian Government to Respect Freedom of Association, 21 April 2010 and a joint NGO statement: "Towards the «militarization» of NGOs: A «fascist» law to strangle civil society", 22/03/2010, available on <http://www.cihrs.org/English/NewsSystem/Articles/2584.aspx>

face up to 20 years in prison, with a minimum sentence of five years. This is believed to target human rights activists who lobby foreign bodies such as the European Union (EU) on the human rights situation in Tunisia²¹.

On the other hand, and as a positive development, in 28 January 2009, the Conference of International NGOs of the Council of Europe adopted a number of recommendations with respect to the establishment of NGOs. Among these, it was recommended that legislative restrictions on the establishment of informal groupings should be repealed; the requirement for securing registration or acquiring legal personality should be simplified; formal time limits for decision-making by relevant authorities should be no more than two or three weeks and steps should be taken to ensure their observance; legal grounds for refusal should be reformulated where they are insufficiently precise and they should be reviewed and modified; decision-making with respect to the registration of NGOs or granting them legal personality should be protected from political; effective and timely judicial control over decisions concerning registration and the grant of legal personality should be assured²².

2.c Restrictions on freedom of expression and information

It is important that organisations and defenders are able to speak out and act without fear of reprisal. They should be able to raise concerns about government policies; seek, receive and impart information; and engage in debates. This is the thrust of the Declaration on Human Rights Defenders which states in its opening article that “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”. The Declaration affirms that everyone has the right, individually and in association with others, “to submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms” and “to participate in peaceful activities against violations of human rights and fundamental freedoms.... everyone is entitled, individually and in association with others, to be protected effectively

under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms”²³.

Ideas that “offend, shock, or disturb” are protected under the right of freedom of expression in international law; and therefore associations that take controversial positions or criticise the Government in ways that “offend, shock or disturb” should equally be protected²⁴.

Laws have been used or often amended to allow for accusations like defaming the head of state or other state officials or institutions, such as the army, the parliament or the judiciary. Other similar provisions in the laws prohibit “spreading false rumours”, “tarnishing the image of the state” or other such broad provisions. Defamation or other such charges have increasingly been used in the last few years to punish those who raise human rights concerns in Tunisia, Egypt, Syria, and Algeria. These provisions have been used to penalise journalists, editors, bloggers, and against human rights defenders who are perceived to be critical of the conduct of the authorities simply for raising concern or fighting against human rights violations. Such practices are in clear violation of the right to freedom of expression, recognised by Article 19 of the ICCPR. There is immense effect on those who are directly caught in that web, detained arbitrarily, without fair trials, and often tortured or ill-treated. Often their families are harassed. These measures are also designed to have a knock-on effect on many other individuals or organisations, which in turn become hesitant or even scared of engaging in activities of civil society organisations fearing penalisation. This stifles real debate on issue with government authorities and in the society on human rights concerns.

Freedom of expression can be subject to restrictions. However, like freedom of association, such restrictions can only be imposed if 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 (ordre public), or of public health or morals”. The test of necessity and proportionality equally applies here.

In Egypt, charges of “defamation”, “the use of threats” and “misuse of communication tools”, after allegations of extortion were made by a judge in 2007 against Gamal Eid, Director of the Arabic Network for Human Rights Information and Ahmed Seif El-Islam Hamad,

²¹ See the joint declaration by the EMHRN, Observatory for the protection of human rights defenders, Reporters sans frontières, Amnesty International and Human Rights Watch: “Tunisia: Parliament adopts amendment further criminalizing the defense of human rights”, 17 June 2010.

²² See Conference of INGOs of the Council of Europe, Recommendations adopted on 27 January 2010 CONF/PLE(2010)REC1.

²³ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, Articles 8 and 12 (1&3)

²⁴ See Report of the Special Rapporteur on the situation of human rights defenders, A/64/226, 4 August 2009, para. 29.

founder of the Hisham Mubarak Law Centre and blogger Amr Gharbeia, who later was employed at Amnesty International²⁵.

In November 2008, the Court of Appeals in Algiers upheld the conviction of the prominent human rights lawyer Amine Sidhoum, who was found guilty of bringing the Algerian judiciary into disrepute on 13 April 2008. This situation stemmed from a newspaper article published in 2004 in which Amine Sidhoum is quoted as saying that the 30 months that one of his clients spent in prison without trial amounted to an “abusive judgement”. Amine Sidhoum says that he actually described the case as one of “arbitrary detention”, which is a human rights violation under international human rights law and national law. This case came as part of a wider pattern of harassment by the Algerian authorities of human rights defenders, including past harassment that Amine Sidhoum also suffered²⁶.

In Syria, nearly 50 members of the pro-democracy umbrella group, Damascus Declaration for Democratic National Change (DDDNC), were arrested in connection with a meeting that took place on 1 December 2007 to elect the DDDNC leadership. 12 remained in detention and were tried on very broadly worded charges of “broadcasting false or exaggerated news which would affect the morale of the country”, “weakening national sentiment”, “forming an organisation with the purpose of changing the economic or social status of the state” and “inciting racial or sectarian strife”. Following an unfair trial, the court found the 12 defendants guilty and on 29 October 2008 sentenced each to two and half years in prison.

In addition to attacks on bloggers and other human rights activists, limiting access to information and disseminating material through the internet is increasingly being used by some governments. In Syria and Tunisia in particular, many websites are blocked and internet communication is intercepted. This limits the ability of associations to carry out their work freely, disseminate their information and message, and receive information from others. It also aims to limit the possibility of building solidarity with those who are under attack. On 18 July 2010, the Tunisian government blocked the site, Fadaa Jadal Democracy (A space for democratic debate) although it was still in the testing stage and not yet officially released. In 2005, Tunisia hosted the UN World Summit on the Information Society. On that occasion, three UN experts on Human Rights Defenders, Freedom of Expression and Independence of Judges and Lawyers expressed concern about “numerous cases of fines, forced transfers, physical attacks, arrests, condemnations and imprisonment of civil society

members and judges for having publicly raised human rights issues and expressing their opinion”²⁷. Syria has a very long list of banned websites that are deemed to be “hostile websites”. This is again a very broad term, which often encompasses websites of civil society organisations or important sources of information and the media. Also internet communication in Syria is closely monitored and intercepted. In Libya, owners of internet cafes are made to place stickers on computers that warn visitors from logging onto websites deemed oppositional²⁸.

2.d Restrictions on protests and assemblies

The ability for people to assemble together to engage in issues of public interest or express positions or opinions is essential in a democratic society. Often, civil society organisations manifest and conduct their activities through meetings, gatherings, protests, and other forms of assembly. Repressing such an important element of the work of associations will have direct impact on the role of civil society organisations. Therefore, freedom of association is closely connected to right to assembly, as reflected in Article 20 of the Universal Declaration of Human Rights and Article 20 of the ICCPR, for example.

Meetings and gatherings require prior approval in several countries of the South and East of the Mediterranean. Quite often, such an approval is rejected. In many cases, police and other law enforcement officers block entrances to meeting places, using excessive force and resorting to arrests in some occasions in order to stop such meetings and gatherings from taking place. The prevention of debate of genuine human rights concerns, which is an integral part of the role of civil society, can only lead to furthering human rights violations.

Egypt has witnessed a number of organised protests in the last few years which were repressed with excessive force to disperse demonstrators and arrest them. Sexual harassment was also reported. Egyptian security forces used excessive force and live ammunition against demonstrators in April 2008 after textile workers called a strike at Mahalla, and in dispersing other popular protests. Similar series of protests that were organised in April, May and June 2010 to deal with many human rights demands, including implementation of minimum wages, have been equally repressed; many have been beaten or detained for hours or days and then released. The case of Khaled Said

²⁵ See Amnesty International: “Egypt using defamation laws to prosecute dissenting voices”, 25 May 2010.

²⁶ See Amnesty International: “Algerian Human Rights Lawyer Convicted for Denouncing Violations”, 26 November 2008.

²⁷ See “UN experts call on Tunisia to respect human rights as information summit opens”, 16 November 2005, available on UN News Centre <http://www.un.org/apps/news/story.asp?NewsID=16582&Cr=information&Cr1=society#>

²⁸ The Arab Network for Human Rights Information: The Initiative for Open Arab Internet, available on <http://www.openarab.net/en>, see also Human Rights Watch: “False Freedom Online Censorship in the Middle East and North Africa”, November 2005.

shocked the conscience of the world. Photos of him spread online in the days after he died. At least ten witnesses have described seeing him being severely beaten following his arrest by plain-clothed security agents. Activists in Cairo and Alexandria organised a number of demonstrations to express anger over his torture and murder. A Facebook page dedicated to him has tens of thousands of members, and the number is increasing continuously²⁹.

In Israel, during the Gaza war between 27 December 2008 and 18 January 2009, it is reported that approximately 830 persons, mostly Israeli Arabs, were arrested for protesting, often while excessive force was being used by the security forces, including tear gas, rubber bullets and beatings.

In Libya, the government imposes severe restrictions on protests. Since late June 2008 several of those active in the protests related to the Abu Salim Prison killings face harassment and intimidation, including threatening phone calls, surveillance, restrictions on travel and even arrest³⁰. For instance, five relatives of victims of Abu Salim killings were arrested and detained incommunicado in March 2009 in connection with the protests, before being released without charge or trial several days later.

In Algeria, meetings are frequently prohibited. A law adopted in 2001 indefinitely bans all demonstrations in the capital Algiers, while the countrywide State of Emergency in effect since 1992 allows officials from the Ministry of Interior to ban any demonstration they deem "likely to disturb public order and tranquillity". For example, on 16 July 2009, the Collective of the Families of the Disappeared in Algeria tried to organise a meeting on the preservation of the victims' memories. However, they arrived at the meeting place to find a large number of policemen, anti-riots squads and civil agents blocking their access to the meeting room. In May 2010, the police blocked a small rally planned in front of the offices of state television to demand press freedom, detaining four protest organisers on the grounds of inciting a gathering "that can disturb public tranquillity". In November 2006, Zohra Bourefis, a wife and mother of victims of enforced disappearance was fined a nominal sum of 100 Dinars (around 1.37 Euros) for hosting a foreigner in her home without informing the Algerian authorities. The foreigner concerned was a French member of the France-based Collective of Families of the Disappeared in Algeria³¹.

29 See Human Rights Watch: "Egypt: Investigate Officers Who Attacked Peaceful Protestors Demonstrators Were Protesting Police Brutality", <http://www.hrw.org/en/news/2010/06/28/egypt-investigate-officers-who-attacked-peaceful-protestors>, 28 June 2010

30 On 29 June 1996, approximately 1,200 inmates of Abu Salim Prison in Tripoli in Libya were killed reportedly when guards fired indiscriminately at prisoners who were out of their cells during a riot sparked by appalling prison conditions. To this day, there has been no full, thorough and impartial investigation into the incident.

31 Amnesty International: "A Legacy of Impunity: A Threat to Algeria's Future", AI Index Number MDE 28/001/2009.

2.e Attacks on human rights defenders

Activists and human rights defenders who belong to registered and unregistered organisations continue to particularly bear the brunt for daring to speak out, defending the rights of others. Their rights to freedom of association, expression, assembly, as well as freedom from torture, ill-treatment and arbitrary detention and right to enjoyment of many other rights continue to be violated. Minorities and women's rights organisations and their activists face restrictions for the causes they are defending.

Prominent human rights defenders are detained in an attempt by governments to silence them and to deter others from being involved in human rights activism. Many have been detained without charge or trial, put in incommunicado detention, tortured or ill-treated. This is also an attempt by the government to silence others by association or consequence.

In Syria the so-called Damascus Spring of 2001, which was a brief period in which longstanding restrictions on freedom of expression and association were eased following the accession to power of President Bashar al-Assad, ended quickly. Many prominent human rights defenders have been subject to continuous restrictions and harassment. For example, Muhammad Ra'dun, former head of the Arab Organisation for Human Rights - Syria (AOHR-S) was arrested in 22 May 2005 and held without charge and without access to lawyers or visits from family members. He was released approximately six months later, on 3 November 2005, following a Presidential amnesty together with approximately 190 other detainees. However hundreds of other prisoners, many of whom are human rights defenders, remained in detention. Prior to that, he was one of several human rights defenders whom the authorities have prevented from leaving the country. Another founding member of AOHR-S, Nizar Ristnawi, was arrested in 18 April 2005 and remained held at an unknown location, also without charge and without access to visits from his family or a lawyer. He continued to be held incommunicado until August 2005. On 19 November 2006, he was sentenced before the SSSC to four years' imprisonment for "spreading false news" and "insulting the President".

Despite an international outcry, human rights defenders and pro-democracy activists continue to be arrested and arbitrarily detained. For example, on 16 May 2006, Nidal Darwish, a member of the CDDLHR, and Mahmoud Mer'i the secretary of the AOHR-S were arrested. On 17 May 2006, the prominent human rights lawyer Anwar al-Bunni was arrested and taken to an unknown location.

Mr. Haytham Al-Maleh, a 79 year old human rights lawyer, founding member and previous director of the

Human Rights Association in Syria (HRAS) is being tried before military court in Damascus for allegations that he had criticised the Syrian President and the prison administration. Mr. Al-Maleh suffers from hyperthyroidism and diabetes, and therefore requires special medical care daily. However, it was reported that Mr. Al-Maleh, currently detained in Adra prison, has been denied access to his medication since 18 February 2010. He appeared in the trial sessions every week. He has also been subjected to ill-treatment and possibly torture³². On July 5th, he was sentenced to three years' imprisonment.³³

Recently, Muhannad Al-Hassani, the President of the Syrian Organisation for Human Rights (Sawasiyah), a leading human rights organisation that has been denied official registration by the Syrian authorities since its establishment in 2004, and one of the Commissioners of the International Commission of Jurists, was detained on 28 July 2009 and convicted to three years' imprisonment on the grounds of "weakening national sentiments and encouraging racist and sectarian feelings", and "transferring false and exaggerated news that weaken national sentiments" under Articles 285, 286 and 287 of the Criminal Code³⁴. In November 2009, the Syrian Bar Association issued a lifetime ban against him. However, in contrast to these measures which are contrary to international law, and in recognition of his important work in the defence of human rights, he was named the 2010 Laureate of the Martin Ennals Award for Human Rights Defenders³⁵.

Human rights activists in Tunisia are under constant surveillance, their offices monitored and raided and material confiscated from them without warrants or such legal basis. Ayachi Hammami and Radhia Nasraoui, two prominent human rights lawyers have constantly experienced surveillance and their offices have been raided, having documents damaged or stolen from them. Radhia Nasraoui has been harassed and intimidated over the years. Recently, her office was broken into and her computer stolen on 1 May, 2010. This is said to be the fifth time her office has been targeted in this manner in the last

few years³⁶.

11 human rights organisations expressed their concerns about a smear campaign in December 2009, which was held by a Tunisian weekly newspaper against several human rights defenders who have been denouncing violations of human rights in Tunisia. Tunisian defenders affected by this campaign include: Mr. Kamel Jendoubi, President of the Committee for the Respect of Freedoms and Human Rights in Tunisia and President of the EMHRN; Ms. Sihem Bensedrine, Spokesperson of the National Council for Liberties in Tunisia; Ms. Sana Ben Achour, President of the Tunisian Association of Democratic Women; and Mr. Khemais Chammari, former FIDH Vice-President and member of the Board of the Euro-Mediterranean Foundation to Support Human Rights Defenders (EMHRF). Also affected by the smear campaign was Mr. Michel Tubiana, Honorary President of the Human Rights League (Ligue des droits de l'Homme), member of the Executive Committee of EMHRN and former FIDH Vice-President³⁷. The above-mentioned Tunisian defenders have been subject to repeated restrictions and harassment, together with others in Tunisia.

Furthermore, in Tunisia, human rights work is constantly undermined by the interference of the state placing pressure on organisations to allow for domination by supporters of the authorities to be in decision-making positions. The Tunisian League for Human Rights was legally forced to open up its membership to anyone in 1992. This allowed for government supporters to join and undermine the organisation's vital human rights work. One of such consequences is the disputes between the membership close to the authorities and the ruling party and the executive board lead to an effective suspension of the League's activities. Another example is that of the Association of Tunisian Judges, which is now effectively run by government supporters, undermining the ability of the association to raise issues related to the independence of the judiciary.

2.e i Defending Minorities and Diversity

Also, defenders who promote the rights of individuals or groups that are not seen as the accepted majority are often restricted and harassed. This occurred in several countries including Turkey, Greece, Spain, Morocco, Syria, Tunisia, Israel, and Algeria. Certain minorities are repressed

32 See "Syria: Opening of the trial held against Mr. Haytham Al-Maleh, a 79 years old human rights lawyer", The Observatory for the Protection of Human Rights Defenders, 25 February 2010.

33 See Conviction of Haytham Al-Maleh, a 79 years-old human rights lawyer signals continuing persecution of Lawyers and Human Rights Defenders in Syria, 5 July 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4500.html

34 See Muhannad Al-Hasani sentenced to three years imprisonment, 23 June 2010 http://en.euromedrights.org/index.php/news/emhrn_releases/67/4457.html

35 See "The Jury of the Martin Ennals Award for Human Rights Defenders (MEA), meeting in Geneva, announces its Laureate for 2010", 7 May 2010, available on <http://www.martinennalsaward.org>

36 For a detailed documentation of violations against human rights defenders in Tunisia, see Amnesty International: "Independent voices stifled in Tunisia", MDE 30/008/2010, 13 July 2010, available on <http://www.amnesty.org/en/news-and-updates/report/tunisia-urged-end-subversion-groups-critical-authorities-2010-07-13>

37 See joint statement by Eleven human rights organisations (international and across the region): "New smear campaign inciting to hatred and violence against human rights defenders", 18 December 2009.

in general in these countries and those organisations or defenders that raise human rights concerns regarding them are not spared targeted repression.

For example, in Algeria, a march was planned on 24 April 2010 in Aïn Benian, a small city in the Wilaya of Algiers to demand respect for their human rights and commemorate the “Berber Spring”, was faced with force³⁸. The organisers formally applied for permission for the event but never got a response. On April 24, the day of the planned event, they saw police deployed in large numbers in Aïn Benian. As demonstrators started marching and chanting slogans, the police intervened arresting almost all of them (around 30 people), transferred them to a police station, where they were questioned and each had to sign a statement before releasing them, after being held for several hours.

In Syria, human rights defenders who promote respect for the rights of the Kurdish minority face harsh repression and are often accused of “inciting sectarian strife”. Riad Drar al-Hamood, an active member of the unauthorised Committees for the Revival of Civil Society, was arrested in June 2005 after making a speech at the funeral of a prominent Kurdish Islamic Sheikh. In April 2006, he was sentenced by the SSSC to five years’ imprisonment on charges of belonging to a “secret organisation”, “publishing false news” and “inciting sectarian strife”. The authorities also arrested members of the Kurdish minority when they sought to demonstrate on International Human Rights Day in December 2007. On 20 March 2009, security forces used excessive force including tear gas and batons to disperse a peaceful gathering of Kurdish Syrian citizens celebrating the festival of Norouz in Aleppo. Tens of participants were arrested. Some were taken to court, while the rest were released.

In August 2008, the Israeli authorities ordered the closure of the Al-Aqsa Association for the Restoration of Muslim Holy Sites and declared the association to be illegal. This is one of the main Arab charities in Israel which plays an important role in collecting and distributing alms to Muslims in need, as well as in restoring Muslim holy sites, cemeteries and educational institutions.

In Turkey, associations promoting rights of Kurdish minority or associations working on rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) have been the main victims of harassment. On 7 April 2008, members of the Financial and Moral Police entered the Lambda Istanbul Cultural Centre, a group that works to end police harassment and ill-treatment of LGBT people, and seized records of Lambda Istanbul’s official decisions, a list of its members, its registers of moveable property, receipts, bills and invoices. Later, the organisation was closed. In March

and July 2009, two members of the Lambda group were murdered.

Members of the Greek Helsinki Monitor (GHM) have been subject to a series of measures including verbal attacks and assaults during a case they launched in courts in respect of Roma rights in which no action was taken by the court, and the filing of a criminal complaint for defamation against those who had testified in the preliminary investigation in that case³⁹.

2.e ii Defending Women’s Rights

Raising concerns related to women and their rights is often faced with harsh measures. Women face many political, social and cultural impediments that hinder their effective participation in the civil society movement. Those who wish to engage in organisations that deal with human rights, politics and reform issues, are pressured by the society and their families who perceive such activities as “dangerous”, “not acceptable” or “not suitable” for women. This is particularly the case in relation to women coming from conservative or rural backgrounds, for example. Active involvement in the women’s rights movement pose a particular challenge as these organisations are seen to be “going against the culture” or “destroying the values of the society”. The long working hours involved in work of associations pose a challenge for the involvement of women, who are also traditionally expected in the South and East of the Mediterranean to maintain other duties related to house-keeping and the upbringing of children. Further, the nature of work of associations, and the difficulty in working in an environment that is largely reluctant to change makes it difficult for associations to achieve their objectives on human rights including women’s rights.

Women are also involved in associations in a context of a society that is largely patriarchal. This often reflects itself internally in the hierarchal structures of associations. A survey on women in decision-making positions in NGOs in Egypt found that there were no women in the board of directors in half of the 408 NGOs surveyed, while about 25 percent had one or two female members. This is an affront to the obligations of states under international law, for example article 5 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which works towards changing social and cultural pattern of conduct. The states are not only failing to do that, but they are contributing to this conduct themselves through their acts which will have a negative effect on women and their families.

38 This is a term that connotes the season three decades ago when, for the first time since Algerian independence, Berbers protested en masse to demand recognition of their language and culture.

39 For further details about the case see EMHRN: “Freedom of Association in the Euro-Mediterranean Region”, 2008, page 67.

In the Occupied Palestinian Territories, 2009, a criminal defamation lawsuit was filed against Ms. Maha Abu-Dayyeh, Director of the Women's Centre for Legal Aid and Counselling (WCLAC) in 2009. According to WCLAC, the charges came on the background of a WCLAC-organised public event, where a woman claimed she had experienced harassment at a police centre when reporting an incident of violence she had suffered. The WCLAC Director commented saying that WCLAC had heard other such testimonies from women using WCLAC services. The police filed a case with the Public Prosecutor for defamation and contempt⁴⁰.

In Egypt, a communiqué was filed in May 2010 by the chairman of the State Council Judges Club against Nasser Amin, leading human rights activist and Director of the Arab Centre for Independence of the Judiciary (ACIJLP) on the background of ACIJLP's position in support of women's right to assume judicial posts at the State Council⁴¹.

Often, women's organisations are closed or denied permission to register because of the nature of their work. For example, the Syrian Women's Association, which has been functioning since 1948, was declared illegal in January 2007 by the Ministry of Social Affairs and Labour. In September 2007, the Minister of Social Affairs and Labour in Syria refused to license five NGOs, including the Organisation to Support Women and Victims of Domestic Violence.

In Egypt, at least three women and one man participating in protests on 6 April 2010 claimed to have been subjected to sexual harassment by security officers. This is not the first time that such claims have been made. Cases have been filed with the authorities who promised to investigate this.

2.f Restriction on freedom of movement

Another increasing trend is the restriction of human rights defenders from travelling abroad to hinder them from raising awareness about the human rights situation outside their country, including in international fora.

Preventing human rights activists from travelling is a very common tactic used by the Syrian, Tunisian, Moroccan and

Israeli authorities. Activists and human rights defenders are banned routinely from even attending training courses, or attending international conferences. It is also often the case that they are summoned for questioning at the border or immediately upon their return. Their applications for passports are refused, or administrative travel bans are imposed. If they do manage to travel abroad, they are subjected to extensive searches of their luggage and sometimes are also subjected to intrusive body searches upon their return. Frequently, their documents and other belongings may be confiscated.

For example, lawyer and human rights defender Mohamed Abbou from CNLT in Tunisia has been denied permission to leave the country seven times since his release from prison in July 2007. Activists in Tunisia are also often blocked from travelling even to another city to attend a meeting or court hearing.

The Egyptian Initiative for Personal Rights (EIPR) was also prevented from taking part in a UN General Assembly high-level meeting on HIV/AIDS in New York in June 2008. While EIPR was nominated to participate in the meeting, the Egyptian government requested that it be excluded from the list of participating NGOs.

Acts of harassments at Moroccan airports against those who campaign for rights of Sahrawis have also been documented. For example, seven Sahrawi activists, who belong to a number of human rights organisations and other civil society groups, were arrested upon their arrival on the airport in Casablanca and upon their return from Algeria on 8 October 2009, where they were visiting the Sahrawi camps in Tindouf between 26 September and 8 October 2009. They were put in incommunicado detention. At least two of the seven are former victims of enforced disappearance.

In December 2009, Western Sahara activist Aminatou Haidar was put under house arrest by Moroccan police in her hometown of Laayoune, following her return to Western Sahara on 18 December after staging a 32-day hunger strike in Spain's Canary Islands. Earlier, on 14 November 2009, the Moroccan authorities confiscated Ms. Haidar's passport and immediately deported her to the Canary Islands because she had listed her place of residence on her border entry form as "Western Sahara", which Morocco does not recognise as a separate entity. Morocco did not allow her return before 17 December, 2009. Ms. Haidar is the president of the Collective of Sahrawi Human Rights Defenders, an organisation that the Moroccan authorities have refused to recognise.

Israel routinely restricts human rights defenders from travelling abroad. In February 2010 the Israeli authorities

⁴⁰ See Women's Centre for Legal Aid and Counselling (WCLAC): "Heading towards achieving hope", Annual Report 2009, available on <http://www.wclac.org/english/reports/annual2009e.pdf>

⁴¹ See "ACIJLP Calls Upon the Egyptian Government to Stop the Violation of the Right to Equality for Women and the Issuance of Clear Legislation Enables them to Undertake Judicial Posts", 15 July 2010, and Amnesty International: "Egypt urged to drop charges of defamation against activist as repression intensifies", MDE 12/026/2010, 25 June 2010.

prevented the well-known Palestinian maps expert Khalil at Tufkaji from leaving the Palestinian territory for a period of seven months. On 8 February 2010, the Israeli Minister of Interior passed the decision upon a recommendation from the Israeli Intelligence agency stating that he was convinced that Tufkaji's travel would jeopardise the "security of the State"⁴². The travel ban on some defenders has been in place for years. In March 2009, the Israeli High Court of Justice issued a decision to dismiss the petition brought by the General Director of Al-Haq, Mr. Shawan Jabarin, challenging the unconditional travel ban that has been repeatedly imposed on him. The latest ban prevented him from travelling to the Netherlands in order to receive a prestigious human rights award for human rights defenders⁴³. The decision was based on secret evidence brought by the Israeli intelligence and parts of the sessions were convened with the presence of only the judges, the State Attorney, and members of the Israeli General Security Services⁴⁴.

Israel imposed new restrictions in autumn 2009 which effectively ban international employees of human rights organisations in Israel and the Occupied Palestinian Territories, including East Jerusalem, from obtaining work visas as before. According to the new regulations, only tourist visas can be issued⁴⁵. This puts human rights activists and the organisations that continue to employ them at risk of legal harassment.

2.g The role of the judiciary

There are many examples in several of the countries under review that point to a very important role of the courts and the judiciary in protecting the right to freedom of association. Generally, cases can be brought to courts to challenge decisions by administrative bodies against associations or human rights defenders. One such area that requires judicial oversight is in relation to dissolution of associations. In Morocco, Algeria, Israel, and Tunisia, the law only allows courts to dissolve associations.

In other countries, cases related to administrative dissolution orders, or other such human rights violations, have been successfully corrected by the judicial authorities. For example, a Cairo Administrative Court rescinded the government's decision to dissolve the

Association for Human rights and Legal Aid (AHRLA) - an association that offers legal support to victims of torture and other ill-treatment - on 26 October 2008. This followed an appeal by AHRLA. The Ministry of Social Solidarity and Cairo Governorate dissolved AHRLA allegedly for breaching the Law on Associations No. 84 of 2002 on the pretext of receiving foreign funds or donations without prior permission from the authorities⁴⁶. A similar administrative court ruling was issued to annul the dissolution of Centre for Trade Union and Workers' Services in September 2007. Administrative detainees in Egypt, many of whom are human rights and political reform activists, and who are detained without charges and trial, have often received court orders for their release, but these have been ignored by the executive authorities. As mentioned earlier, there were 18 such court decisions in the case of Mosad abul Fagr, which were ignored by the authorities. Each time following a release order he was served with another administrative detention order⁴⁷. In 2006, the administrative tribunal of Agadir in Morocco ruled that the authorities' administrative decision to refuse to accept the repeated submission by Sahrawi Association of Victims of Grave Violations Committed by the Moroccan State had been illegal.

At the same time, as many of the examples earlier illustrate, restrictions that took place against associations or individual activists came through court decisions. Judges have repeatedly refused to take international human rights law and standards into account. They apply the letter of national law in a very narrow sense, without acknowledging their role to preserve and protect human rights. Cases that challenge the dissolution of associations by the executive authorities which reach courts often do not receive a remedy. Further, no independent, impartial and thorough investigations have been ordered or carried out in cases of violations of freedom of association and against human rights defenders when they reach the attention of judges.

In the EU countries, the European Court of Human Rights plays a very important role in protecting and defining freedom of association and elaborating the content of that right. For example, in the European Court's ruling in the case of the 'Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia', the Court looked into the legality of the annulment of the Association's Articles and Programme. Earlier, the Constitutional Court ruled for such annulment because it found that the true objectives of the Association the revival of Ivan Mihajlov-Radko's ideology according to which "...

42 See Akhbarona, al-Haq Newsletter, Issue number 1, April 2010, available on <http://www.alhaq.org/pdfs/a5barna-english-first%20draft2.pdf>

43 The Geuzenpenning Dutch Prize for Human Rights Defenders, which in 2009 was jointly awarded to Al-Haq and B'Tselem.

44 See al-Haq: "Travel Ban on Al-Haq General Director Upheld: Once again, the Israeli judiciary demonstrates its subservience to the military and security authorities", 11 March 2009.

45 FIDH: "Israel: Obstacles to Freedom of Association", 2 February 2010.

46 See Amnesty International: Egyptian association for torture victims wins court case against closure 31 October 2008, available on <http://www.amnesty.org/en/news-and-updates/good-news/egyptian-association-for-torture-victims-wins-court-case-20081031>

47 See Amnesty International: "Egypt Releases Rights Activist"; 14 July 2010.

Macedonian ethnicity never existed ..., but belonged to the Bulgarians ... from Macedonia and its recognition (i.e. that of Macedonian ethnicity) was the biggest crime of the Bolshevik headquarters committed during its existence". The European Court on Human Rights found that the dissolution of the Association was in violation of Article 11 of the European Convention on Human Rights (freedom of association). The European Court explained that while it accepted that the Association's dissolution pursued a legitimate aim, namely the protection of "the rights and freedoms of others", and recognised that it is possible that tension is created in situations where a community becomes divided, it considered that this is one of the unavoidable consequences of pluralism. It stressed that the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other⁴⁸.

However, while taking all these into consideration, in relation to human rights, the action plan proposes that "EU assistance will be available for strengthening the culture of respect for human rights and fundamental freedoms and the capacity and effectiveness of all competent institutions. Syria's plans to set up a national institution for human rights (National Human Rights Council) could be supported, on the basis of experience gained in neighbouring countries e.g. Egypt. One of the objectives of the Five-Year Plan is to empower women in society. The EU could support the government in the establishment of a comprehensive gender mainstreaming strategy....". Therefore, while the main challenges have been identified clearly and accurately, the action plan in relation to human rights seems to focus more on 'soft issues'. There have been no clear actions in relation to the protection of human rights defenders, journalists, and associations who are under threat, as identified in the paper itself.

3. International and Regional Mechanisms

3.a The EuroMed Partnership

In its dialogue with countries of the region, the EU did use the EuroMed Partnership to raise concerns about freedom of association, but on some occasions the outcome documents lacked specific recommendations to deal with freedom of association, address the specific concerns, including the plight of human rights defenders.

For example, the sub-committee on human rights and democracy of the Jordan-EU Association Council commended Jordan's recent advances in some areas and "encouraged Jordan to make further progress in others, such as the independence of the judiciary and freedom of association". Furthermore, the EU welcomed the Revised Law on Societies of 2009 and considered it a step in the right direction. It did, however, encourage Jordan "to bring the law further in line with international standards and address the remaining concerns regarding registration, dissolution and funding of associations and civil society organisations"⁴⁹. This lacks specific analyses of what is positive in the law and what specifically is contrary to international law and therefore needs to be amended.

The strategy paper for 2007-2013 of the European Neighbourhood Policy and Partnership Instrument with Syria mentions many human rights concerns in Syria including attacks on freedom of expression, arbitrary detention, use of torture and incommunicado detention, as well as refusal to register certain human rights organisations.

3.b The Arab Charter on Human Rights

The Arab Charter on Human Rights is ratified today by 10 states, including Algeria, Libya, Jordan, Palestine⁵⁰, and Syria. The provisions on freedom of association and expression are among those provisions in the Charter that raise concern, despite many others that are in line with international law. Freedoms of association and peaceful assembly are limited in the Charter to citizens while both the ICESCR and the ICCPR recognise these rights to everyone.

State reports presented to the Arab Human Rights Committee, which will supervise the implementation of the Charter, will provide the Committee with the opportunity to examine freedom of association in the states' parties and give its conclusions and recommendations. No such reports have yet been submitted. The Committee is also empowered with issuing general comments. Time will show whether the Committee will make a real contribution through general comments or country-specific concluding observations to the respect of freedom of association in the countries of the South and East of the Mediterranean. The Committee insists that it is a body of experts and that it does not accept unduly interference in its work. Whether the Committee will be steadfast or will crumble under the pressure of governments is yet to be seen.

48 European Court of Human Rights, case No 74651/01, 15 January 2009.

49 Eighth Meeting of the EU-Jordan Association Council (Brussels, 16 November 2009), Statement by the European Union, Para. 4 and 16.

50 Palestine is a full member of the League of Arab States.

3.c The United Nations

The United Nations Human Rights mechanisms have repeatedly expressed concern in relation to the states under review in this report over attacks on freedoms of association, expression, assembly and movement and the impact of such violations on human rights defenders. They have also raised concern over individual cases of human rights defenders, their detention, torture, ill-treatment and found many of these cases arbitrary detention. Yet, the concerned governments have done very little, if any, to yield to the calls by the UN expert bodies to redress the violations. Many states of the countries under review have now been through the first round of examination under the newly established the Universal Periodic Review of the Human Rights Council (UPR). Prior to the dialogue that took place in relation to several of the South and East of the Mediterranean countries, international, regional and national human rights organisations prepared submissions in which they highlighted their concerns over violations of freedom of association and other associated rights. In the dialogue that took place between the representatives of the concerned state and other states, many states have raised concerns over these violations and made recommendations that appeared in the outcome of the review. Therefore, it seems that the concerns raised by many UN mechanisms and human rights organisations have been taken seriously in the last two years in the UPR review process.

For example, after the examination of Egypt, recommendations were made asking the government to “effectively guarantee the exercise of freedom of expression, association and peaceful assembly and the right to participate in public life and politics,” and to “pass legislation that allows NGOs to accept foreign funding without prior government approval, legislation that allows for increased freedom of association and assembly, and legislation allowing labour unions to operate without joining the Egyptian Trade Union Federation.”⁵¹ Another recommendation called on Egypt to amend NGO law 84 of 2002 “so as to ensure that NGOs’ activities and activities of all human rights defenders not be inhibited or their ability to raise finance be impeded” did not receive the immediate support of the Egyptian government which responded merely that it will examine this issue⁵².

It should finally be noted that in the consideration of the human rights situation in the first few states under the UPR, issues pertaining to freedom of association were not taken as seriously as they were in later sessions (as seen in the example of Egypt above). This was the case of Tunisia, for example, where no real concerns and

no recommendations on freedom of association were raised⁵³.

Efforts by international organisations in the field of freedom of association

Freedom of association is increasingly gaining the attention of many national, regional and international organisations. Some organisations have developed specific projects for this, and others have incorporated this in their daily work. The following is a review of some of the main efforts by selected organisations.

The EMHRN Freedom of Association Working Group⁵⁴

The Network has identified freedom of association as one of its key working areas and decided at its General Assembly in 2006 to establish a working group dealing with this. Today, it is one of six active working groups of the Network.

The objectives of the Working Group are:

- To promote and protect human rights values and international standards related to freedom of association in the Euro-Med region, particularly in the South and East Mediterranean area;
- To develop sustained civil society monitoring and expertise on freedom of association conducive to change in legislation and to contribute to democratic reform through the drafting of an annual report on freedom of association as well as advocacy activities in the North and South Mediterranean Region;
- To support persecuted human rights defenders who are frequently subjected to harassment, travel banning, arbitrary arrest and defamation by their national governments.

One of the distinctive features of the work of the Freedom of Association Working Group is its reliance on a systematic methodology to measure compliance with international law and standards. Five criteria were developed to measure the level of respect for and implementation in law and practice dealing with the life of an association, prior authorisation to register, dissolution, interference, access

51 Report of the Working Group on the Universal Periodic Review: Egypt, (A/HRC/14/17), 26 March 2010, para. 95 (102) and 87 (10).

52 Ibid, para. 99 (22).

53 Report of the Working Group on the Universal Periodic Review: Tunisia, (A/HRC/8/21) 22 May 2008.

54 See EMHRN's work on freedom of association at <http://en.euromedrights.org/index.php/themes/3683.html>

to foreign funds, and other elements). Such a systematic way of examining the situation of freedom of association in said country allows for measuring progress, and for conducting comparisons between different countries, regions, or periods of time. It will be very useful if this methodology is used by other human rights organisations. It will be important for this tool to be developed further to incorporate international law, standards and jurisprudence that relate to the various phases and components of the right to freedom of association. The annual reports of the EMHRN on freedom of association are the only systematic reports that focus on this specific area. Other reports of other organisations may integrate some elements on freedom of association, but this is not systematic. The EMHRN has also commented on draft legislation and intervened in cases of violations of freedom of association, particularly in its relation with human rights defenders.

Amnesty International, Human Rights Watch, FIDH, Front Line and ICNL

Amnesty International, Human Rights Watch, FIDH⁵⁵, Front Line and ICNL are five major international organizations that have carried out important work in relation to freedom of association, albeit mostly in its relation with human rights defenders. They have monitored cases of violations of freedom of association, assembly and expression. They have commented on draft legislation on associations in some cases, as was the case of Jordan and Egypt. They have also commented and intervened in numerous cases when human rights defenders are prevented from doing their work, are harassed, are penalised for speaking out or for being associated with organisations that do not gain the approval of the executive authorities. They have carried urgent actions, written directly to the authorities, raised concerns in meetings with government officials, observed trials, issued public press releases and reports, and have intervened with governments asking them to use their leverage and put pressure on the concerned authority. Their campaigning on these individual cases have yielded some fruit in some cases, and in other cases, this has formed a protective shield allowing organisations and individuals to function with less interference or harassment, albeit in very few cases. Amnesty International was the only international organisation until recently that has systematically resorted to bringing cases to the attention of

various UN mechanisms as a tool of building the pressure and exposing the violations. The five organisations have acted individually or often jointly with each other or with others. The organisations have also issued detailed reports on freedom of association, or attacks against human rights defenders dealing with the issue on regional or country specific basis. The reports have analysed laws as well as practices and provided specific recommendations.

Friedrich Naumann

Under its work on Arab Laws Reform, the organisation launched a project on freedom of association in the Arab World, which aims at enhancing legal framework in selected Arab countries. It is particularly concerned with legislation that relates to trade unions, NGOs and political parties. It focused on Jordan, Syria, Lebanon, Palestine, and Egypt, with outreach efforts to Morocco, Algeria, and Tunisia. The project's objectives are: 1) adopting minimum guidelines governing NGOs, trade unions and political parties in close consultation between different stakeholders nationally and regionally; 2) Creating partnership among civil society organisations (CSOs) including moderate Islamic groups, and between CSOs and their governments on a national and regional level; 3) Improving performance, image of CSOs and relations with the government and with their constituencies through the adoption of internal good governance principles: a Code of Conduct for NGOs, a Charter on Democratic Practices for political parties, and a Code of Conduct for workers' associations. The project's objectives also include amending laws and legislations in close cooperation between well informed CSOs and governments open to dialogue. The project was conducted through a series of national and regional conferences and workshops. A book titled "Guiding Principles on Freedom of Association in the Arab World" was issued as a reference to legislators and governments. The Arab Council for Freedom of Association was launched in the concluding conference of the project in February 2010. Also a book containing reports on freedom of association in nine Arab countries was produced.

The project had the unique point of bringing together NGOs, political parties and trade unions. It usefully produced codes and principles in relation to each of these sectors. It also produced reports on legislation. But sadly the project did not deal much with the practice, but seemed to restrict itself largely to the letter of the law. The Arab Council for Freedom of Association may have an important role in the protection of freedom of association,

⁵⁵ International Federation for Human Rights (FIDH), jointly with the World Organisation against Torture (OMCT), have a programme called the Observatory which focuses on monitoring and intervening in cases of violations of the rights of human rights defenders. In March 2009, the International Federation for Human Rights (FIDH) and the Arab Institute for Human Rights (AIHR) jointly published a legal study that covers the right to freedom of association in three Arab Gulf countries, Bahrain, Kuwait and Yemen (See <http://www.fidh.org/Freedom-of-Association-Report-on-Bahrain-Kuwait>).

but it does not seem to be active so far⁵⁶. The project ended with its final conference in February 2010.

Club de Madrid⁵⁷

The project of Club de Madrid on “Freedom of Association in the Middle East and the North of Africa”⁵⁸, launched in 2007, is based on a very accurate identification of the nature of the problems related to freedom of association in the region. The project aims to “strengthen discourse and association in the Middle East and North Africa. Calling on the leadership experience of its Members and working with local partners promoting the constructive engagement of civil society, the Club de Madrid provided strategic counsel to leaders for reform in Bahrain, Jordan, Morocco, Saudi Arabia, Tunisia and Egypt.”

Missions were carried out to all the countries participating in the project, in addition to a number of regional meetings. In Jordan, Bahrain and Morocco, dialogue activities were said to be successful in bringing together Club de Madrid members with representatives of key government and civil society institutions to discuss ways in which freedom of association could be better guaranteed and secured. Representatives of both sectors convened upon completion of the dialogue missions and agreed a set of country-specific recommendations. Interestingly, and as expected, in Egypt, Saudi Arabia and Tunisia, holding open dialogue sessions between government and civil society stakeholders, was not possible due to “a high level of distrust between sectors and stalled reform processes” as stated by the Club de Madrid. Therefore, in these countries, the delegations held individual meetings, and invited members of both sectors to participate in panel discussions on transition processes. Specific recommendations were identified and presented in relation to each country.

The project identifies among its achievements the active participation of over 500 leaders from executive, judicial and legislative bodies including Heads of State and Government, Ministers, Upper and Lower House legislators, political parties, civil society organisations, activists, journalists and academics. The meetings and

activities resulted in the identification of locally owned and drafted policy recommendations for strengthened freedom of association and national reform processes. Importantly, one of the project’s findings is that the lack of real commitment “by the leadership in project countries to allow for significant opening of political space is an overarching challenge to reform efforts generally and freedom of association efforts specifically. Many promises at the highest level were made during project activities, but actual change for the most part has yet to be seen”. The project concludes that “Unless there are strong push factors led by local reformists, coupled with external pressure, there is a clear risk of continuing stagnation”. This seems to be the crux of the issue and EMHRN wholly agrees with that conclusion.

The project, its recommendations, reports, and discussions can contribute tremendously to the advancement of freedom of association in the region, but this cannot be achieved without the real commitment by governments in the region, and the external pressure, as the project identifies. The project aims to continue to provide more capacity-building activities for civil society organisations, and continue to push for project findings and recommendations to become actual policy and practice. Club de Madrid is raising funds to do so from 2010 onwards.

A final report of the previous phase of the project titled “Strengthening Dialogue and Democratic Discourse through Freedom of Association in the Mediterranean and the Middle East Region” documents the process, identifies the issues and challenges, and provides recommendations. It is a very valuable resource.

⁵⁶ For more information about the project see <http://www.arab-laws-reform.net/english/index.php/about-project>

⁵⁷ The Club de Madrid responds to the demand for leader-to-leader support to confront today’s global, regional and national democratic leadership challenges. It is an independent organisation dedicated to strengthening democratic values and leadership around the world by drawing on the unique experience and resources of its members –more than 70 democratic former Heads of State and Government from 50 countries who contribute their time, experience and knowledge to this mission. For further information see <http://www.clubmadrid.org/en>

⁵⁸ See http://www.clubmadrid.org/en/programa/freedom_of_association_in_the_mena

GENERAL RECOMMENDATIONS TO THE EUROPEAN UNION INSTITUTIONS AND TO THE UNITED NATIONS BODIES

THE EMHRN URGES THE EUROPEAN UNION TO

- Comply with its own commitments with respect to human rights in its relations with partner countries of the mediterranean region, recalling that article 6 of the treaty on European Union states that “[t]he union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states”, and that all actions and policies of the European Union institutions must be based on those principles;
- Take all necessary measures to implement article 2 of the association agreements;
- With respect to those countries with which the European Union (EU) has not yet signed an association agreement, include in any new association agreement conditions aimed at fostering effective improvements in the human rights situation in the country considered, including in particular: recognition of ngos (especially those active in the field of human rights); steps needed to end attacks against civil society (release of political prisoners and removal of travel bans); and amendments to laws on associations that will allow ngos to conduct their activities unimpeded and to receive funding from abroad;
- Ensure that any deepening of relations with partners countries and any granting of “advanced status” to them are conditional upon tangible and long-lasting improvements in the human rights situation;
- Ensure that the human rights priorities of ENP action plans, especially with respect to freedom of association, are implemented by translating the action plans’ general objectives into concrete measures according to a predefined timetable and set of criteria;
- On an annual basis, review the implementation of the priorities of the ENP Action Plans related to human rights and freedom of association through specific indicators;
- Strengthen the goals and measures related to human rights, in particular the right to freedom of association, in the new ENP action plans that are expected to be adopted in 2010;
- Give urgent priority to freedom of association and raise any violation of the right to freedom of association in all political and diplomatic dialogues with the governments of ENP partner countries, as well as in more technical exchanges at the subcommittee level between the eu and the mediterranean governments;
- Ensure the effective implementation of the EU Guidelines, especially those on human rights defenders, as the latter cannot carry out their activities without full and complete enjoyment of their right to freedom of association;
- Throughout the EU Delegations, establish and maintain contacts with human rights defenders in the euro-mediterranean region who are at risk, including members of unregistered associations, in order to, firstly, report on human rights violations and secondly, provide human rights defenders with strong support if needed, including through visits to their places of work and trial monitoring.

THE EMHRN URGES THE UNITED NATIONS BODIES TO

- Ensure that the member states of the United Nations implement the major international human rights treaties, in particular the international covenant on civil and political rights and the international covenant on economic, social and cultural rights, as well as the jurisprudence developed by the treaty bodies;
- Ensure that the member states of the United Nations uphold the declaration on human rights defenders adopted by the United Nations general assembly on 9 december 1998, in particular article 1, which states that “[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”; as well as article 5, which recognises that “[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels... (b) to form, join and participate in non-governmental organizations, associations or groups”;
- Ensure that the issue of freedom of association is raised systematically in the Universal Periodic Review process of the human rights council, and that the council’s recommendations are implemented;
- Ensure that the issue of freedom of association is raised systematically in the reviews of the human rights committee’s periodic reports, and that the committee’s recommendations are implemented;
- Ensure that the member states of the United Nations provide the newly-established Special Rapporteur on the rights to freedom of peaceful assembly and of association all the necessary support for the effective fulfilment of his mandate
- Ensure that the member states of the United Nations facilitate the work of the special rapporteur on the situation of human rights defenders in order to support her efforts to promote and protect human rights defenders, in particular by responding to individual cases and by organising field visits;
- Maintain contact with independent NGOs and ensure that they take part in the Universal Periodic Review process of the human rights council and in the reviews of the periodic reports of the treaty bodies.

INDICATORS USED TO ASSESS THE IMPROVEMENT OF FREEDOM OF ASSOCIATION IN THE EURO-MEDITERRANEAN REGION

In 2007, the EMHRN launched its current project on Freedom of Association. One of the objectives of this project is to assess changes in the situation of NGOs in relation to their freedom to associate throughout the Euro-Mediterranean region. As such the project focused on identifying new or amended legislation improving or impeding on this right – as well as practices of governments facilitating or obstructing the exercise of the right to freely associate. In order to try to measure these developments over time (2007-2010) as well as to allow for comparison between countries in relation to the degree of compliance with international law as well as to identify which reforms to promote, the EMHRN Working Group on Freedom of Association worked on developing indicators. The identified indicators were updated each year in an attempt to define a series of precise and relevant indicators allowing for a systematic approach to measure the developments within freedom of association in the region. As part of this process, consultations were held with the EMHRN's Working Group on Gender to ensure that the indicators would fully respect the gender dimension, which is an integral part of the Freedom of Association project.

Five criteria were developed to analyse the laws and practices of the different countries with respect to freedom of association and to the associations' life' – their independence, the procedures in place to create and dissolve associations, interference in their activities, their access to outside funding and other factors that have a bearing on freedom of association – making it possible to make comparisons between countries and between time periods. The tools used to analyse the situation include a study of the existing legislations and legislative changes, case studies (violations or restrictions of the right to freedom of association, good practices implemented by governments, etc.), an examination of judicial decisions and interviews with associative actors, including EMHRN member organisations and women's rights groups. The aim of these efforts was to analyse the situation in which independent non-governmental organisations (NGOs), especially human rights NGOs, found themselves. For each of the five criteria, a distinction is drawn between the following types of environments:

- **GREEN** (clear colour) denotes an environment where freedom prevails; countries where the situation is satisfactory overall, where internationally recognised standards and principles are respected in full or are breached only in minor ways. In those countries, freedom of association has since 2007 followed, or has broadly developed in a direction that follows, the spirit and letter of international instruments on human rights, and citizens have been able to exercise that freedom.
- **ORANGE** (grey colour) signals an environment where controls prevail; countries where the situation is not satisfactory overall, and where since 2007 freedom of association has either: improved somewhat but not enough to conform to international standards related to freedom of association; has stagnated and remains limited for all individuals; or is severely restricted or even denied for specific groups.
- **RED** (dark colour) symbolises an environment where repression is the rule; countries where the situation is unsatisfactory and where internationally recognised standards and principles are systematically or frequently and egregiously violated. Since 2007, the right to freedom of association has either: been severely curtailed; has been denied totally; or has been severely restricted for all individuals.

The five elements selected for the analysis, which broadly correspond to the structure adopted for the report's chapters on individual countries, are the following:

Registration

With regard to the changes in law, in jurisprudence and in practice – both quantitatively (the number of associations targeted) and qualitatively (the groups targeted) – the situation of groups (including women's groups and associations promoting the rights of women) wishing to create an association since 2007:

Green: (All) groups seeking to form an association were able to launch their activities immediately after having informed the relevant authorities of the creation of the association (the so-called "declarative system").

Orange: A declarative system exists de jure but was not fully implemented in practice, with some groups facing specific obstacles (for example, through rejection of registration applications or delays that were longer than is deemed acceptable by international human rights instruments).

Red: (All) groups seeking to form an association had to obtain the prior approval of the authorities, either by law or by common practice, before launching their activities (the so-called "prior authorisation" system).

Dissolution

With regard to the legislation as it relates to Article 22.2 of the International Covenant on Civil and Political Rights (ICCPR) and to government practices (based on the the organisations targeted) since 2007:

Green: Only tribunals had the authority to dissolve (all) associations, and their decisions were compliant with Article 22.2 of ICCPR.

Orange: Certain groups were subject to dissolution orders or to threats of dissolution by the government under conditions that were not in compliance with international human rights standards (as described under 'Green').

Red: The government had the authority to dissolve (all) associations and/or dissolution decisions have been based on grounds that were not in compliance with the provisions of Article 22.2 of ICCPR and/or the government infiltrated the association leading to the de facto dissolution of the association.

Interference

With regard to the improvement in law and in practice with respect to the degree of freedom that members of an association have to act within the association (freedom to draft its statutes, to manage the association, to meet, etc.) since 2007, from a quantitative (number of associations targeted) and a qualitative (nature of the associations targeted) assessment of the extent of harassment by the authorities (physical damages, physical or psychological harassment) perspective:

Green: All associations were free to develop their activities.

Orange: A large number of associations had to cope with a variety of non-systematic difficulties when implementing their peaceful activities.

Red: The authorities interfered systematically in the internal management of all associations and/or the members of all associations were subjected to various forms of harassment by the authorities.

Access to foreign funding

With regard to the changes in law, in jurisprudence and in practice – from a quantitative (number of associations targeted) and qualitative (nature of the associations targeted) perspective – affecting associations (including women's groups and associations promoting the rights of women) that have tried to access to foreign funding:

Green: (All) associations, while obligated to follow the law and respect the rules of transparency, were only required to inform the relevant authorities before receiving funding from abroad.

Orange: Associations were allowed by law to receive funding from abroad upon simple notification of the government, but in practice, the government exerted control over the access of some associations to outside funding.

Red: Any association wishing to receive funding from abroad had to seek the government's approval.

Other elements

With regard to the changes in law (including laws on terrorism, laws making it a crime to assist migrants, etc.) and in practice – both quantitatively (the number of associations targeted) and qualitatively (the nature of the associations targeted) – since 2007:

Green: The government has established a framework that encourages freedom to operate for (all of) civil society.

Orange: Because of some targeted restrictions, some groups were unable to fully exercise their right to freedom of association.

Red: Other laws (laws on states of emergency, anti-terrorist laws, laws on publications, etc.) prevented (all) associations from conducting their activities freely.

The indicators, which include relevant data that can be used to measure the results and impact of an action, have evolved somewhat since the beginning of the project in 2007 as attempts were made to enhance their accuracy and their relevance. The indicators must be adapted to suit the context to which they are to be applied in order to avoid errors and/or misunderstandings. For example, an increase in the number of complaints in countries of the Eastern and Southern Mediterranean could be interpreted negatively (because of the increase of complaints) and positively (as an improvement in the judicial system being able to accept and/or deal with complaints), whereas in Europe it would unquestionably be seen as a negative signal because the judicial system has been stable for a long time.

The EMHRN's first report on freedom of association, published in 2007, was a benchmark in which the legislation, and to a lesser extent the practice, pertaining to freedom of association were examined in detail in 11 countries of the Euro-Mediterranean region. The report adopted an essentially descriptive approach and was intended to be a tool that organisations active in the field could use in their activities related to freedom of association. Each of the six criteria selected – the presence of independent associations, the requirement for prior approval by the government for registration purposes, dissolution procedures, interference of the government in NGO affairs, and other factors having an impact on freedom of association (laws on states of emergency, for example) – made it possible to distinguish between a system where freedom prevailed (in countries where the overall situation was satisfactory, with few or no serious violations of internationally recognised standards), and an environment where control or repression prevailed (in countries where the overall situation was unsatisfactory because of non-compliance with internationally recognised standards or because the standards were often violated).

In 2008, given the fact that governments sometimes enforce existing laws in an excessively restrictive manner or actually subvert them, the Working Group focused its attention on the practices of the authorities and expanded the six criteria described above in that direction – for example, by asking whether between 1 September 2007 and 1 September 2008, groups that sought to form an association had been given a registration application receipt without difficulty or had faced rejection or delays by the government. Three new indicators were added to the 2007 indicators: a) has a new legislation been adopted in 2007-08; if yes, does it comply with international law? b) Have international bodies assessed the state of freedom of association; if yes, what is the assessment? c) Have any violations of the right to freedom of assembly occurred? The assessment led to three levels of classification: 1) freedom regimes; 2) repression regimes; and, 3) control regimes. Although this added precision to the analysis, the Working Group was faced with difficulties in attempting to assess the situation in the 11 Mediterranean countries, thus suggesting that the main challenge presented by the indicators in the third report would be to achieve balance between legislations and practices.

In 2009, the Working Group decided to return to the five criteria used in the first report – that is, the six criteria of 2007, but without the category related to the presence of independent associations, a criterion that was deemed of little relevance because, with the exception of Libya, an independent civil society exists in all countries of the Mediterranean region. The three new criteria developed in 2008 were subsumed into the five original criteria, with the “new legislation” and “assessment by international bodies” criteria being integrated into one or the other of the five categories, depending on relevance, and “freedom of assembly” being merged into the category on “interference by the authorities”.

This fourth report is intended to document developments related to freedom of association since the publication of the Network’s last report in December 2009 and also to present a survey of the broad trends – both advances and setbacks – that have marked the period since the publication of our first report in December 2007. The indicators selected this year are designed to: 1) achieve

a balance between concerns about legislations and about practices on the ground; 2) set out benchmarks for measuring advances and setbacks in the area of freedom of association since 2007. The analysis of 2010 developments must be seen in the light of the results published since 2007 in order to highlight the positive and negative trends that have emerged over the past three years.

2007-2010	Registration of associations	Dissolution	Interference / Campaign of harassment	Access to foreign funds	Others elements
LIBYA					
SYRIA					
EGYPT					
ALGERIA					
JORDAN					
PALESTINIAN TERRITORIES					
TUNISIA					
ISRAEL					
LEBANON					
TURKEY					
MOROCCO					

Algeria



*Algerian medical staff hold a protest in front of the Health Ministry to demand for better terms of employment, Algiers February, 2010.
by Fayez Nureldine/AFP/Getty Images*

INTRODUCTION

During the past three years, the right to freedom of association in Algeria has witnessed a continuous pattern of restriction in terms of registration and operation, and of the right to assemble peacefully. Red lines were drawn at activities addressing issues such as the national reconciliation policy, enforced disappearances, and the rights of trade unions and professional syndicates, resulting in a weakened associational life. Furthermore, Algeria's state of emergency, in effect since 1992, has endangered constitutional guarantees for freedom of association, expression and assembly as the government has mostly invoked martial law to curtail these rights¹. In 2008, the Ministry of Interior declared that the Associations Law would be reviewed in order to improve it, but this had not happened by the time of writing this report (June 2010).

The constitution provides for the right of association, and in theory the Association Law Act 90-31, passed in December 1990, respects rights enshrined in international conventions. It does this by allowing for a simple declaration process to the local authority (wilaya), with a receipt acknowledging the registration application, or a "*récépissé*". The law gives the government the power to deny a license, through a court order², if the association is deemed to be "founded for a purpose contrary to the established institutional system", "public order" or "public decency."

I – Formation of Associations

In practice, registration receipts have continued, during this review period, to be issued on a case-by-case basis, following instructions from the government, which has not referred refusal cases to the courts, but instead simply not responded. Without a *récépissé*, an association has no legal status and can neither initiate legal proceedings nor open a bank account or apply for funding.

Organisations working on unresolved enforced disappearances that took place during the civil war in the 1990s have never heard back regarding their application. SOS Disparus has several times applied to the wilaya and the Ministry of Interior but has received no response to date. Despite funding difficulties and occasional harassment by the security forces – most recently in summer 2010 when security forces broke up the association's weekly demonstration³ - they have documented up to 5,000 cases of unresolved enforced disappearances and held various rallies that are usually tolerated but sometimes broken up by security forces. A new organisation, Michael (Flame) for the Children of the Disappeared, was set up in May 2009 and by January 2010 it had still not received a reply to its request for registration.

The Association Law also requires notification of any change in the board of directors, in return for a *récépissé*, and associations have encountered the same difficulties as during the registration process, which is in violation with international standards. For example, up until the writing of this report (June 2010), the Algerian League for the Defence of Human Rights (*Ligue algérienne de Défense des Droits de l'Homme*, LADDH) has not obtained a receipt confirming its notification of a new board of directors in November 2007, virtually leaving the new leadership in an illegal situation.

1 US 2009 Country Report on Human Rights Practices, Algeria, <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136065.htm>

2 Article 7 of Act No. 90-31 states that an association is duly constituted after a declaration has been submitted to either the province (wilaya) where the association has its headquarters (for local associations) or to the Ministry of Interior (for national organisations). The relevant authority must issue a registration receipt within 60 days of receiving an association's file, or the organisation is considered to be legally registered. See EMHRN Freedom of Association in the Euro-Mediterranean Region, 2009, p. 17, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html
The Ministry of Interior's website lists 962 national associations, including seven human rights organisations, and 77,361 local associations. See <http://www.interieur.gov.dz/Associations/frlitem.aspx?html=2>

3 See "CFDA: Les familles des disparus empêchées de tenir leurs rassemblements hebdomadaire" http://fr.euromedrights.org/index.php/news/member_releases/3933.html

There is no legal obstacle to women forming or participating in associations, and women have a well-documented history of activity dating back to the war of independence. Women have advanced to senior positions in different types of NGOs, and are generally well-accepted by the public⁴. Women however remain poorly represented in parliament, holding only 5.2 percent of the upper house and 7.2 percent of the popularly elected lower house⁵.

II – Life of Associations

A decree issued in 2000 forbids any demonstrations on public thoroughfares, and Decree 92-44, which established the emergency law in 1992, authorises the Minister of Interior and the local governor (*wali*) to temporarily shut down public meeting spaces and to forbid any gathering or demonstration that could disturb public order and peace.

In May 2008, and within the context of the Universal Periodic Review of the UN Human Rights Council, the Government of Algeria accepted a recommendation to review the impact of the state of emergency on fundamental freedoms⁶. However, there has been no improvement in the associations' right to peaceful assembly since then and the trend to block certain protest demonstrations has remained unchanged.

In May 2010, police blocked a small rally, which was held in front of the offices of state television to demand press freedom. The police briefly detained four protest organisers on the grounds of inciting a public gathering that can disrupt public tranquillity⁷. In April 2010, police prevented a gathering of relatives of victims of enforced disappearances from presenting a complaint to the Ministry of Justice⁸, as well as an Amazigh celebration march commemorating the Berber Spring, an event that occurred 30 years ago when Berbers protested to demand recognition of their language and culture⁹.

In July 2009, security forces prevented a public discussion on the question of national reconciliation¹⁰. During summer 2010, associations defending families of the disappeared have been, several times, vigorously prevented in organising their weekly peaceful protests¹¹. In 2007 a similar seminar – on truth and reconciliation - organised by Algerian and international NGOs was prohibited.

Human rights defenders active within associations have also been subjects to acts of administrative or judicial harassment. Cherifa Kheddar, the president of the Djazairouna association and a civil servant in the Blida wilaya, continued to face pressure at work because of her activities conflicting with the national reconciliation policy. In May 2010, she was threatened with eviction from accommodation provided by her job¹².

Restrictive measures also remained in place against trade unions, including against the National Council of Contract Teachers, and most recently in May 2010 when the Algiers governor ordered the closure of one of the remaining places available to gather. The House of Syndicates, run by the National Autonomous Syndicate of Public Administration Personnel (SNAPAP), was ordered closed on grounds it was used for unauthorised meetings and for transferring the place into a meeting place for young men and women, which was thereby disturbing the public order¹³. The House of Syndicates was a private location where independent associations and unions could hold meetings without needing to obtain state approval, and the closure order came two days before a planned Maghreb syndicate forum¹⁴.

4 Telephone interview with a senior woman member of a rights organisation. June 13, 2010.

5 Freedom House, Freedom in the World, 2010, country report, Algeria. The FH rating for Algeria is Not Free. <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7767>

6 EMHRN, Freedom of Association in the Euro-Mediterranean Region, 2009, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

7 Human Rights Watch (HRW), Algeria: Stop Suppressing Protests, May 3, 2010, <http://www.hrw.org/en/news/2010/05/03/algeria-stop-suppressing-protests>

8 CFDA, Les familles de disparus malmenees, la constitution algerienne bafouée, http://fr.euromedrights.org/index.php/news/member_releases/3810.html

9 HRW, Letter to Minister of Interior Zerhouni on the right to Freedom of assembly, May 3, 2010, <http://www.hrw.org/en/news/2010/05/03/letter-minister-interior-zerhouni>

10 The Collective of the Families of the Disappeared (CFDA) and SOS Disparus, and of terrorism victims (Djazairouna and Somoud).

11 See Amnesty, EMHRN, Observatory "Don't Silence Families of the Disappeared Calling for the Truth", August 13, 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4572.html

12 See also EMHRN, Freedom of Association in the Euro-Mediterranean region, 2009, p. 20, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

13 AlgeriaWatch, SNAPAP communiqué, May 15, 2010, http://www.algeria-watch.de/fr/article/pol/syndicat/com_snapap_fermeture_maison.htm

14 International Federation of Human Rights, Fermeture des locaux de la Maison des syndicats, May 18, 2010, <http://www.fidh.org/Fermeture-des-locaux-de-la-Maison-des-syndicats>

Algerian authorities have also controlled the activities of foreign organisations. For instance, the Friedrich Ebert Foundation (FES) has scaled down its meetings with associations and trade unions after the Secretary General of the General Union of Algerian Workers (UGTA, an official and authorised trade union), accused it of abusing its privileges through a planned programme of events and debates in September 2008¹⁵.

III – Dissolution of Associations

By law¹⁶, the dissolution of an association is done by court order, at the request of the responsible authority and/or if it is deemed that the associations' activities are in breach of the law or are not compatible with the purpose of the association set forth in its statutes. There have been no known instances of dissolution in the past years.

15 Telephone interview with LADDH member. See also EMHRN, Freedom of Association in the Euro-Mediterranean region, 2009, p. 19, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

16 Article 32 of Law n° 90-31 (1990).

Algeria

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Put an end to the state of emergency which arbitrarily restricts the enjoyment of freedoms of association and assembly.
- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the International Human rights instruments ratified by Algeria;
- Implement the Universal Periodic Review recommendations of the United Nations Human Rights Council and take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW.

With regard to the legislation and practice related to freedom of association:

- As announced in 2008, ensure that any amendments of the Law 90-31 of 1990 conform to and guarantee international standards on the right to association, particularly:
 - Ensure that associations can be established by notification without the need for a prior license. Ensure that authorities systematically deliver a receipt upon filing for registration;
 - Guarantee effective recourse within a reasonable timeframe to associations whose registration requests have been refused by administrative authorities;
 - Abolish prison sentences for leaders of non-approved, suspended or dissolved associations, who pursue their activities (Art. 45), for such measures are contrary to the very foundations of the declaratory system;
 - Abolish Article 28-2 of Law 90-31 of 1990, whereby the granting of foreign subsidies is subject to the prior approval of the concerned public authorities;
- Repeal all legislation forbidding demonstrations in public places and lift all practice preventing civil society to gather and encourage civil society to express its views;
- Modify Articles 144 to 148 of the Penal Code, which pertain to slander, as well as Article 46 of Law 06-01 of 27 February 2006, which asserts any written or verbal declaration denouncing criminal acts perpetrated by state agents during the 1990s as an offence.

Environment required for the sustainable development of civil society:

- Implement public policies that encourage dialogue between public authorities and civil society actors;
- Involve civil society in the decision-making process for public interest policies;
- Promote equal participation of women and men in civil society organisations and public institutions.



Egypt



*Collectors of the Real Estate Tax hold a Strike to demand
higher wages,
Cairo 2007.
by Hossam Hamalawy*

INTRODUCTION

In Egypt, the right to freedom of association has continued to witness legal restrictions over the past three years in terms of formation, activity and dissolution. Additionally, there are signs of further regression to come as newspapers have carried a leaked version of a draft Associations Law which, if passed, would severely curtail civil society¹. This is combined with a smear campaign in state-affiliated media against human rights defenders, and official statements (see below) declaring new restrictions to human rights efforts.

The timing of these developments seemed partly aimed at keeping human rights activists away from Egypt's legislative and presidential elections scheduled for November 2010 and September 2011 respectively, and some NGOs have already complained that they were not granted permission to monitor the upper house of parliament's mid-term elections in June 2010².

An essential factor continuously restricting associations is the security apparatus, whose approval – through the Ministry of Social Solidarity – is key to the registration of NGOs, receipt of funding and other issues pertaining to their activities, even though the law does not contain any role for it (see below for examples)³. A joint report by 16 NGOs said that in practice “the – continuously renewed – state of emergency continues to violate the provisions of even this overly restrictive law”. The joint NGO report, issued in December 2009 ahead of the Universal Periodic Review of Egypt, said “In reality, the Ministry of Social Solidarity has simply become the contact point between NGOs and the security apparatus”⁴.

I- Formation of Associations

The Association Law No. 84 of 2002⁵ requires prior authorisation for registration through the Ministry of Social Solidarity, which must respond within 60 days. This continued to be difficult during the period under review due to security restrictions on organisations working on political or social rights. Some have resorted to registering as law firms or civil companies, with the result that a number of human rights groups could operate over the past three years⁶.

Refusals may be appealed, and the judiciary has been seen to be quite independent and to have a strong role in associational life. A number of associations have won rulings in their favour at the administrative court and in civil courts the last three years. The Centre for Trade Union and Workers' Services (CTUWS), an organisation promoting the right of trade unions and workers, is a prominent example: the Ministry refused to register it citing security reasons⁷ and ordered its offices closed down in late 2007. The CTUWS appealed and on 30 March 2008, the Administrative Court ruled in its

1 Copy in Arabic of draft law as carried by Al-Dostor, March 7, 2010, <http://dostor.org/politics/egypt/10/march/7/8677>. Information leaked to the media in 2009 also mentioned stricter control.

2 Al-Dostor, *Organizations sue the higher council for elections for barring them from monitoring amid high expectations of rigging*, May 31, 2010, <http://www.dostor.org/politics/egypt/10/may/31/17846>. The Egyptian Organisation for Human Rights later said the administrative court ruled in its favour, <http://ar.eohr.org/?p=1045>

3 Interviews with several associations, June, July 2010, and previous reports – for example, see EMHRN Freedom of Association in the Euro-Mediterranean Region, Monitoring Report, 2008, p. 22, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

4 The report was prepared by: (1) The Cairo Institute for Human Rights Studies, (2) Al-Nadim Centre for Treatment and Psychological Rehabilitation for Victims of Violence, (3) Andalus Institute for Tolerance and Anti-Violence Studies, (4) Arab Penal Reform Organisation, (5) Association for Human Rights Legal Aid, (6) The Group for Human Rights Legal Aid, (7) Hesham Mubarak Law Centre, (8) Land Centre for Human Rights, (9) New Woman Research Centre, (10) The Arabic Network for Human Rights Information, (11) The Centre for Trade Union and Workers' Services, (12) The Egyptian Association for Community Participation Enhancement, (13) The Egyptian Initiative for Personal Rights and (14) The Human Rights Centre for the Assistance of Prisoners, (15) Association for Freedom of Thought and Expression and (16) The Egyptian Centre For Economic and Social Rights. See <http://www.cihrs.org/English/NewsSystem/Articles/2520.aspx>

5 For text of law, see International Centre for Not-for-Profit Law, <http://www.icnl.org/knowledge/library/showRecords.php?country=Egypt&subCategory=1>

6 Interviews with a number of activists from groups working on social and political rights. May-July 2010.

7 Article 11 of the Association Law prohibits organisations from any involvement in political or union activities that are restricted to political parties or trade unions.

favour⁸.

Although there are no additional legal restrictions on women to the right to associate, recent surveys found that there were no women on the board of directors of half of the 408 NGOs surveyed around the country, while 25 percent of the NGOs had one or two female board members⁹. A number of rights organisations have said that the lack of women on the board is changing and they are including gender-mainstreaming in their structure and management¹⁰.

II – Life of Associations

The law requires associations to seek government approval for public meetings, board candidates, board decisions, new activities, expenditures, foreign funding, travel, invitations to foreigners, and publications, among other activities. The pattern has been a familiar one over the last three years: authorities have failed to authorise events or have issued last minute cancellations, usually under undeclared security orders.

For example, the Arab Programme for Human Rights Activists was unable to book a venue for a conference on Sudan and Darfur in May 2010; while the One World Foundation's conference in July 2009 on monitoring parliament performance was cancelled at the last minute. In July 2008, a seminar by the New Woman Foundation in a town near Cairo was also cancelled.

Additionally, the state of emergency prohibits the gathering of more than five people without permission from the security services, making it difficult for associations to act freely and have a wide outreach. When the state of emergency was renewed in May 2010, the government promised that it would limit its application to terror suspects or drug cases, but until the writing of this report this has yet to be experienced in practice.

In a new development, the authorities in 2010 targeted cooperation between NGOs and the growing social movement¹¹, which has held regular high-profile

demonstrations and strikes in demand of better work conditions. For example in early 2010, security agents held up the CTUWS coordinator, Kamal Abbas, at Cairo airport for the second time in a year and released him just in time for his flight, in violation of his right to freedom of movement. A number of other organisations, such as the New Woman Foundation (NWF), and the Egyptian Centre for Economic and Social Rights (ECESR) that cooperate with the social movement are subjected to close scrutiny by the security service¹², and were subject to a media smear campaign. In a story dated May 22, 2010, the semi-official newspaper Al-Ahram charged them as well as human rights defenders in general of pursuing political motives and financial gain from foreign sources, and cited as an example an EMHRN-organised series of meetings between Egyptian activists and the European Council and the European Parliament¹³. A week later, the pro-government daily magazine Rosa el-Youssef carried a similar story¹⁴.

III – Dissolution of Associations

Until 2007, the dissolution of associations was carried out by the Ministry of Social Solidarity; however the dissolution was to be suspended if it was challenged by the court. In July 2007, the Ministry of Social Solidarity introduced an amendment to the Associations Law allowing dissolution orders to be executed promptly, in contradiction to international standards, particularly ICCPR Article 22.2.

Shortly after the amendment, a decision was issued to dissolve the Association for Human Rights and Legal Aid (AHLRA), which had been active in the fight against torture for 13 years. The Administrative Court ruled against the dissolution¹⁵, which allowed the association to continue to operate, although the Ministry of Social Solidarity has continuously tried to block its activities.

⁸ Other examples of applications rejected for security reasons are the Association for Alternative Opinion on Human Rights and Development, and the Ancient Egyptians for Human Rights. Report by the Forum of Independent Human Rights Organisations in Egypt, June 9, 2010, p. 3, <http://www.anhri.net/?p=7251&page=3>

⁹ EMHRN Freedom of Association in the Euro-Mediterranean Region, Monitoring Report, 2009, p. 26, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

¹⁰ Telephone interviews with more than three activists from different organisations, May, June 2010.

¹¹ Increasingly organised activities by independent trade unions that initially started as spontaneous groups demanding better working conditions; generally they have been more tolerated than pro-reform demonstrations.

¹² Interviews with NWF and ECESR, June 1, 2010.

¹³ See Al-Ahram daily, <http://www.ahram.org.eg/174/2010/05/22/12/21417.aspx>

¹⁴ See, in Arabic, <http://www.rosaonline.net/Daily/News.asp?id=65493>, criticism of the CTUWS and the ECESR in connection to labour strikes and funding.

¹⁵ FIDH, Egypt: AHLRA finally authorised to be officially re-registered, October 29, 2008, <http://www.fidh.org/EGYPT-AHLRA-finally-authorised-to-be-officially>

In May 2009, the Egyptian Organisation for Human Rights (EOHR) received a notice from the Ministry of Social Solidarity warning of its impending dissolution for carrying out a project before its foreign grant was approved. The government was compelled to withdraw its threats of dissolution following an international solidarity campaign with EOHR¹⁶.

IV – Participation of the Civil Society in the Decision-Making Process (including the new Law on NGO)

Regarding the participation of the civil society in decision-making on public policy issues, the government convened a series of consultative meetings with NGOs ahead of the Universal Periodic Review of the Human Rights Council, but these were seen by civil society as government efforts to water down international criticism of its human rights record, and have not resulted in any improvement to the human rights situation in Egypt¹⁷. Additionally, during the drafting of the new association bill, the government did not take NGO recommendations into account, even though it had agreed to this during the Universal Periodic Review (UPR) of November 2009¹⁸.

If passed, the bill, as published in Al-Dostor newspaper, would create a stronger role for the state by obliging associations to join the semi-state General Federation of Civic Associations (GFCA), which would supervise all aspects of NGO life, instead of having a consultative role as under the current law¹⁹. In addition, the bill would criminalise any organisation that is not registered as an association but that practices any of its activities²⁰. This would target a significant number of human rights activists²¹ who have opted for registering as a law firm or another civil company in order to bypass the stringent law

governing NGOs²².

Official statements by GFCA chairman, Mr. Abdel-Aziz Hegazi, have illustrated the danger of the new bill. At a conference on the role of civil society held in July 2010 in Egypt, Mr. Hegazi stated that human rights organisations resist the new draft law because they prefer to have chaotic (he used the Arabic expression “*sadah madah*”) funding rules so that they could obtain support from multiple sources²³. In an interview with the daily Al-Akhbar in May 2010, Mr. Hegazi said, “The era of foreign aid to human rights has ended,” and support would be channelled to development projects instead. Mr. Hegazi also noted that security approval for the formation of associations was “a national necessity”²⁴.

The draft law may be presented to parliament by late 2010 or early 2011.

16 CIHRS Annual report 2009, p 122.

17 See <http://www.anhri.net/?p=7145>

18 EMHRN EU-Egypt Association Council: The EU Should Call on the Egyptian Government to Respect Freedom of Association, April 21, 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4271.html

19 The following articles of the bill address the scope of GFCA supervisory role: Articles 5 and 6 in NGO registration; Art. 9 in NGO scope of NGO work; Art 17 in a unified accounting system; Art. 18 in bank account details; Art. 23 in general assembly agenda and minutes; Art. 30 in board of director candidates for approval; Art. 33 in general assembly or board decisions; Art. 35 in NGO dissolution; Art. 75 on penalties.

20 Article 3 in the Preamble to the bill, and Article 72a. The draft law provides for a prison sentence of no more than six months, and/or a fine for any entity under any form that performs the activities of an association without “following provisions of this law”.

21 These include, among others, prominent organisations such as the Hisham Mubarak Law Centre, the Association for Freedom of Thought and Expression, and the Egyptian Centre for Economic and Social Rights that work in the field of human rights.

22 EMHRN Freedom of Association in the Euro-Mediterranean region, 2007, p. 28, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2007/3622.html

23 Article 17 of the draft law requires a unified accounting system. See Al-Masry Al-Youm (Arabic), Abdel-Aziz Hegazy: Human rights organisations want haphazard funding, by Yasser Shamis, July 14, 2010, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=262455&IssueID=1831>

24 Al-Akhbar daily, Dr. Hegazi: We shall not permit “chaos” in civil society, interview by Abdel Wahab Wahid, May 10, 2010.

Egypt

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- End the state of emergency enforced since 1981 as it arbitrarily restricts enjoyment of freedoms of association and assembly;
- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the international Human rights instruments ratified by Egypt;
- Implement the recommendations of the United Nations Human Rights Council (in particular the UPR recommendation, which states that the government of Egypt should “continue its efforts to reform in the short term Law 84/2002 in order to establish a procedure for setting up NGOs, which is nimble, fast and not subject to administrative discretion”). Take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW.

With regard to the legislation and practice related to freedom of association:

- Reject the draft bill on NGOs as it has been published in the media but amend the Associations Law 84/2002 in consultation with all relevant parties in order to comply with international standards on the right to association. In particular:
 - The right to establish an association through simple notification without the need for a prior license;
 - The right of associations to freely choose their fields of activity;
 - The right of associations to form thematic and regional unions, as well as their right to join networks or alliances for common purposes, nationally, regionally and internationally. Membership in the General Federation of NGOs and Foundations should not be compulsory;
 - Associations’ freedom from ministerial or government interference in their meetings;
 - The internal affairs of associations should be monitored only by their board of directors and external monitoring should be confined to the regular judiciary. The General Federation of NGOs and Foundations should not be allowed to monitor associations’ internal affairs;
 - Acknowledge associations’ right to receive domestic and foreign funding without a prior license and subject only to notification, with provisions that guarantee a commitment to transparency and respect for the law;
 - Provide the courts exclusive jurisdiction in abolishing or suspending an association;
- Put an end to acts of intimidation against civil society activists and human rights defenders, and provide legal protections to allow them to conduct their activities without interference.

Environment required for the sustainable development of civil society:

- Establish a new institutional relationship with civil society associations which is based on transparency, the impartiality of the state and amended legislation on associations. Establish an adequate consultative mechanism to ensure that civil society can contribute to decision-making on public policy issues;
- Promote equal participation of women and men in civil society organisations and public institutions.



Israel



*A demonstration against the eviction of Palestinian families in Sheikh Jarrah, East Jerusalem, March 2010.
by Anne Paq/ Activestill*

INTRODUCTION

Since the Israeli military attack on Gaza in late 2008 and elections in early 2009, which resulted in a strongly conservative government and parliament, the right to freedom of association has suffered setbacks, and human rights organisations have become regarded as enemies of the state whose activities must be curtailed¹. This reversed a promising development when in February 2008 the government presented its policy regarding the non-profit sector for the first time and called for increased consultation with civil society².

By August 2010, four draft laws were introduced in the Knesset, with the backing of conservative civil society organisations, that would seriously undermine the strength of human rights organisations if passed³.

In August 2010, the Knesset's Law and Justice Committee approved a first reading of a bill requiring Israeli NGOs, on a quarterly basis, to report funds received directly or indirectly from foreign governments, and to declare details of the fund on their public statements and website⁴. The bill grew as a reaction to the Goldstone Report and the controversial report by the Breaking the Silence group (see below), and was proposed by seven Parliament Members following a conference with the conservative groups, NGO Monitor and the Institute for Zionist Strategies. The current bill removed more restrictive language requiring any organisation seeking to influence public opinion in Israel to register with the Political Party Registrar, thereby losing its tax-exempt status⁵, but it still imposes invasive and stringent financial reporting requirements. Furthermore, the bill, which may be passed by the end of the year, is discriminatory and targets human rights organisations that depend primarily on foreign government funds⁶.

In April, 2010, a group of 19 Knesset members introduced an amendment to the Associations Law, known as the Universal Jurisdiction Bill, to prohibit the registration of, or to close down any existing NGO that is found to provide "information to foreign entities or is involved in legal proceedings abroad against senior Israeli government officials or IDF officers, for war crimes". The move also came amid a campaign by right-wing groups, especially Im Tirtzu (the Second Zionist revolution) and NGO Monitor⁷, against human rights organisations in connection to the Goldstone Report. If passed, the bill would outlaw any organisation that resorts to extra-national jurisdiction, and would place arbitrary and unnecessary restrictions on the rights to freedom of association⁸.

1 See Dr. Ishai Menuchin's Speech before European Parliament Subcommittee on Human Rights, submitted by PCATI, June 29, 2010. <http://www.scribd.com/doc/33619158/Menuchin-Cost-of-the-Missing-Left-EP-HRhearin...>

2 The policy called for increased consultations with civil society, increased involvement of non-profit organisations in operating social services and encouraged businesses to donate to the non-profit sector. The government also reiterated the enactment of a January 2008 law that cancelled taxes on NGOs, who were required to pay a 4 percent tax prior to that. See Freedom of Association in the Euro-Mediterranean Region 2008, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

3 In June 2010, the NGO Adalah – The Legal Centre for Arab Minority Rights in Israel - submitted a report detailing these bills to the UN Human Rights Committee for its consideration of Israel's Third Periodic Report of November 2008 during its review sessions on 12 and 13 July 2010. See http://www.adalah.org/eng/pressreleases/pr.php?file=28_06_10_2

4 The Jerusalem Post, Knesset Law Committee okays controversial NGO funding bill, by Dan Izenberg, August 17, 2010, <http://www.jpost.com/Israel/Article.aspx?id=184998>

5 JNews, Modified bill to monitor funding of Israeli NGOs discussed, July 16, 2010, <http://www.jnews.org.uk/news/modified-bill-to-monitor-funding-of-israeli-ngos-discussed>. See also EMHRN, Open Letter: Restricting the space of Human Rights Defenders and Organisations working in Israel and the Occupied Palestinian Territories, March 12, 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4182.html. See also Foreign Policy, Civil Society and human rights in Israel (and elsewhere), by James Ron, March 10, 2010, http://walt.foreignpolicy.com/posts/2010/03/09/civil_society_and_human_rights_in_israel_and_elsewhere

6 See: Adalah, Stop the ban on foreign funding to NGOs in Israel: Joint statement of 11 human rights organizations, December 2009, <http://www.adalah.org/newsletter/eng/dec09/dec09.html?navi=%2Fnewsletter%2Feng%2Fdec09%2Fdec09.html>

7 The campaign targeted human rights organisations funded by the New Israel Fund, including Adalah, Public Committee against Torture in Israel (PCATI), Physicians for Human Rights-Israel and others. In early 2010, Im Tirtzu launched a smear campaign against the NIF, on billboards and websites. See JNews, Renewed attacks on human rights groups in Israel, April 17, 2010, <http://www.jnews.org.uk/news/renewed-attacks-on-human-rights-groups-in-israel>. For NIF's response, see New Israel Fund, Lies, Damn Lies and the Im Tirtzu report, <http://www.nif.org/media-center/under-attack/lies-damn-lies-and-the-im.html>

8 Joint statement: Proposed Bill Seeks to Outlaw Human Rights NGOs. See <http://www.adalah.org/eng/index.php>. See also http://en.euromedrights.org/index.php/news/emhrn_releases/67/4299.html

A third bill that passed the preliminary Knesset vote in July 2010⁹, a month after its introduction by 24 Knesset members, proposes to outlaw any activities promoting any kind of boycott against Israeli organisations, individuals or products, whether in the Occupied Palestinian Territory or in Israel¹⁰. In addition to these three bills, a fourth draft law currently under discussion in the Knesset is the “Infiltration Prevention Law”, which also puts strong restrictions on Israeli NGOs working with irregular migrants.

I – Formation of Associations

In theory, Israel’s Association Law of 1980 and the Companies Law of 1999 respect international standards, especially on the formation of associations, as there is no article in the law that prohibits any group from acting as an association without being registered. However, grounds to reject applications are vague and may conduct to arbitrary refusals.¹¹ Both registered and non-registered associations may conduct activities, but only legal associations - authorised by the Registrar of Associations/Companies - may open a bank account or undertake court proceedings. According to a Ministry of Justice database, there are 30,000 registered non-profit organisations in Israel¹².

II – Life of Associations

Three restrictive types of statutory laws remain in effect: the Law on the Prohibition of Terror Funding of 2005; the Prevention of Terrorism Ordinance Law of 1948; and the British-mandate era emergency legislation known as the Defence (Emergency) Regulations of 1945¹³, which has especially been used to close down associations (see below). In addition, the 1994 Law Implementing the Interim Agreement on the West Bank and Gaza Strip ensures that the Palestinian Authority does not engage in political, diplomatic, security or other activities within the area of Israel, particularly in Jerusalem. In early 2009, the Minister of Public Security invoked this law to prohibit

numerous Palestinian cultural and educational activities in East Jerusalem that had been organised to mark the dedication of Jerusalem as capital of Arab culture 2009¹⁴.

Israel has invoked security reasons in arresting activists, barring them from travel or deporting international activists. Since early 2010, police have arrested more than 120 protestors against the eviction of Palestinians in East Jerusalem, including a member of Rabbis for Human Rights, and Hagai El-Ad, Executive Director of the Association for Civil Rights in Israel. Most were released by court order within 36 hours¹⁵.

On 28 March 2010, Al-Haq’s General Director, Mr. Shawan Jabarin, was denied exit from the OPT by Israeli forces when he attempted to travel to Cairo for a regional seminar, via Jordan, and a year earlier he was prevented from travelling to the Netherlands to receive an award¹⁶. Mr. Jabarin has been under a travel ban for an indefinite period since 2006 when he became director of Al-Haq¹⁷.

Ameer Makhoul, General Director of Ittijah, the Union of Arab Community-Based Associations, which works on social rights, was arrested on 6 May, 2010 from his home in Haifa by the Israeli police and the Israeli Security Agency. He had previously been barred from travel on grounds he was a “security threat” under the 1948 Emergency Regulations. Similarly, on 24 April, 2010, Dr Omar Saeed, a political activist with Balad political party, was also arrested while trying to leave Israel. Both men were reportedly accused of espionage for Hezbollah¹⁸, and Mr. Saeed has reached a plea bargain that gave him a seven-month prison sentence for working for an illegal organisation¹⁹. The next hearings in Mr. Makhoul’s case are set for September and October 2010²⁰.

After the Gaza invasion, associations that criticised the Israeli military came under particular attack. In July 2009,

9 JNews, Antiboycott bill passes preliminary reading in the Knesset, July 14, 2010, <http://www.jnews.org.uk/news/antiboycott-bill-passes-preliminary-reading-in-the-knesset>

10 English translation of the bill available at <http://www.jnews.org.uk/news/new-bill-seeks-to-outlaw-boycott-both-of-settlements-and-of-israel>

11 EMHRN, Freedom of Association in the Euro-Mediterranean region, 2007

12 The new MoJ, Yad Hanadiv and the Joint Distribution Committee (JDC)-Israel website does not provide a breakdown of the organisations. See <http://www.guidestar.org.il/Default.aspx>

13 EMHRN, Freedom of Association in the Euro-Mediterranean region, Monitoring Report, 2009, p. 29. http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

14 Freedom of Association in the Euro-Mediterranean Region 2009, p. 32, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

15 ACRI Head and fellow Protestors Released without Charges, <http://www.acri.org.il/eng/story.aspx?id=702>. Since then, more than 40 public figures have complained to the Attorney General about discriminatory behaviour by Jerusalem police. See <http://www.en.justjlm.org/136>

16 The Guezenpenning 2009 Dutch Prize for Human Rights Defenders Al-Haq and B’Tselem

17 See Al-Haq press release, April 8, 2010 <http://www.alhaq.org/etemplate.php?id=520>. See also FIDH, Ongoing travel restrictions imposed on Mr. Shawan Jabarin, April 12, 2010, <http://www.fidh.org/Ongoing-travel-restrictions-imposed-on-Mr-Shawan>

18 Amnesty International, Israel Must Stop Harassment of Human Rights Defender, 12 May 2010, <http://www.amnesty.org/en/news-and-updates/israel-must-stop-harassment-human-rights-defender-2010-05-12>

19 Haaretz, Israeli Arab strikes plea bargain over Hezbollah espionage charges, by Jack Khoury, July 8, 2010. <http://www.haaretz.com/news/diplomacy-defense/israeli-arab-strikes-plea-bargain-over-hezbollah-espionage-charges-1.300782>

20 Telephone call with one of Mr. Makhoul’s lawyers.

Breaking the Silence (an NGO of veteran Israeli soldiers that demands accountability for military abuses against Palestinians) issued a report that revealed sharp disparities with the official Israeli Army's version of events. The Ministry of Defence has depicted the NGO as traitors, and the Israeli government called on at least three European governments to stop providing funds to the organisation, but the group has continued its activities; in January 2010 it published a report by female soldiers, and was to hold a photo exhibit in Madrid this summer. In April 2009, Israeli police arrested 16 members of New Profile, an Israeli feminist and pacifist organisation, to investigate its website for "incitement to evade military service", which carries a five-year prison penalty.

III – Dissolution of Associations

Under the Associations Law, dissolution is made by the attorney general or the registrar, who must first provide warning to the association, unless its aims are found to negate the existence of the state of Israel.

During the past three years, the Defence (Emergency) Regulations of 1945 were used a number of times, as in the closure of Al-Aqsa Association for the Restoration of Muslim Holy Sites²¹, and the Culture Forum under orders from Israeli Defence Minister Ehud Barak in August and March 2008 respectively²², and of Ansar al-Sajeen (Prisoners' Friends Association) in November 2008 in the Arab village of Majd al-Krum. The use of the Emergency Regulations contradicts international standards for the dissolution of an association, as it does not provide for appeal.

To conclude, the current political atmosphere that has resulted in restrictive draft laws and heavy security measures threatens freedom of association, and sharply reverses any relatively promising developments, such as the February 2008 government policy on NGOs.

21 The Al-Aqsa Association is one of the main Arab charities in Israel, collecting and distributing alms to Muslims in need, as well as in restoring Muslim holy sites, cemeteries and educational institutions.

22 Freedom of Association in the Euro-Mediterranean region 2008, p. 25, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

Israel

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the international Human rights instruments ratified by Israel;
- Implement the Universal Periodic Review recommendations of the United Nations Human Rights Council and take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW;
- Cancel the state of emergency in place since 1948 and cease using the “Emergency (Defence) Regulations [EDR] – 1945” to close down NGOs, without due process of law;
- Abolish the “Prevention of Terrorism Ordinance – 1948”, pursuant to which the government may declare any organisation as a “terrorist organisation” without relying on clear criteria as prescribed by express legislation;
- Cancel the “Law for the Prohibition of Terror Funding – 2005” as it contradicts fundamental principles of criminal law;
- Cancel and cease using the “Law Implementing the Interim Agreement on the West Bank and Gaza Strip (Restriction on Activity) – 1994” to close down Palestinian NGOs in East Jerusalem and prohibit cultural activities in the occupied part of city;
- Refrain from passing restrictive laws, such as the foreign funding bill, the Universal Jurisdiction Bill, the Infiltration Prevention Law, that would hamper the activities of civil society organisations in contradiction with democratic values and violate international human rights standards binding upon Israel.

With regard to the legislation and practice related to freedom of association:

- Ensure that refusal to register an association (according to Articles 3 and 4 of the Law) complies with Article 22 of the ICCPR and Article 7 of CEDAW;
- Repeal Amendment 10 to the Companies Law enacted in 2007, which strengthens the Registrar’s authority to approve or disapprove a change in the aims of public benefit companies and NGOs, as it constitutes undue regulation of the decision making power of the non-profit sector;
- Provide greater public access to information and transparency on the work of the Registrar by making it available on the website, including statistics on the current number of NGOs, any dissolution proceedings initiated against NGOs and the reasons for such proceedings, new legislation affecting NGOs, etc.

Environment required for the sustainable development of civil society:

- Encourage the participation of associations in public life, in particular when it comes to the development of public policies;
- Promote equal participation of women and men in civil society organisations and public institutions.



Jordan



*Jordanian female riot police hold back a woman during a protest near the Israeli embassy in Amman to condemn Israel's deadly raid on ships carrying humanitarian aid to the Gaza, Amman, June 2010.
by Kalil Mazrawwi/AFP/Getty Images*

INTRODUCTION

Jordanian associations have been governed by a series of changing laws that have tended to become more restrictive over time, especially for those that work on political freedoms. Associations have found that the new requirements have imposed more restrictions, and have reduced their ability to operate smoothly because of increasing state interference in their management, funding and activities.

The government has engaged civil society in consultations over new legislation during the past three years, but these were not always fruitful. Recommendations by international and Jordanian civil society to facilitate the establishment of societies and their ability to function independently¹ were not reflected in new legislation adopted during the past years, and there is no sign of progress to come: “This is the biggest attack against the freedom of association,” said a leader of the Arab Women’s Organisation of Jordan, “Jordan has witnessed one of the major steps backward relating to the Freedom of Association, in 2009”.

Since Jordan first passed its own Association Law in 1966, replacing the more liberal Ottoman law of 1909, it has initiated a series of restrictive changes. During the past three years, it passed a more restrictive Societies Law² in 2008 that was amended a year later, which allowed for even more state interference and control, using broad terms to prohibit associations that violate public order or pursue political objectives³.

I – Formation of Associations

The 2009 Law on Associations no. 22 amending Society Law 51 of 2008 provided for a faster registration process by creating a single location for registration, the registry management committee⁴, instead of going through multiple ministries, but it made no improvement on any of the restrictive clauses of the law and still does not conform to ICCPR Article 22 on the right to freedom of association. Associations must obtain authorisation to register, without which they cannot undertake any activities; and the law grants the registry management committee the right to refuse any association without providing a reason and without resorting to the judiciary. Applicants may contest a refusal at the Supreme Court level, but this only reviews the procedure’s legality⁵.

The Ministry of Social Development’s website currently lists some 1,200 registered associations, including Christian and Muslim charity and service-providing organisations, community-based organisations, ethnic groups (Chechen), and human rights and women empowerment organisations⁶.

1 The government was in consultation with a coalition of NGOs that included Partners-Jordan, Adalah Centre for Human Rights, MIZAN (human rights association), Centre for Defending Freedom of Journalists, LHAP (Environment Association), Tkeit Um Ali (charity association), Jordan Women’s Union, Al-Urdun Al-Jaded, Women’s Rehabilitation Centre, National Association for Freedom and Democracy, Sisterhood is a Global Institute (SIGI), Democracy Development Association, Arab Women’s Association, National Centre for Human Rights. See Partners-Jordan, *Building an Advocacy Coalition for NGO Law Reform- Case Study from Jordan*, and EMHRN, *We Appeal o His Majesty King Abdullah II to Reject New Societies Law (22/07/2009)*, <http://euromedassociation.blogspot.com/2009/07/jordan-emhrn-hrw-fidhomct-club-of.html>

2 The 2008 Law of Associations no. 51 of 2008 was passed despite heavy criticism from civil society activists. The 1995 law allowed applicants to resort to ordinary courts to contest rejection, and did not place any restrictions on funding as long as it was declared. The current law (and its 2009 amendments) requires prior approval for funding from foreign sources, and the authorities have the right to refuse without providing any justification. http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2007/3622.html

3 See EMHRN-HRW Joint letter to the Jordanian Prime Minister on the draft amendments to the 2008 Societies Law, May 12, 2009, <http://euromedassociation.blogspot.com/2009/05/jordan-emhrn-hrw-joint-letter-to.html>

4 The committee has six representatives from various ministries (agriculture, industry, education, health, etc) and three government-appointed non-state members, and is presided over by the Ministry of Social Development.

5 EMHRN, *Freedom of Association in the Euro-Mediterranean region*, 2009, p. 37 http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

6 See more details on the Ministry of Social Development’s website at http://www.mosd.gov.jo/index.php?option=com_contact&task=view&contact_id=1&Itemid=66

It may be too early to judge the real impact of the new amendments in terms of how easy it is for associations to register, but the EMHRN has not been informed of any arbitrary refusals when it comes to registration. Since the passage of the 2009 amendment the registry committee has been occupied with regularising the status of some 30 existing human rights organisations that had previously registered as non-profit companies to avoid the NGO limitations. Another 500-odd non-profit companies are also to come under the Ministry of Social Development rather than the Ministry of Industry and Trade, and have been given until September 2010 to regulate their status, failing which they would be dissolved⁷.

It is also noteworthy that Jordan has royal NGOs that are unique in the region and that are established by special decree with government-appointed boards of directors: these royal NGOs do not come under the Society Law and function under royal patronage⁸. They focus on economic and social development and include the Noor Al-Hussein Foundation, the Jordanian National Commission for Women (JNCW – led by Princess Basma), and the King Abdullah Fund for Development. Although some independent associations would have the same outlook or mission as some of the royal NGOs and may join in campaigns with them, there has been little cooperation between them otherwise.

There are no restrictions on the participation of women in associations, and women have historically been highly active in charity organisations as they are generally more involved in voluntary work than men. However, the increasing restrictive climate and existing conservative trends impose limits on their activities in the public, civil and political scene. Women have usually moved from charity work to the development field and more recently, into rights-based associations, holding important positions in women's rights organisations and in other organisations. For example in the General Union Voluntary Societies, one-third of the board is made up of elected women. Campaigning by women's rights activists helped to pass the Family Protection Law in 2008, which provides key safeguards against domestic abuse. In 2009, Jordan lifted one of its reservations on the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), giving women the same rights as men to travel freely and to decide their place of domicile, which may

encourage women to take a more active public role in political parties and in trade unions⁹.

II – Life of Associations

Additionally, the law requires associations to submit their annual plan of work, obtain approval before holding board elections or amending rules and regulations, and allows ministry officials to attend general meetings and approve board decisions, contrary to international standards. This practice is much resented by civil society: "There is too much control and interference by the Ministry of Social Development, it's as if we are working for them, and we face being penalised with fines and jail sentences" a human rights activist complained, "by the end of the day we are sick of the bureaucracy – it's as if they are trying to tell us 'do not do this work'"¹⁰.

Public meetings must be approved and since late 2008 the granting of security permits has been an increasingly restricted and lengthy process. The security services demand very specific information from associations, and even if an association is able to submit all the required information on time, a refusal is still possible. The authorities have refused to grant permits for many activities, prompting most associations to hold their events on their own premises, and thus preventing them from reaching their target audience¹¹.

Police violently dispersed demonstrations protesting Israel's offensive in Gaza in January 2009, as well as a protest against food imports from Israel in July 2009. The Amman governorate also prevented an Islamist demonstration protesting clashes at Jerusalem's Al-Aqsa mosque in September 2009¹².

Under the current law, the foreign funding approval process has been shortened but it still requires full cabinet approval, leading to a burdensome and complicated process. Furthermore, the new approval comes with more conditions attached that amount to interference and harassment, such as requiring additional detailed information and reporting on the use of the funds; requirements that are not legally required. The Law gives the government the right to refuse requests without providing any justification, and stipulates that only the Supreme Court of Justice can review complaints about refusals, thus denying associations the right to a two-level

7 Telephone interview with the National Council for Human Rights, a national organisation set up by law in 2002 with a government-appointed board of trustees, and is funded in part by the national budget and by international donors. See <http://www.nchr.org.jo/>

8 According to interviews with the NCHR and other associations, royal NGOs – or 'National Foundations' (mu'assasat wataniya) are formed by royal decree and governed by special laws; they are not accountable to concerned ministries but to a central accounting body; they do not follow the Society Law in terms of formation, operation, funding or activities or dissolution or any other function or aspect.

9 Telephone conversation with the Arab Women's Organisation Jordan, May 30, 2010.

10 Telephone interview with a civil society activist, June 15, 2010.

11 EMHRN, Freedom of Association monitoring report, 2009, p. 39.

12 Freedom House, Freedom in the World, Jordan, 2010, <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7849>

trial which would guarantee fairness¹³.

III – Dissolution of Associations

Violation of the funding approval may constitute a reason for dissolution by law, in contradiction to international standards on freedom of association. The law allows for a dissolved organisation to run elections within 60 days, but this is often not implemented. For example, the General Union of Voluntary Services (GUVS) was dissolved in 2006 ostensibly because of financial corruption, but the dissolution of the union came straight after the GUVS had published criticism of the government's NGO restrictions. The union went to court after the government did not acknowledge its newly elected board, and in 2010 it won the case in an appeals court, which cleared it of corruption charges. Up to the writing of this report (June 2010) however, the court decision has not been implemented and the NGO has not been handed back to its elected board¹⁴. On a brighter note, since then the cases of reported dissolution have been few¹⁵.

13 Telephone interview with a member of The Families Development Association, June 15, 2010. See also EMHRN, Freedom of Association in the Euro-Mediterranean region – 2009, p. 38, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

14 Telephone interview with AWO-Jordan, May 30, 2010. See also HRW, Shutting out the Critics, December 16, 2007, p. 26, <http://www.hrw.org/en/node/10532/section/4>

15 According to the NCHR and AWO-Jordan no examples were available. May and June 2010 telephone interviews.

Jordan

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the international Human rights instruments ratified by Jordan;
- Implement the Universal Periodic Review recommendations of the United Nations Human Rights Council and take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW.

With regard to the legislation and practice related to freedom of association:

- Ensure that the 2009 Societies Law is carried out in a way that respects freedom of association.
- Revise the Societies Law in consultation with all relevant parties in order to comply with international standards on the right to association. In particular:
 - The right to establish an association through simple notification without the need for a prior license. Any refusal of an application for registration should be clearly motivated;
 - Only the regular courts should review cases related to the formation and activities of associations and examine refusals of registration, closures, dissolutions, or legal violations;
 - Ensure that organisations challenging the rejection of an application for registration have an effective access to justice within a reasonable period;
 - Ensure that organisations can freely carry out their activities as described in their statement of application, including those of a political nature, limited by Article 3 of the Associations Law;
 - Associations' freedom from ministerial or government interference in their meetings;
 - The internal affairs of associations should be monitored only by their board of directors and external monitoring should be confined to the regular judiciary;
 - Acknowledge associations' right to receive domestic and foreign funding without a prior license and subject only to notification, with provisions that guarantee a commitment to transparency and respect for the law.

Environment required for the sustainable development of civil society:

- Establish a new institutional relationship with civil society associations which is based on transparency, the impartiality of the state and amended legislation on associations;
- Establish an adequate consultative mechanism to ensure that civil society can contribute to decision-making on public policy issues;
- Promote equal participation of women and men in civil society organisations and public institutions.



Lebanon



*Disabled Lebanese persons hold signs calling for reconciliation among rival Lebanese leaders, Beirut May 2008.
by Joseph Barrak/AFP/Getty Images*

INTRODUCTION

Lebanon has the most liberal association law in the South and East Mediterranean region and in practice it may be considered the only Arab state with hardly any real restrictions to the right to freedom of association. Of an estimated 6,000 associations, more than 588 have been established since 2008¹. The law considers an association to be established as of the date of its application and it is free to hold meetings, open bank accounts, join regional or international networks, and receive funding without prior approval. Since 2007, the government has sought recommendations from civil society, and the only restrictions in practice for associations seemed to be those targeting groups working on LGBT issues.

I – Formation of Associations

The formation of an association, in line with international standards, is by declaration according to the 1909 Ottoman era law of associations and a number of decrees and laws issued since then. The official acknowledgment receipt ("*ilm wa khabar*") used to require a lengthy process of approval by the ministry concerned and the General Security. But in 2008 this was changed, when a new circular was implemented to complete the formation within two to three months. In practice however, this may take longer than predicted and activists say applications are still sent to the security services for their approval, or simply to inform them.

The Helem Association, which defends LGBT rights, continued to meet obstacles during the period under review and has been awaiting a receipt since its foundation in 2005. Homosexuality is prohibited under Article 534 of the Lebanese criminal code, which forbids sexual relations that are "contrary to the laws of nature" and makes it punishable by a sentence of up to one year. Despite not obtaining an '*ilm wa khabar*' receipt, Helem has operated openly and in a new precedent, judge Mounir Suleiman from the Batroun court district ruled in March 2009 that consensual homosexual relations are not against nature and thus could not be prosecuted under article 534 of the Penal Code in Lebanon². However, Helem is still not officially registered.

Foreign organisations, in which foreigners may constitute 25% of the membership, must get approval from the Council of Ministers. The process is long and complicated, but in practice foreign NGOs have been able to operate while waiting for the approval³. In practice, a large number of associations working on issues pertaining to Palestinian operate as unregistered but tolerated groups, especially in the refugee camps. Depending on the political situation, they sometimes face authorities' pressure.⁴

1 See EMHRN Freedom of Association in the Euro-Mediterranean Region, Monitoring report 2009, p. 42, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

2 Helem, *Decision in Batroun District: Homosexual relations are not against nature*, 15 January, 2010, <http://helem.net/node/232>

3 Interview with a foreign NGO and local activists, July 2010.

4 Interview with a member of the Palestine Human Rights Organisations and other activists, July 2010.

II – Life of Associations

Although an association may operate before receiving the *'ilm wa khabar* receipt, it needs to be formalised in order to get a VAT discount, and may need to present the receipt to open a bank account⁵. Associations are required to present their annual budget and account to the Ministry of Interior. Also, if associations change their statutes, they have to notify the Ministry of Interior. During the past three years, there were no restrictions by law or in practice on domestic or foreign funding. Notification procedures were simple; the source of funding, amount, purpose and use of funds must be listed and made transparent to the authorities.

The year 2008 marked an increase in rights granted to civil society and this has continued into 2010. The Lebanese government launched the National Project for Human Rights in close consultation with civil society, and parliament's Human Rights Commission invited several associations to participate in debates in the summer of 2008, as part of an ongoing project to build a national plan for reforming the situation of all major civil, political, economic, social and cultural rights.

Lebanon's Constitution guarantees equality to all citizens, but the legislation does not permit Lebanese women to pass on their nationality to their spouse or children, and the Court of Appeal recently overturned a lower court decision in June 2009 allowing women the right to pass their Lebanese nationality on to their children⁶. Women participate in most aspects of public life, but general patriarchal attitudes make it difficult for them to obtain high-level positions in the public and private sectors and so challenge women's efforts to advance their overall status. As a result of the years of conflicts and wars, women NGOs have opted to focus on economic and social needs, and work toward achieving women's rights on the ground as well as lobby policy makers and the judicial system. They also work to raise gender awareness through conferences, and media campaigns⁷.

III – Dissolution of Associations

Associations can be dissolved by the group's general assembly; by a judiciary decision in case it pursues an illegal objective, or if it is a secret organisation (if a group has not applied for *'ilm wa khabar* receipt and pursues illegal goals); by a Council of Ministers decree for violation of public order, trying to overthrow the government or inciting discrimination. The EMHRN was not informed of any reports of dissolutions over the past three years.

⁵ According to a leading civil society activist, some banks required the formal receipt, May 2010.

⁶ See EMHRN, EU-Lebanon Association Council Human Rights Commitments Should be Implemented, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4432.html

⁷ Freedom House, Women's Rights in the Middle East and North Africa: Citizenship and Justice, Lebanon, <http://www.freedomhouse.org/template.cfm?page=176>

Lebanon

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Abolish special courts, military tribunals and justice council rulings.

With regard to the legislation and practice related to freedom of association:

- Continue its efforts to ensure the respect and the promotion of freedom of association;
- Ensure that both the French and the Arabic versions of the Constitution are identical regarding "Freedom of association". Remove any references in the Association Law to Ottoman authorities and Ottoman currency. Abrogate part of article 5 of the law on associations regarding to members' age. This article is unconstitutional since the constitution sets legal maturity at 18 years;
- Ensure the implementation of the Circular No 10/am/2006 which facilitates the formation of associations;
- Put an end to security apparatus interference in the registration process of associations;
- Ensure that all individuals, including sexual minorities, can create associations to defend their rights independently of the existing legislation, which requires reform.

Environment required for the sustainable development of civil society:

- Encourage the participation of associations in public life, in particular when it comes to the development of public policies;
- Promote equal participation of women and men in civil society organisations and public institutions.



Libya



*Families of the victims of the Abu Salim prison violent
events,
Benghazi, 2007.
by Liby Alyoum*

INTRODUCTION

Over the past few years, Libya has come out of its pariah state, and has recently launched a series of economic reforms that would attract foreign business and expertise, but has stopped short of undertaking any political improvement, except for tolerating some activities that would have been unthinkable a few years ago. Any hint of progress however remains unreliable because of continuous repression and contradictions between statements by Saif al-Islam al-Gaddafi, declaring the need for a modern constitution and an active civil society, and those of his father, the Libyan leader, who has said Libya has no need for civil society¹.

Libya still has no real civil society as such, or independent associations of any kind. All officially recognised cultural, charitable and sports associations are financed and controlled by the state and by the security apparatus. One of the rare human rights groups based in Libya is the Human Rights Society, which is part of the Gaddafi International Charity and Development Foundation (GICDF). The GICDF is headed by Saif al-Islam, and the foundation has been influential in securing the release of hundreds of Islamist political prisoners in 2009, as well as the safe return of some Libyans in exile. Another large organisation is Waatasemu Association for Charity, headed by Dr. Aisha al-Gaddafi, Muammar al-Gaddafi's daughter. It runs women's and children's development projects and has intervened in cases of death penalty and in women's rights issues.

I – Formation of Associations

All associations are governed by Law 19 of 2001, which over the past three years has continued to require that every NGO obtain official permission to operate. This law also regulates the association's budget, fundraising activities, board composition, meetings and resolutions, in contradiction of ICCPR, Article 22, which Libya has signed and ratified. The law requires a minimum of 50 members for the establishment to exist, and its regulatory code states that if no answer is received within two months, it is to be considered rejected.

Law 71 of 1972 criminalises partisan activism, and makes any activities that run counter to the principles of the Libyan revolution punishable by death. In 1975, the Penal Code was amended to include articles of this law and thereby became one of the most important obstacles to the formation of associations.

Any activity that is deemed as opposing the ideals of the al-Fatih revolution of 1969 that brought Gaddafi to power, are criminalised. The 1969 Constitutional Proclamation, the Declaration of People's Power, the Charter of Human Rights, and Law 20 on the strengthening of freedoms all prohibit the formation of associations with an ideology contradicting the principles of the al-Fatih Revolution of 1969.

A new draft penal code retains provisions that, if passed, would also violate freedom of association. For instance, Article 166 and 167 criminalise the establishment of any organisation that is "against the Jamahiriya system" or all those who aim to change the system, without providing details on what exactly this entails. Article 169 would limit the freedom of Libyans to join international organisations unless they obtained government permission. Again, the article does not provide the criteria for such permission. If passed, these articles would include organisations, groups and even research institutes that are critical of government policy².

Women legally enjoy many of the same protections as men, but certain laws and social norms perpetuate discrimination, particularly in areas such as marriage, divorce and inheritance. Women are also underrepresented in Libya's political system; only 36 women gained seats in the March 2009 indirect elections for the 468-member General People's

¹ Agence France Presse, Kadhafi says Libya no place for "civil society", January 28, 2010, <http://www.google.com/hostednews/afp/article/ALeqM5iHN4BDASgALw7xKVBgxPDjZKqvjg>

² There was no indication when the bill might pass. See Human Rights Watch, Truth and Justice can't Wait, Human Rights development in Libya Amid Institutional Obstacles, December 12, 2009, p. 30, <http://www.hrw.org/node/87097>

Congress³.

II – Life of Associations

On 29 June 2009, the General People's Committee (GPC – the government) additionally issued Decree No. 312, which requires authorisation from the ministries of industry, general security authority, tourism authority, and oil industry for any event or seminar. While the decree seemed to target industrial fairs and business events, it was issued shortly after a seminar on civil society in the town of Derna where participants had criticised the lack of freedom in the country⁴.

The following case is a perfect example of the extent to which it has been impossible as well as dangerous to try to address human rights issues over the past three years: In March 2008, a group of lawyers and journalists attempted to set up two groups; the Centre for Democracy and the Association for Justice and Human Rights. The application was first approved by the government, but was later revoked following the intervention of the Internal Security Agency. In June 2008, lawyer Dhaw al-Mansuri, the head of the Centre for Democracy, was stopped by plainclothes men, driven out of town, blindfolded, beaten and abandoned, with a warning to abandon his NGO attempts⁵.

The best known, and possibly the only independent association with a human rights agenda is that of families of the victims of the Abu Salim Massacre. The association presses for information on the fate of their relatives, and in April 2008 it established a coordination committee, and thereby applied to the authorities in Benghazi to be recognised as an NGO. To this date (June 2010) they have not yet received a response to their application and have continuously faced increasing pressure to abandon their campaign.

While their presence is somewhat tolerated, and they hold weekly Saturday protests in Benghazi, several of the activists have faced harassment and intimidation. Most recently, in April 2010 the coordinator of the families of the victims of the Abu Salim Massacre, lawyer Fat'hi Turbil, was struck by a member of a rival pro-state group, Lest we Forget (families of security forces killed in armed

Islamist attacks), which then lead to a fight⁶. Protests have however continued by the families of the victims of the Abu Salim Massacre, and seem to be gathering support. For example in 2009, families in al-Baida and Derna organised demonstrations outside the internal security agency offices⁷, but these were short-lived due to tribal pressure⁸. In August 2009, two brothers of an Abu Salim victim who had participated in the weekly protests were briefly detained, ostensibly in connection with a stolen car. In March 2009, Mr. Turbil and two other members of the committee were arrested and held incommunicado for four days. This was clearly an attempt at intimidating them to cease the demonstrations. They were released after the intervention of Saif al-Islam al-Gaddafi⁹.

In a positive move, Tripoli has allowed visits by international human rights organisations. In December 2009 HRW issued its report on Libya from Tripoli, where journalists, lawyers, former prisoners and families of prisoners attended a press conference. The press conference was held to mark the report's launch and the attendees asked questions regarding the repressive laws in Libya and abusive security agents. However, before the event started, security forces arrested a number of people, and later called in at least one person for interrogation, in a clear indication that public criticism of the regime still remains a dangerous pursuit¹⁰.

3 Freedom House, *Libya Country Report*, 2010, <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7862>

4 Euro-Mediterranean Human Rights Network, *Freedom of Association in the Euro-Mediterranean Region*, Monitoring Report, 2009, p. 47, <http://en.euromedrights.org/index.php/publications/emhrnpublications/68/4075.html>

5 Ibid., p. 32

6 Amnesty International, "Libye : des événements récents mettent en évidence la nécessité d'enquêter sur les homicides perpétrés dans la prison d'Abou Salim", 30 April 2010, <http://www.amnestyinternational.be/doc/article16138.html>

7 HRW, *Truth and Justice Can't Wait*, p. 58

8 Correspondence with Libyans in exile, June 2010.

9 Ibid.

10 Human Rights Watch, *Is Libya Opening Up?* By Heba Morayef, January 5, 2010, http://www.hrw.org/en/news/2010/01/05/libya-opening_and_timesonline, *Break up of Human Rights Watch meeting exposes rifts in Libyan regime*, December 14, 2009, <http://www.timesonline.co.uk/tol/news/world/africa/article6955289e.html>

Libya

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Draft a Constitution respectful of fundamental rights that will be submitted to the Libyan people for approval by referendum on the basis of a secret ballot;
- Abolish all provisions of national laws which say that fundamental individual and collective freedoms are guaranteed only “within the limits of public interest and the Revolution”;
- Void all laws and regulations that are contrary to the spirit and the letter of the International Covenant on Civil and Political Rights such as Law 71 of 1972;
- Ensure that any new penal code provisions will conform to international treaties for civil and political rights that Libya has ratified. In particular, reject proposed new Articles 166, 167 and 169 as they do not respect international standards related to freedom of association;
- Initiate a reform process with the aim of transposing all of Libya’s international commitments into national law and applying them to the country’s institutions.

With regard to the legislation and practice related to freedom of association:

- Revoke Law 19 governing the freedom of associations and democratically draft a law incorporating international standards on the right to freedom of association. In particular:
- The right to establish an association through simple notification without the need for a prior license;
- Associations’ freedom from authorities’ interference in their meetings and operations;
- Associations can only be dissolved by internal bodies according to their own regulations, or by a court of law;
- Acknowledge associations’ right to receive domestic and foreign funding without a prior license and subject only to notification;
- Put an end to acts of intimidation against civil society activists and human rights defenders, and provide legal protections to allow them to conduct their activities without interference.

Environment required for the sustainable development of civil society:

- Free all human rights defenders and members of associations who are arbitrarily detained;
- Promote equal participation of women and men in civil society organisations and public institutions.



Morocco



Demonstrators hold up placards to protest against the death penalty, Rabat on October 2009.
by Abdelhak Senna/AFP/Getty Images

INTRODUCTION

Over the last two decades, Morocco, once one of the more repressive countries in North Africa, has witnessed important progress in its human rights record, with reforms to the family code and the criminal procedure code, among other changes. Its civil society is one of the most liberal in North Africa, although freedom of expression, association and assembly remain subject to certain restrictions, especially concerning the topics of territorial unity, Islam and the monarchy and some associations have encountered obstacles in the last three years to their right to register or to operate due to an unsatisfactory implementation of the law.

I – Formation of Associations

The formation of associations is governed by Royal decree (Dahir) no. 1-58-376 of 1958 and a 2002 amendment that requires a simple prior declaration process at the local administration, in return for a provisional receipt, or a “*récépissé*”, and a final registration document after 60 days, in the absence of which the association becomes legal¹. Only the general prosecutor may refuse an application, in case the goal of the association is deemed to promote discrimination, undermine Islam, the monarchy, or the country’s territorial integrity. These are reasons that are open to wide interpretation and that exceed the limits of international standards for the freedom of association². The same procedure must be followed for board elections.

The law does not penalise individuals for belonging to an association that has not applied for registration, and some organisations have continued to operate without a receipt, although technically they may not be able to rent space, open a bank account, set up an office, hold public gatherings, obtain local or foreign funding or apply for subsidies³.

In practice, the authorities have over the past three years often denied the right to formation of some groups without providing official reasons. For instance, the authorities refused to provide an application receipt or an official explanation, to a group set up in 2006 to monitor the treatment of Sub-Saharan immigrants in Morocco. Despite this restriction, the Group against Racism and for Assisting and Defending Foreigners and Migrants (GADEM) has continued its activities and the group is recognised as a leading critic of the government’s policy toward migrants⁴. Branches of the well-established Association Marocaine des Droits de l’Homme (AMDH) have failed to register themselves in areas within or close to the Western Sahara, and the authorities have indicated to the AMDH that they view the associations as being supportive of Polisario separatists⁵. Within the Western Sahara region, the authorities cited anti-discriminatory measures in their refusal to accept the declaration of the Sahrawi Association of Victims of Grave Violations Committed by the Moroccan State (*Association Sahraouie des Victimes de violations graves commises par l’État marocain*, ASVDH) - despite a court ruling in ASVDH’s favour - and have blocked the declaration process of the Collective of Sahrawi Human Rights Defenders (*Collectif des Défenseurs Sahraouis des Droits de l’Homme*, CODESA)⁶. Amazigh associations working on cultural and linguistic rights⁷, such as IZ’URAN in Lakhssas and IMAI in the Tiznit region have not received *récépissés* either, and some branch offices of the established Amazigh Network for Citizenship have also not been recognised, including in Casablanca, Marrakech and Tanalt⁸. In 2009, the authorities failed to acknowledge the renewal of the

1 EMHRN, Freedom of Association in the Euro-Mediterranean Region, Monitoring Report, 2008, p. 62, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

2 EMHRN, Freedom of Association in the Euro-Mediterranean Region, Monitoring Report, 2009, p. 55, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

3 Human Rights Watch, *Freedom to Create Associations, A Declarative regime in Name Only*, October 7, 2009, p. 7-9, <http://www.hrw.org/en/reports/2009/10/07/freedom-create-associations-0>

4 Telephone interview with GADEM, June 10, 2010. See also HRW, *Freedom to Create Associations*, p. 38.

5 Telephone interview with the AMDH about its offices in Smara and Tantan, June 11, 2010.

6 HRW, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 19, 2008, p. 104-105. <http://www.hrw.org/sites/default/files/reports/wsahara1208web.pdf>

7 The government has also declared an Amazigh political party illegal because it breached the political party law, which prohibits activities founded on ethnicity or language. See EMHRN, *Freedom of Association in the Euro-Mediterranean Region*, Monitoring Report, 2008, p. 42.

8 Telephone interview with Association Marocaine des Droits de l’Homme, June 11, 2010.

boards of a number of other Amazigh organisations around the country, including the Aguelmane Association in Ifrane province, and the Touiza Association in Nador province.

Moroccan women are generally active and attain senior positions in associations, and a large number of women across the country work in youth and community-based organisations, but a lack of financial resources, together with cultural and family restrictions – especially where travel or work carried out in the evening is concerned – keeps many women from exercising their rights in Morocco⁹.

II – Life of Associations

Since August 2009, the authorities resumed restrictive measures against the activities of Sahrawi associations after a period of relative calm, and in November 2009 King Mohammed VI announced: “there is no more room for ambiguity or deceit: either a person is Moroccan, or is not”¹⁰. His speech came shortly after the arrest of seven Western Sahara human rights activists¹¹ on their return from Algeria where they were visiting Sahrawi refugee camps. They were to face military trial, and were accused of threatening national security¹²; three of them were released from jail on May 18, 2010 following an international outcry¹³. Ten days after the King’s declaration, the authorities expelled Aminatou Haidar, the president of CODESA to Spain because she had identified “Western Sahara” as her homeland on her arrival in Morocco. She was allowed back a month later following an international campaign for her return.

Associations regarded as being anti-Islamic have faced restrictions and media campaigns against them. In October 2009, two founding members of an informal group called the Alternative Movement for Individual Liberties (MALI – advocates for religious freedom and respect of personal

rights) were barred from travelling abroad, based on orders from the prosecutor’s office. This came after MALI protested a month earlier against a law banning Muslims from eating in public in Ramadan during the fasting hours¹⁴. Pro-government dailies attacked the group and a Council of ‘Ulamā’ (senior Islamic scholars) called them “agitators” acting “in defiance of the teachings of God and the Prophet Mohammed”¹⁵.

Public gatherings must be authorised by the Ministry of Interior, which can refuse them, if it believes the association may “disrupt public order”. Student unions, trade unions and associations of unemployed graduates have been banned from holding demonstrations and sit-ins during the past three years. For example, in June 2009, security forces violently dispersed a demonstration of several associations in Sidi Ifni (South Morocco), which had been organised by an association of unemployed graduates, and the disruption caused many injuries.

III – Dissolution of Associations

An association may be dissolved by a tribunal if its objectives are deemed illegal, contrary to public morality, discriminatory or risk undermining the Muslim religion, territorial integrity or the monarchy. There have been no reports of related dissolutions since 2007, but following the conviction to three years’ imprisonment of Chakib El Khyari, the President of the Rif Human Rights Association, after he publicly denounced local government complicity in drug trafficking, the association, although not closed down, may be significantly weakened.

9 The OMDH, AMDH, Espace Associatif and the Moroccan Euro-Med Network of NGOs have elected women as presidents. See also EMHRN, Freedom of Association in the Euro-Mediterranean Region, Monitoring Report, 2008, p. 82-84, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

10 HRW, *Morocco: Lift Travel Restrictions on Sahrawi Activists*, January 26, 2010, <http://www.hrw.org/en/news/2010/01/26/morocco-lift-travel-restrictions-sahrawi-activists>

11 The activists belong to the Sahrawi Collective of Human Rights Defenders (CODESA), the ASVDH, the AMDH, the Forum for the Protection of Sahrawi Children, the Action Committee against Torture in Dakhla/Western Sahara, and the Sahrawi Committee for the Defence of Human Rights in Smara.

12 Frontline, Protection of Human Rights Defenders, *Seven Sahrawi human rights defenders could face harsh sentences before a military court*, October 21, 2009, <http://www.frontlinedefenders.org/node/2206>

13 FrontLine: The Release of Three Human Rights Defenders, (Arabic text only) <http://www.frontlinedefenders.org/ar/node/1864>

14 See HRW, *Morocco: End Police Actions against persons Accused of Breaking Ramadan Fast*, September 19, 2009, <http://www.hrw.org/en/news/2009/09/19/morocco-end-police-actions-against-persons-accused-breaking-ramadan-fast>

15 Organisation Mondiale contre la Torture, *Obstacles a la liberte de mouvement et harcelement a l'encontre de plusieurs defenseurs*, October 19, 2009, <http://www.omct.org/index.php?id=&lang=fr&actualPageNumber=1&articleSet=Appeal&articleId=8851&PHPSESSID=a82a7501b2eeffb8a9b695b828cff7ed>

Morocco

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the International Human rights instruments ratified by Morocco;
- Implement the Universal Periodic Review recommendations of the United Nations Human Rights Council and take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW.

With regard to the legislation and practice related to freedom of association:

- Respect the administrative procedure for forming and registering associations and thus, systematically delivering a receipt upon filing for registration;
- Guarantee effective recourse within a reasonable timeframe to associations whose registration requests have been refused by administrative authorities;
- Enforce court rulings pertaining to government authorities which overstep their jurisdiction by refusing to deliver temporary receipts to persons who wish to form an association;
- Encourage freedom of expression by removing obstacles to the freedom to hold meetings or other public demonstrations, whose objectives and goals are not illegal;
- Ensure that the reasons behind the dissolution of an association are in conformity with Paragraph 2 of Article 22 of the International Covenant on Civil and Political Rights which states that: "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others";
- Put an end to acts of intimidation against civil society activists and human rights defenders, and provide legal protections to allow them to conduct their activities without interference.

Environment required for the sustainable development of civil society:

- Encourage the participation of associations in public life, in particular when it comes to the development of public policies;
- Promote equal participation of women and men in civil society organisations and public institutions



Palestinian Territories



*Palestinian women face Israeli soldiers during a demonstration against the Wall in the West Bank village of Al Ma'sara, April, 2010.
by Anne Paq/Activestill*

INTRODUCTION

Since 2007, the political divisions between the West Bank, ruled by the Palestinian National Authority (PNA) and the Hamas-controlled Gaza Strip have contributed heavily to an erosion of the right to freedom of association in both areas. This is despite the fact that when the Palestinian Authority was established in 1994, it took over a highly efficient civil society, with organisations that provided health care and other services. Both PNA and Hamas systems exercise judicial, legislative, and executive powers which each has exploited in their fight against associations that are considered to be affiliated with the opposition. Hundreds of associations in the West Bank and Gaza were dissolved in 2007 and 2008, or prevented from working, offices were ransacked and documents belonging to several associations in both areas were confiscated, and there has been no sign of improvement since then in associational life, despite a modern legal framework¹.

I – Formation of Associations

The right to form associations is enshrined in the Palestinian Basic Law, and the Palestinian Charitable Associations and Community Organisations Law (henceforth, Associations Law) issued in 2000. The Law requires only a notification to the Ministry of Interior for registration. If a two-month appointed period passes and no decision is taken, the society or association should then be considered registered. In practice, formation has become an authorisation procedure as associations are not allowed to conduct any activities before obtaining registration from the Ministry of Interior², in contradiction to international standards for freedom of association.

Following the Hamas takeover in mid-2007, both sides introduced measures that severely hampered the formation and activities of associations, and that contradicted the provisions of the Basic Law and the Associations Law. For instance, the Palestinian National Authority in the West Bank issued the following: Presidential Decree No. 16 of 2007 granting the Minister of Interior the power to review all existing licenses; Council of Ministers Resolution No. 8 regarding associations engaged in illegal activities; and the Minister of Interior Decision No. 20 of 2007 that requires associations to refer to security services to complete their registration process, measures that are in excess of the Associations Law³. In Gaza, registered associations are subject to security checks and must present a certificate of good conduct and a clean criminal record for all of their members. This has become a prerequisite for registration with the Hamas-led Ministry of Interior⁴. So far, no statistics for the period September 2009 – July 2010 have been available to the EMHRN. By August 2009, the total number of registered associations in the West Bank was 2,100. This number includes the 100 new associations that were approved out of the 170 that applied earlier that year. Officials from the Ministry of Interior argued that the workload had not allowed it to process all applications within the 60 days as specified by the Associations Law. In the Gaza Strip, the number of registered and functional associations reached 899 in 2008. In 2009, a total of 101 registration applications were submitted to the authorities; at least 35 of those were rejected, while 22 had not been reviewed by the end of the year⁵. It was not possible to obtain more details about those that were rejected.

Despite the ongoing conflict, a traditionally patriarchal society and ideological restraints in Gaza, women have continued to be active both in women's rights as well as in more generalised groups in both the West Bank and Gaza. Association life is the one of the few spaces where women can take an active public role and many have reached senior board positions, a trend that has continued into 2010⁶.

1 For more details, see Palestinian Centre for Human Rights (PCHR) report on Palestinian Violations of the Right to Freedom of Association (in Arabic), http://www.pchrgaza.org/portal/ar/index.php?option=com_content&view=article&id=7201:2010-01-03-10-26-59&catid=138:2010-02-04-09-12-41&Itemid=240

2 EMHRN, Freedom of Association in the Euro-Mediterranean Region, 2007, p. 77, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2007/3622.html

3 Freedom of Association in the Euro-Mediterranean Region, 2009, p. 68, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

4 Freedom of Association in the Euro-Mediterranean Region, 2009, p. 67, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

5 EMHRN Freedom of Association in the Euro-Mediterranean Region, 2009, p. 66, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

6 Telephone interview with Independent Commission for Human Rights (ICHR), June 8, 2010.

II – Life of Associations

In terms of the operation of associations, the Associations Law and its Executive List, issued in 2003, prohibit official and unofficial bodies from interfering in the internal meetings of associations and in their elections. Despite this, the Ministry of Interior in the West Bank has increasingly interfered in meetings and sent delegates to attend them. An association cannot open a bank account or appoint signatories without an advance letter from the Ministry of Interior. The Ministry of Interior requests that associations provide a financial and administrative report, despite the fact that, under Palestinian law, these reports should only be presented to the ministry responsible for the sector on which the association's work focuses⁷.

In both Gaza and the West Bank, associations have continued to be subject to intimidation and harassment as security agents and the authorities violated the Associations Law by raiding and searching premises and seizing assets without judicial authorisation, usually of associations believed to be affiliated with the opposing side. In the West Bank, the Preventative Security Forces have raided a number of associations, including a medical centre in the village of Qiblan in March 2009, and the Islamic Charitable Association in March 2008⁸. Although no recent raids have been reported, activists have said the authorities in the West Bank continued to maintain a tight grip on associations considered to be close to Hamas⁹, or on any activities that may be connected to Hamas. For example, in May 2010, officers from the Palestinian General Intelligence Agency in the West Bank city of Nablus prevented members of the Independent Commission for Human Rights from visiting a Hamas-affiliated political party, the Change and Reform Bloc¹⁰. In 2009, security services continued to prevent the formation of peaceful assembly, and to arrest human rights defenders as they monitored violations on the ground¹¹.

In Gaza, internal security forces raided and also forcefully closed down six associations in Gaza City and Rafah on May 31 and June 1, 2010. These included a women's and children's association and a youth association, where security forces also confiscated their computers, cameras

and files¹². Officials from the Ministry of Interior denied they had ordered the raids, proving a trend in which security forces act independently, and so far with impunity. Security agencies took over a number of association premises and converted them to government buildings in 2009, such as the Palestinian Al-Tahir Organisation in Beit Hanoun, which became a police station and the Internal Security Agency appropriated the Young Scientists Forum.

In April 2010 alone, government authorities in Gaza transferred the leadership of the Jabalya Services Club to a ministry-appointed board of directors; Officials from the Ministry of Interior replaced Ms. Suad Hajo, chairwoman of the Women Programmes Centre in Khan Younis with an appointed person¹³; and they dissolved the Gaza branch of the Palestinian Youth Association for Leadership & Rights Activation (PYALARA), which has its headquarters in Ramallah and was registered many years ago, on grounds that it was missing security clearance. Additionally, in the West Bank, in 2009, interim committees were appointed to run 11 charity associations apparently affiliated with Hamas, while 28 such committees were appointed in 2008¹⁴.

In Gaza, there were also unresolved cases of break-ins and theft of documents and data that did not fit the regular pattern of burglary; in November and December 2009, the offices of at least four human rights and social services NGOs were broken into and ransacked, including that of Al-Dameer for Human Rights, whose files and computers were searched. Subsequently, Palestinian human rights organisations urged the authorities to bring perpetrators to justice and provide protection to civil society organisations¹⁵.

7 For more details, see EMHRN Freedom of Association in the Euro-Mediterranean Region, 2009, p. 68, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

8 EMHRN Freedom of Association in the Euro-Mediterranean Region, 2008, p. 49, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

9 Telephone interview with member of PCHR, 22, July 2010.

10 The ICHR visited the party's office to verify their claims of harassment as parliament members. See ICHR Condemns the Obstruction of Staff while on Duty, May 30, 2010, <http://www.ichr.ps/etemplate.php?id=202>

11 ICHR Annual Report, 2009, <http://www.ichr.ps/atemplate.php?id=500>

12 The four associations in Rafah are: Sharik Youth Institution, Bonat Al-Mustaqbal (Future Builders) Society, the South Society for Women's Health, and the Women and Children Society. In Gaza City, they are: Palestinian Mini Parliament and the National Reconciliation Committee. See Al-Dameer for Human Rights - Gaza, press release: *The Closure of Five NGOs in the Gaza Strip Affects the Palestinian Society*, June 3, 2010, <http://aldameer.org/en/index.php?page=main&id=284>. See also PCHR, http://www.pchrgaza.org/portal/ar/index.php?option=com_content&view=article&id=7909:2010-06-02-08-28-08&catid=39:2009-11-24-06-31-29&Itemid=194

13 ICHR, Monthly Report, April 2010.

14 Freedom of Association in the Euro-Mediterranean Region, 2009, p. 67, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

15 PCHR, PCHR Is Gravely Concerned over Increasing Attacks and Robberies against NGOs in Gaza, and Demands Competent Authorities to Investigate these Crimes and Bring Perpetrators to Justice, December 16, 2009, <http://www.pchrgaza.org/files/PressR/English/2009/127-2009.html>

III – Dissolution of Associations

The Palestinian Associations Law specifies situations in which associations can be dissolved (see below) and allows the Minister of Interior to order the dissolution of associations at his discretion, in contradiction with international standards. In both the West Bank and Gaza, associations seen to be affiliated to the opposition continued to be targeted for dissolution, ostensibly because of illegal activities or administrative mismanagement.

In the West Bank, at least one association was closed down in 2010 on administrative grounds. 22 associations were dissolved in 2009, compared to 69 in 2008; on grounds they did not hold board meetings or activities during the first year of their registration, in accordance with the law. Others were dissolved for political reasons¹⁶. In August 2007, soon after the PNA-Hamas split occurred, the Minister of Interior ordered the dissolution of 103 associations in the West Bank, most of which were considered to be affiliated with Hamas.

In a number of cases, the Palestinian Supreme Court in the West Bank ruled against government dissolution measures, but some decisions were not enforced by the time of writing this report (June 2010). These included court rulings in August and June 2009 against decisions by the Ministry of Interior to replace the elected boards of both the Yatta Charitable Society for the Care of Orphans, and the Beit Ummar Society for the Care of Orphans with appointed boards¹⁷.

Between November 2009 and January 2010, at least three associations in Gaza received dissolution orders, which the Ministry of Interior justified on the grounds that the associations had violated the law by undertaking political activities and irregular financial transactions¹⁸. During the previous year, by August 2009, the Ministry of Interior had ordered the dissolution of 40 associations in Gaza, significantly less than the 171 dissolution orders in 2008, but nearly all were for political reasons¹⁹. Officials said the Ministry of Interior had also appointed new governing bodies for three associations in 2009²⁰.

16 Independent Commission for Human Rights (ICHR), special report on Freedom of Association, 2009, p. 13, <http://www.ichr.ps/atemplate.php?id=36>. See also Freedom of Association in the Euro-Mediterranean Region, 2009, p. 69, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

17 ICHR, Monthly Report on Violations of Human Rights and Public Freedoms in the Palestinian-controlled Territory, June 2010.

18 The associations were: The Palestinian Surgeons Association, Adham Charity Association and the Youth Association for Palestine in Bureij Camp. Correspondence and telephone interview with ICHR, August 4, 2010.

19 EMHRN Freedom of Association in the Euro-Mediterranean Region, monitoring report, 2009, p. 69, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

20 EMHRN Freedom of Association in the Euro-Mediterranean Region, monitoring report, 2009, p. 68, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

Palestinian Territories

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Act in conformity with Article 10 of the Basic Law which states that the Palestinian Authority is intent to adhere to international and regional treaties and conventions for the protection of human rights;
- Take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW;
- Call upon both Fatah and Hamas to stop the campaign against civil society organisations and to abolish all measures of closure and confiscation against these organisations, and call for the immediate release of all political detainees in the West Bank and Gaza Strip.

With regard to the legislation and practice related to freedom of association:

- Ensure the implementation of the Charitable Societies and Associations Law No. 1 of year 2000 and its regulations;
- Guarantee the right to establish an association through simple notification without the need for a prior license. End the practice of forwarding associations' registration applications to the security agencies for security checks;
- Associations' freedom from security services interference in their meetings;
- Immediately halt the policy of dissolution and replacement of associations' governing bodies, which occurs in a manner inconsistent with the provisions of the law as well as with international standards related to freedom of association;
- Provide the courts exclusive jurisdiction in abolishing or suspending an association;
- Abolish all restrictions to the free circulation of members of association, except in the case of motivated judicial decisions;
- Put an end to acts of intimidation against civil society activists and human rights defenders, and provide legal protections to allow them to conduct their activities without interference.

Environment required for the sustainable development of civil society:

- Encourage the participation of associations in public life, in particular when it comes to the development of public policies;
- Promote equal participation of women and men in civil society organisations and public institutions.



Syria



*Syrian riot police officers stand guard as a mother carries a placard demanding the release of her son in front of the State Security Court, Damascus, April 24, 2005.
by Ghaith Abdul-Ahad/Getty Images*

INTRODUCTION

The right to freedom of association in Syria has remained one of the most limited in the region in terms of formation and activities, despite promises of change. When Bashar al-Assad took over as President of Syria in 2000, he released a number of political prisoners and allowed for more liberalisation. This ultimately led to a one-year Damascus Spring during which he was confronted with demands for political reform. A year later, the liberalisation ended, and since then no new human rights organisations have obtained licensing, and a number of charities and women's rights groups were closed down. In addition, while the government has allowed civil society activity in non-political fields, it has reacted unpredictably to human rights groups that work on arbitrary arrest, enforced disappearance and unfair trials, tolerating them at best in an effort to improve its international image, but often cracking down on them.

"We think the right to association is getting worse every year and there is more pressure by the security" a Kurdish human rights activist has stated. He also described the increase that has occurred over the past three years in terms of arrests, travel bans, termination of employment and forced transfers of human rights defenders. In 2009 alone, the supreme state security court sentenced over 45 people, including Islamists, Kurdish activists, and independent critics of the government (see below for more)¹.

The Association Law 93 of 1958 has remained in force with no amendments despite promises of reform made in 2007 and 2008 by the Ministry of Social Affairs. Most recently, at an international development conference in January 2010, First Lady Asma al-Assad stated that a new draft law was in its final stages, and that this law would be significantly different to the previous one².

I – Formation of Associations

The current legislation on association contradicts international standards in regards to formation, management, activities and dissolution. The law and its regulatory decrees authorise the Ministry of Social Affairs, in consultation with the security services, to approve the registration of an association. Requests have been denied on political grounds, and most of the more than 1,400 associations are charity organisations, apart from a few specialised, developmental groups³.

In case of a refusal, the law allows the applicant to appeal with the Ministry of Social Affairs, and failing that, seek redress from the administrative tribunal. But in practice, this has proved impossible. In March 2010, the National Organisation for Human Rights in Syria (NOHRS) lost its appeal because the organisation was not a legal entity in the first place⁴.

The law does not differentiate between men and women and there are no restrictions for women regarding being on the board or in other offices, but many women activists may be pressured by their own families to abandon the association work because of remaining gender inequalities and the climate of insecurity related to this kind of work⁵.

1 Human Rights Watch, Annual Report 2010, p. 555.

2 Text of the speech, in Arabic, can be found on Syrian Women Observatory, <http://nesasy.org/content/view/8532/257/>

3 EMHRN Freedom of Association in the Euro-Mediterranean region, 2009, p. 59, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

4 Article 7 of the Association Law stipulates that the association acquires legal personality 60 days after application. See EMHRN Freedom of Association in the Euro-Mediterranean Region, 2007, p. 70, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2007/3622.html

5 According to Ms. Nawal Yazeji, a feminist and expert on associative life in Syria, "The work of associations is carried out entirely illegally because associations are not granted authorisation. The threat of reprisals is always present; this scares women primarily because of family pressure." This is a common state of affairs in most Southern and Eastern Mediterranean countries, but especially in Syria, Tunisia and Algeria. See EMHRN Freedom of Association in the Euro-Mediterranean region, 2008, p. 79, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

II – Life of Associations

Law 93 of 1958 requires associations to submit annual plans for government approval, and gives the government the right to examine financial records without a specific reason or a court order. The Ministry may revoke any decision taken by an association's board of directors, general assembly or director if the Ministry deems the decision to be illegal or contrary to public order or morals (Article 35). Government officials also have the right to attend associations' meetings.

Because of these restrictions, only a small number of non-licensed rights-based associations operate relatively freely on the margins of the law, especially on issues such as women's and children's rights. For example, the Syrian Women Observatory remains active and has held meetings in universities, public halls, and culture centres to address violence against women, honour crimes, and rights of handicapped people. In 2009 Syrian women's and human rights groups were instrumental in the cancellation of a draft personal status law that kept discriminatory clauses in the current law intact, such as requiring women to obtain male permission for travel and to work, and denying the right of Syrian women who are married to non-nationals to pass on their nationality to their children.

Human rights defenders who denounce torture or who have called for democracy and government accountability, defended political prisoners or Kurdish rights are particularly susceptible to a sudden security clampdown. In one of the largest violations of the right to freedom of association and assembly, the Syrian State Security Services rounded up more than 40 activists from the Damascus Declaration for Democratic and National Change Initiative in December 2007. The initiative was formed of a wide coalition of political reform activists calling for the establishment of a democratic system that respects citizens' rights and ensures freedom of speech and association⁶.

The following cases show a persistent denial of the right of associations to function over the past three years: The lawyer and founder of the Syrian Organisation for Human Rights, Sawassyah, Muhannad al-Hassani⁷ was in June 2010 sentenced by a Damascus court to three years in jail for "spreading false news that could debilitate the morale of the nation" and "weakening national sentiment". Mr. al-Hassani was arrested in July 2009 after he drew public

attention to unfair trials of political prisoners⁸. Less than two weeks later, veteran human rights lawyer Haytham al-Maleh, 79, was sentenced by a military court to three years in prison also for "spreading false news that could debilitate the morale of the nation". He was arrested in October 2009 after he publicly criticised the emergency law in Syria⁹. The lawyer Anwar el-Bunni is serving a five-year sentence handed down in 2007 for his role in establishing the Legal and Human Rights Research Centre and a committee for the freedom of political prisoners; Abdul Hafiez Abdul Rahman, a leader in the Human Rights Organisation in Syria (MAF), is on trial in a military court for belonging to an illegal organisation, which will carry a sentence of three to five years in jail if he is convicted. MAF is an organisation that defends the rights of the Kurdish minority in Syria¹⁰.

In addition to the restrictions against Syrian human rights associations, those working on the Kurdish situation have increasingly faced the problem of state policy repressing the Kurdish identity. Kurds in Syria have been denied basic social, cultural and political rights, in many cases stemming from the state's denial to grant them citizenship. Harassment against Kurds has increased after they held large-scale demonstrations in 2004 and since then, the government has banned cultural and political activities¹¹ related to Kurds. Between May 2009 and June 2010, the authorities released four activists who ended their prison terms in connection to the Damascus Declaration case, and the Syrian-Lebanese declaration case, in which they signed a petition calling for relations based on sovereignty¹².

Although the Syrian Constitution allows for free assembly¹³, the emergency law in place requires prior approval for any gatherings of more than three people, or for a demonstration. This has especially targeted Kurdish

8 Amnesty International, Syrian Human Rights Lawyer Jailed for Three Years, 23 June 2010, <http://www.amnesty.org/en/news-and-updates/syrian-human-rights-lawyer-jailed-three-years-2010-06-23>

9 Mr. al-Maleh was Mr. al-Hassani's defence lawyer and a founding member of the Human Rights Association in Syria. See also EMHRN, SYRIA: Conviction of Haytham Al-Maleh, a 79-year old human rights lawyer signals continuing persecution of Lawyers and Human Rights Defenders in Syria, July 5, 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4500.html

10 World Organisation against Torture (OMCT), Arbitrary Arrest of Mr. Abdul Hafiez Abdul Rahman, Syria, March 10, 2010, <http://www.omct.org/index.php?id=&lang=eng&actualPageNumber=1&articleId=9157&itemAdmin=article>

11 HRW, A Wasted Decade Human Rights in Syria during Bashar al-Asad's First Ten Years in Power, July 2010, <http://www.hrw.org/en/reports/2010/07/16/wasted-decade-0>

12 Michel Kilo and Mahmud 'Issa were freed in May and June 2009, and Walid elBunni and Yasser el-Aiti in June 2010. See Syrian Observatory for Human Rights, 18 June 2010, <http://www.syriaohr.com/18-6-2010-syrian%20observatory3.htm>

13 Article 16 of the Constitution stipulates that Syrians have the right to peaceful assembly and demonstration, and Article 39 provides citizens with the right to gather and demonstrate in a manner conforming to the principles of the Constitution.

6 EMHRN Freedom of Association in the Euro-Mediterranean region, 2009, p. 57, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

7 Mr. el-Hassani has been awarded the 2010 Martin Ennals prize.

cultural celebrations and demonstrations demanding their rights be respected, and security forces have broken up the Kurdish spring celebrations, Nowruz, for the last few years, sometimes violently. On 21 March 2010 security forces again broke up a Kurdish Nowruz festival by firing live bullets, killing one person and arresting at least 30 others. In 2009, a similar event took place and security forces used tear gas and batons to disperse a peaceful gathering of Kurdish Syrian citizens celebrating the festival of Nowruz in Aleppo. Security forces intervened with force to stop demonstrations against a presidential decree restricting property transactions in certain Kurdish-majority border areas. In November 2008, more than 300 people tried to protest the decree in front of parliament but police stopped them and briefly detained 200 people¹⁴.

III – Dissolution of Associations

The law allows the Ministry of Social Affairs and Labour to dissolve an association under certain conditions and after a warning period. The conditions include undertaking sectarian, ethnic or political activities that harm the nation's security; abuse of public morals; or simply if the Ministry decides there is no need for the associations' services. These are wide-ranging measures that allow for implementation that go beyond international standards.

The Ministry has used these conditions to dissolve a number of NGOs since 2007, including the Union of Charity Organisations and the Ihsan (charity) associations in Aleppo in 2009¹⁵, and the Association for Social Initiatives that focused on issues related to women's rights, which the Ministry argued was dissolved "according to the requirements of public interest"¹⁶.

¹⁴ HRW, Group Denial, repression of Kurdish Political and Cultural Rights in Syria, November 2009, p. 20-26

¹⁵ EMHRN Freedom of Association in the Euro-Mediterranean region, 2009, p. 60, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

¹⁶ HRW, No Room to Breathe, State Repression of Human Rights Activists in Syria, October 16, 2007, p. 23, <http://www.hrw.org/en/reports/2007/10/16/no-room-breathe>

Syria

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- End the state of emergency declared by Military Decree No. 2 of 8 March 1963 which arbitrarily restricts enjoyment of freedoms of association and assembly;
- Abolish the special tribunals of any kind and transfer cases that have been brought before them to the relevant regular courts;
- All citizens must be guaranteed an effective access to justice and the right to a fair trial before an independent and impartial tribunal;
- Introduce major constitutional reform and:
 - a. Revoke Article 8 of the Constitution, which defines the ruling Baath Party as the leader of the state and of society;
 - b. Ensure the principle of separation of powers and the independence of the judiciary;
- Revoke Presidential Decree No. 64 of 30 July 2008, which does not hold security agencies accountable for crimes committed in the line of duty;
- Reopen rooms for the expression of civil society by lifting all legal and practical hindrances that prevent it to enjoy freedom of association.

With regard to the legislation and practice related to freedom of association:

- Abolish Law 93 of 1958 on Associations and Private Societies, and draft a law conforming to international treaties on human rights in order to ensure:
 - The right to establish an association through simple notification without the need for a prior license. Ensure that human rights groups that respect international standards related to freedom of association can register as an association;
 - Associations' freedom from ministerial or government interference in their meetings and operations. Revoke the Ministry of Social Affairs and Labour's ability to dismiss boards of directors or temporarily appoint boards;
 - Associations can only be dissolved by internal bodies according to their own regulations, or by a judicial court;
 - Acknowledge associations' right to receive domestic and foreign funding without a prior license and subject only to notification;
- Put an end to security services' surveillance and intimidation of civil society activists and human rights defenders, include those working on Kurdish rights, and provide legal protections to allow them to conduct their activities without interference;
- Immediately and unconditionally release political detainees, such as Mohannad Al Hassani, Head of the Syrian Organisation for Human Rights (Sawasiah) and Hytham el Maleh;
- Repeal all provisions that allow criminal proceedings against associations and members for their normal activities that do not contradict international standards related to freedom of association;
- Abolish all restrictions to the free circulation of members of association, except in the case of motivated judicial decisions.

Environment required for the sustainable development of civil society:

- Put an end to persecution and harassment and the policy of exclusion and censorship against independent associations;
- Establish a new institutional relationship with civil society associations that is founded on transparency, the impartiality of the state and the amended legislation on associations;
- Promote equal participation of women and men in civil society organisations and public institutions.



Tunisia



*Gafsa social protest, Gafsa,
June, 2008.
by Alhewar Channel*

INTRODUCTION

Tunisia has remained one of the most repressive countries in the region despite its image as a progressive state, especially regarding women's rights issues. Government repression has targeted student unions, workers, opposition parties, journalists and the few independent associations that exist in Tunisia. Over the past three years, the authorities have maintained a persistent pattern of rejecting new rights groups, while security agents have physically attacked independent activists and damaged their property and offices. Associations have faced restrictions to their work such as email and phone tapping, and the blocking of public and even private meetings.

A new law, passed in June 2010, may make it even more dangerous for human rights defenders to promote international awareness of the situation in Tunisia, and comes at a time when Tunisia is negotiating advanced partner status with the EU. The law, amending Article 61b of the Penal Code, adds to those who can be prosecuted and sentenced to prison term: "persons who establish, directly or indirectly, contact with officials of a foreign state, institution or foreign organisation with the aim of inciting them to harm Tunisia's vital interests and its economic security"¹. Tunisian organisations have criticised the new law for being too loosely worded, which would allow for criminalisation of simple acts such as expressing an opinion in the foreign media, or participating in seminars or forums held abroad². The amendment may also allow the prosecution of human rights defenders who cooperate with foreign and multi-lateral organisations, including the European Union (EU) and the United Nations (UN), and may also affect academics, who are unofficially required to obtain permission from their relevant ministry for travel to meetings abroad.

"There has been no progress, only aggression and regression", a Tunisian activist said; "What is positive is that people are expressing themselves, and protesting, and the impact is larger in the past few years, which is made by young people and citizens"³.

I – Formation of Associations

The law on associations is restrictive and does not conform to international standards – Article 3 of the association law No. 59-154 of 1959 states that a receipt or "*récépissé*" shall be issued upon declaration by an association to the local authority, and it will become legal after three months when its incorporation is publicised in the official journal. In practice, this has become a prior authorisation procedure, exposed to the possible withholding of the *récépissé*. In case of a refusal, formally announced within three months, the founding members may appeal before the administrative tribunal, but the most common approach the authorities have taken is to withhold the *récépissé*, leaving the applicant with no formal proof of application that would allow it to go to court. This is the situation of a number of independent organisations, such as the Tunisian Association Against Torture (ALTT)⁴, the International Association for the Support of Political Prisoners (AISPP), and Liberty and Equity. The latest example and one of the main events that have occurred during the period under review is the Tunisian Observatory for Syndicate Rights and Liberties, whose founders tried to register several times with the local authorities in Gabes in June 2010, but were unsuccessful. As a common practice when it comes to the registration of associations, the association was blocked by an intentional inactivity of the administrative authorities.

Of the more than 9,000 officially registered NGOs, only a few are really independent, and like their 'unrecognised' colleagues they operate under precarious conditions as they continue to challenge the government on its human rights behaviour, or address corruption at senior levels. Human rights organisations that have not been registered

¹ See CRLDHT, "61 bis impasse de démocratie en Tunisie" http://www.crlght.info/index.php?option=com_remository&Itemid=77&func=fileinfo&id=1

² Statement by the Tunisian League for Human Rights (LTDH), May 29, 2010.

³ Telephone interview with a member of one of the unauthorised associations, May 8, 2010.

⁴ Telephone interview with Tunisian human rights defender, May 8, 2010.

include the following: the National Council for Liberties in Tunisia (CNLT)⁵, the Observatory for the Freedom of Press, Publishing and Creativity (OLPEC), the International Association for the Support of Political Prisoners (AISPP), Liberty and Equity, the Tunisian Association against Torture (ALTT), the Association of Free Writers and the Tunisian Cultural Association for the Defence of Secularism, which was denied registration in 2008.

There are no provisions in Tunisian law that would limit or prohibit the participation of women in associational offices, and Tunisia has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This report covers a number of independent groups whose leadership consists of women (CNLT, ALTT, ATFD, the National Syndicate of Tunisian Journalists, the Association of Tunisian Magistrates, the AFTURD and Kalima, a radio station that publishes an online publication). However, a regional report from 2008 indicated that it was difficult for women to access executive positions⁶ because the weight of tradition limits their participation, as would the threat of reprisals – physical and psychological (see below) – if they joined any of the unregistered associations.

II – Life of Associations

The unrecognised associations mentioned above were particularly singled out for continuous physical and psychological harassment, and although they have continued to function openly, they are unable to open a bank account, receive funding, have their own official premises or hold public meetings.

Security forces have used the same methods of intimidation throughout the 2007-2010 period under review. These included physical assaults on human rights defenders, ransacking their offices, damaging their cars or homes, preventing them from holding public meetings, and placing their offices or homes under security surveillance.

For example, lawyer Mohamed Abbou, a CNLT member, was subjected to a full body search on his return from Casablanca, Morocco in February 2010, and police insulted and pushed him, as well as threatened to have him sent

back to jail⁷. In May 2010, the police surrounded the offices of Mr. Abbou and his partners, Mr. Abderraouf Ayadi and Mr. Ayachi Hammami, as well as that of the lawyer, Ms. Radhia Nasraoui. The police then stopped the lawyers' clients for questioning, with the clear aim of intimidating them⁸.

In 2009, authorities stepped up their measures to weaken opposition leaders and human rights activists ahead of presidential elections in October. In April, the home of Ms. Nasraoui, a lawyer and member of the ALTT was broken into; in June, Ms. Nasraoui and two colleagues were assailed by Tunisian police upon their return to Tunis airport. In October, police violently attacked Sihem Bensedrine, spokesperson for the National Council for Liberties in Tunisia (CNLT) and Secretary General of the OLPEC as she was on her way to attend a workshop by the Tunisian Democratic Women's Association (ATFD). Security forces also have blocked the way to the offices of the CNLT and placed the house of Khémaïs Chammari, honorary member of the EMHRN and a member of the Euro-Mediterranean Foundation of Support to Human Rights defenders, under surveillance⁹.

Even members of legally registered organisations are placed under observation, their emails are monitored or blocked, and their telephones tapped. The legally registered (but curtailed by court order)¹⁰ Tunisian League for Human Rights (LTDH) and the Tunisian Democratic Women's Association (ATFD) have been subjected to continuous restrictions. In May 22, 2010, security forces prevented a celebration of the LTDH's 33rd anniversary that was to take place in the presence of diplomats and activists. The ATFD has been unable to obtain approval for public meetings, foreign funding (usually bilateral, European), and is under constant police surveillance. Also, together with the UN Fund for Women's development (UNIFEM), the ATFD had organised a workshop to take place in October 2009 on media coverage of the election

⁵ The CNLT received a receipt certifying submission on 26 February 1999, and then received a refusal with no explanation from the Ministry of Interior on 2 March 1999. See EMHRN, Freedom of Association in the Euro-Mediterranean Region, 2008, p. 53, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

⁶ EMHRN, Freedom of Association in the Euro-Mediterranean Region, 2008, p. 82, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

⁷ Mr. Abbou was released from prison in July 2007 after he served more than half of a 36-month sentence imposed on him for denouncing torture in Tunisia in an article he posted on the internet in 2004. See Amnesty International, Independent Voices Stifled in Tunisia, July 13, 2010, Index: MDE 30/008/2010, <http://www.amnesty.org/fr/library/info/MDE30/008/2010/fr>.

⁸ FIDH, "Après la presse, vague d'intimidation à l'encontre des avocats défenseurs des droits de l'Homme", May 18, 2010, <http://www.fidh.org/Apres-la-presse-vague-d-intimidation-a-l-encontre>

⁹ Following a hunger strike by Mr. Chammari in February 2010, security forces adopted a more discreet surveillance of his house, and did not stop visitors as before.

¹⁰ The legally registered Tunisian League for Human Rights underwent a split initiated by pro-government figures that sued the league for irregular elections and other reasons in October 2000, and eventually won in June 2009, effectively freezing the activities of the oldest human rights leagues in the Arab and African world. See http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

campaign, but this was not allowed¹¹. The government has been known to want to monopolise the field of women's rights by harassing independent groups and limiting their access to public space.

The right to freedom of peaceful assembly has been curtailed with little or no change during the period under review, including activities by trade and student unions demanding social rights. In November 2009, Police violently intervened to stop a demonstration supported by the authorised General Student Union of Tunisia (*l'Union Générale des Etudiants de Tunisie*, UGET), who were protesting the lack of student accommodation at Tunis university. Some 20 students were arrested and were later sentenced to jail terms of up to one year for damaging property, theft, and public disturbance¹².

Some 50 activists in the mining region of Gafsa-Redayef were arrested in 2008 as leaders of a peaceful social protest movement, and sentenced unfairly to up to eight years in prison for "belonging to a gang, distributing leaflets to disturb the public order", in violation of their right to freedom of assembly. They were released in November 2009 on the occasion of President Ben-Ali's 22nd year in power but, they have not been reinstated in their jobs, and are threatened with re-arrest to complete their sentences if found guilty of a crime or offence in the five years following their release. Meanwhile, a journalist who had covered the Gafsa-Redayef protests was in July 2010 sentenced to four years in prison for "participating in a criminal association with the intention of harming people and their property". Fahem Boukaddous, who was in hospital at the time of the court hearing, had produced video reports on the protests for a satellite television channel¹³.

Human rights defenders have also been subject to psychological harassment as newspapers close to the government launched smear campaigns in 2007, a practice that continued into 2010. In May 2010, two papers accused Ms. Bensedrine, Mr. Khémaïs Chamhari, and Mr. Kamel Jendoubi, of treason and said they must be put on trial for "being in contact with the European Union

in order to harm the country"¹⁴. This is especially alarming in light of the new law (see above).

III – Dissolution of Associations

Concerning dissolution, the Minister of Interior may issue an order suspending all activities of an association in case of extreme urgency, or may ask the relevant court to order the dissolution of an association if its goals or activities undermine public order, or public morals or whose purpose is political. These are broad implications that would violate international standards for dissolution of an association. There was no information on the dissolution of other associations in the period 2007-2010.

However, when the police surround an association's office, the association may de facto be closed, without the need to go through the legal channels – this has been the case for at least 10 branch offices of the LTDH since 2005. Furthermore, the authorities have increasingly resorted to different means to virtually dissolve associations; for example by infiltrating the association with pro-government agents who then stage a 'coup', resulting in the replacement of the original, elected board with an appointed one. The clearest examples of this practice can be seen in the fate of the LTDH, the National Syndicate of Journalists, and the Association of Tunisian Magistrates amongst others. The National Syndicate of Tunisian Journalists was taken over in September 2009 by its pro-government wing by illegal means and following a court order. This came after a year of pressure against the group after it published its 2008 report on freedom of expression in Tunisia, and ahead of the October 2009 presidential elections, when the original syndicate refused to support Ben Ali's election. The Association of Tunisian Magistrates, which also suffered a putsch in December 2004, faced disciplinary sanctions, the magistrates were deprived of the right to travel, including for professional meetings abroad, and they continue to be subjected to intimidation measures.

11 International Federation for Human Rights (Fédération internationale des Ligues des Droits de l'Homme, FIDH), Mauvais traitement à l'encontre de Mme Bensedrine, 23 October, 2009. <http://www.fidh.org/Mauvais-traitements-a-l-encontre-de-Mme-Sihem>.

12 Interview with UGET member. See also Euro-Mediterranean Human Rights Network, Halte à la répression des militants de l'UGET, 19 April 2010, http://fr.euromedrights.org/index.php/news/member_releases/3811.html

13 OLPEC, Boukaddous sentenced to 4 years in prison after unfair lawsuit, Tunis, July 6, 2010, <http://www.olpec-marsed.org/fr/News-sid-Boukaddous-sentenced-to-4-years-prison-after-an-unfair-lawsuit-30.html>

14 See http://ar.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/4201.html. The papers in question are Al Hadath and Al-Chorouk, both of which ran the stories on May 18, 2010.

Tunisia

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the International Human rights instruments ratified by Tunisia;
- Implement the recommendations of the United Nations Human Rights Committee, in particular the recommendation which states: “take steps to put an end to acts of intimidation and harassment and to respect and protect the peaceful activities of human rights organisations and defenders. Reports of acts of intimidation and harassment should be investigated without delay”. Take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW;
- Guarantee the separation of executive, legislative and judicial powers, and guarantee the independence of the judicial system, the cornerstone of human rights. All citizens must be guaranteed an effective access to justice and the right to a fair trial before an independent and impartial tribunal;
- Repeal the law passed in June 2010 that amends Article 61bis of the Penal Code, which complements the provisions of Article 61bis of the Criminal Code by adding the criminalisation of “persons who establish, directly or indirectly, contact with officials of a foreign state, institution or foreign organisation with the aim of inciting them to harm Tunisia’s vital interests and its economic security”; as its provisions contradict the spirit and the letter of the International Covenant on Civil and Political Rights, which Tunisia ratified on 23 March 1976. Any further amendments to the Penal code must be clearly worded and explicit to prevent its misuse, and to conform to international standards for civil and political rights.

With regard to the legislation and practice related to freedom of association:

- Systematically deliver a receipt upon filing for registration;
- Guarantee effective recourse within a reasonable timeframe to associations whose registration requests have been refused by administrative authorities;
- Associations’ freedom from ministerial or government interference in their meetings;
- Create the offence of violation of the right of assembly, applicable against any individual or government official who intervenes to prohibit the holding of a meeting without having been given a mandate to do so for a legitimate cause;
- Immediately halt the policy of dissolution and replacement of associations’ governing bodies, which occurs in a manner inconsistent with the international standards related to freedom of association. Provide the courts with exclusive jurisdiction in abolishing or suspending an association;
- Put an immediate end to the harassment and intimidation of civil society activists and human rights defenders, as well as to the police surveillance of their telecommunications (telephone and Internet) and home, and provide legal protections to allow them to conduct their activities without interference;
- Carry out independent and impartial investigations on allegations of human rights violations (including psychological and physical harassments) against civil society activists and human rights defenders, publish the results and bring the accused parties before a court of law.

Environment required for the sustainable development of civil society:

- Put an end to the persecution and harassment (including psychological and physical assaults) and the policy of exclusion and censorship against independent associations;
- Establish a new institutional relationship with civil society associations which is based on transparency and the impartiality of the state. Establish an adequate consultative mechanism to ensure that civil society can contribute to decision-making on public policy issues;
- Promote equal participation of women and men in civil society organisations and public institutions.



Turkey



*Trade Union workers strike, Istanbul,
November 2009.
by Jill Granberg*

INTRODUCTION

Turkey's association law largely conforms to international standards. However, the political situation during the past three years has firstly led to the arrests of a number of human rights defenders working on Kurdish minority rights. Secondly, it has imposed restrictions on the activities of trade unions, as well as associations or human rights defenders who express criticism of the Turkish military, particularly in regards to the Kurdish issue. The number of dissolutions of associations has decreased¹, but LGBT associations, which were especially targeted for dissolution by local authorities during the past three years, has continued to face restrictions at both official and social levels.

I – Formation of Association

Freedom of association in Turkey is governed by Associations Law (No. 5253 of 2004), the Foundations Law (No. 5753) and the Trade Union Law (No. 2821). The Civil Code also affects freedom of association (see below concerning LGBT groups). The Associations Law allows for establishment on notification and approval of the association statutes, in accordance with international standards. It gives applicants a month to submit their statutes, for approval within 60 days after which it can start its activities as described in its detailed mission statement. To overcome this limitation, associations have defined their objectives broadly and provided long lists of activities.

The official figure for associations as of June 2010 was 84,782, which shows an increase of about 4,000 since 2008². The authorities turned down a number of applications in the period under review, most prominent among them being the Confederation of Farmer's Unions (Ciftci-Sen), which the Ankara governor rejected in 2008 on grounds that farmers were neither workers nor employers, and the Ankara Labour Court upheld this decision in 2009. The confederation was formed by seven trade unions and included 22,000 members³.

Turkish law bans discrimination on the basis of gender⁴, but this has not been satisfactorily reflected in practice as women's participation and representation in mixed associations, and professional organisations has remained low⁵. This is partly due to traditional and religious obstacles, especially in rural areas or small towns, where women opt for charity and development work and avoid taking a feminist stance publicly. This may be slowly changing as more NGOs adopt a gender sensitive approach in response to EU requirements for funding⁶.

No prior authorisation is necessary to receive foreign funding, but associations must notify authorities one month before receiving the fund, by sending in standard forms, that may be cumbersome and time-consuming especially for small associations.

1 There were 13 cases in 2007, 11 in 2008 and 10 in 2009. Interview with Turkish human rights activist, May 2010.

2 Website of Turkish Directorate of Associations, Ministry of the Interior, http://www.dernekler.gov.tr/index.php?option=com_content&view=article&id=552%3Aruvete-kar-dernek-kurdular-&catid=15%3Ahaberler&Itemid=23&lang=en

3 EMHRN Freedom of Association in the Euro-Mediterranean Region, 2009 monitoring report, p. 80, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

4 EMHRN Freedom of Association in the Euro-Mediterranean Region, 2008 monitoring report, p. 81, http://en.euromedrights.org/index.php/publications/emhrn_publications/emhrn_publications_2008/3806.html

5 EMHRN 2009 monitoring report, p. 82, http://en.euromedrights.org/index.php/publications/emhrn_publications/68/4075.html

6 Telephone interview with women's rights activist, June 9, 2010.

II – Life of Associations

Most associations operated freely during the 2007-2010 period. However, those working on Kurdish cultural, social and political rights have faced increasing restrictions since 2009 when Turkey's Constitutional Court banned the pro-Kurdish Democratic Society Party (DTP), accusing it of engaging in activities against the integrity of the country and expelled a number of parliament members⁷.

In March 2010, anti-terror police arrested Ms. Vetha Aydın, president of the Siirt branch of the Human Rights Association (IHD), and Mr. Abdullah Gürgeç, IHD board member, from their homes⁸, and raided the IHD office and confiscated documents. This was part of an anti-terror operation that started in 11 Turkish provinces in December 2009, where 36 Kurdish leaders, activists and journalists were arrested for alleged links with the outlawed Kurdistan Workers Party (PKK), including Mr. Muharrem Erbey, vice president of the IHD, and president of its Diyarbakir branch, Ms. Roza Erded and Mr. Arslan Özdemir. They are to appear in court on October 18, 2010.

In August 2009, Mr. Camal Bektas, head of Yakay-Der association was convicted for "undermining the reputation of the army" and "propaganda and lies against the State" in association with his work on enforced disappearances⁹ and the existence of unexplored mass graves in Turkey. Ms. Nezahat Teke, a member of the association "Mothers for Peace" that works on the issue of enforced disappearances, was convicted and sentenced in 2009 to 18 months of prison on charges of links with the PKK¹⁰.

The authorities also targeted members of various trade unions, including the Teachers' Union, and in May 2009 arrested some 22 members on charges of links to the PKK – most were active in supporting Kurdish-language education¹¹. They were released on bail by order of Izmir court, and are to reappear in court on October 22, 2010.

In terms of dissolution, the law respects international standards, as it requires the judiciary to instruct the closure of an association, based on a court case filed by the

public prosecution office following notification from the civil administration office. The cases allowing dissolution include incomplete registration documents or activities considered contrary to the law, such as endangering national security or public order.

III – Dissolutions of Associations

During the period under review, LGBT associations were especially targeted for dissolution by local authorities whose closure attempts, for "purposes against law and morality" were overturned by the judiciary. In April 2010, a court in Izmir dismissed a case against Black Pink Triangle LGBT Association, saying that LGBT associations had the same right to exist as other associations¹². Similarly, Turkey's Court of Cassation ruled against the closure of Lambda Istanbul Solidarity Association in April 2009¹³, but placed a discriminatory condition that it should not "encourage lesbian, gay, bisexual, transvestite and transsexual behaviour with the aim of spreading such sexual orientations"¹⁴.

Additionally, LGBT group members have been victims of homophobic violence, the last case being the murder of Azra, a founding member of the Black Pink Triangle, in Izmir in April 2010 at a time when the association was facing a court case. LGBT associations have urged the authorities to enact anti-discrimination legislation that includes sexual orientation as a legal protection.

7 The European Union has expressed its concern over the closure and the expulsions. See Presidency Statement on the Closure of the Democratic Society Party in Turkey, December 11, 2009, http://www.se2009.eu/sv/moten_nyheter/2009/12/11/presidency_statement_on_the_closure_of_democratic_society_party_dtp_in_turkey

8 FIDH, Turkey: Arbitrary Arrest of Ms. Vetha Aydın and Mr. Abdullah Gürgeç, March 19, 2010, <http://www.fidh.org/Arbitrary-arrest-of-Ms-Vetha-Aydin-and-Mr>

9 Hundreds of civilians disappeared as a result of the military conflict in Southeast Turkey in the 1980 and 1990s and remain unresolved.

10 Ibid.

11 The trade unions were affiliated with the public sector workers' trade union confederation, KESK. See also Human Rights Watch, Turkey: Rights Defender Arrested, January 12, 2010, <http://www.hrw.org/en/news/2010/01/12/turkey-rights-defender-arrested>

12 Turkish Politics in Action blog, Triangle Saved from Court Case, April 29, 2010, <http://turkishpoliticsinaction.blogspot.com/2010/04/black-pink-triangle-saved-from-court.html>. The report cites a Turkish report in Radikal daily, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=994355&Date=30.04.2010&CategoryID=77>

13 Lambda was ordered closed a year earlier by a court of first instance in Istanbul, following a complaint by the governor's office.

14 HRW, Universal Periodic review: Turkey, submission for the 8th UPR session (My 2010), November 15, 2009, <http://www.hrw.org/en/news/2010/04/23/universal-periodic-review-turkey>

Turkey

RECOMMENDATIONS

With regard to the political situation and the general framework of democracy and human rights:

- Act in accordance with the provisions of the International Covenant on Civil and Political Rights and the International Human rights instruments ratified by Turkey, and endorse the additional protocols pertaining to individual complaints as a basic insurance for the protection of human rights;
- Implement the Universal Periodic Review recommendations of the United Nations Human Rights Council and take into account the relevant jurisprudence of the United Nations Committee on Human Rights as well as other relevant UN bodies, including the CEDAW;
- Eliminate all forms of discrimination based on, inter alia, gender, race, language, religion, political opinions, sexual orientation or membership in a national minority, in all matters pertaining to the organisations of civil society.

With regard to the legislation and practice related to freedom of association:

- Amend the Associations Law in consultation with all relevant parties in order to comply with international standards on the right to association. In particular, reduce the number of founding members which is acquired to form an association from 7 to 2;
- Put an end to acts of intimidation against civil society activists and human rights defenders, including those working on Kurdish and LGBT rights, and provide legal protections to allow them to conduct their activities without interference;
- Repeal all provisions that allow criminal proceedings against associations and members for their normal activities that do not contradict international standards related to freedom of association.

Environment required for the sustainable development of civil society:

- Encourage the participation of associations in public life, in particular when it comes to the development of public policies;
- Ensure the enjoyment by association of the freedom of expression, a component of their associative freedom;
- Promote equal participation of women and men in civil society organisations and public institutions.



The European Union



*Climate Change Conference (Cop15) Copenhagen,
December 2009.
by Nikolaj Mortensen*

INTRODUCTION¹

The formal protection for freedom of association in European Union (EU) countries is high and has been strengthened with the adoption of additional guarantees in the period under review. Furthermore encroachments upon the freedom have been resisted both through existing protection mechanisms and the adoption of some new monitoring arrangements. In this context it is not surprising to find that there is generally a vigorous exercise of the freedom that is guaranteed both at the national level and in regional institutions².

In general the enhancement of standards and protection mechanisms is a response to problems in European countries that are not part of the EU. Nonetheless, as the text below indicates, there continue to some problems in securing freedom of association within the EU despite some suggestions to the contrary³.

These problems concern the formation, management and continued existence of associations, as well as regards the life and security of certain persons belonging to them. They are sometimes no more than isolated instances but the difficulties faced by associations being established by minorities and those seen (not always with justification) as threatening national security endures in EU countries despite clearer standards and more protection mechanisms.

There is also increasing concern about funding position of associations and the use of legitimate efforts to promote the transparency and accountability of associations as a means of imposing inappropriate controls on them.

Developing and implementing guarantees

Freedom of association in EU countries is not only protected at the constitutional level but has the benefit of acceptance by all of them of the guarantees in Article 22 of the International Covenant on Civil and Political Rights ('the International Covenant') and Article 11 of the European Convention on Human Rights ('the European Convention') and by most of them of its assurance specifically for minorities in Articles 7 and 8 of the Framework Convention for the Protection of National Minorities⁴.

Furthermore 9 EU countries have accepted the unique obligation at the international level found in the Council of Europe Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations⁵ (INGOs) to grant the legal capacity to act to any association which has been established in another ratifying state.

In addition 5 EU countries have accepted Article 3 of the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level which guarantees, inter alia, freedom of association to foreign residents⁶.

¹ By Jeremy McBride

² There have been estimated to be more than 3 million associations within the 27 European Union countries; see *Guide de la liberté associative dans le monde: 183 législations analysées*, prepared under the supervision of Michel Doucin (La Documentation Française, Paris, 2007), p 576.

³ See *Freedom under Threat (2008)*, a report by Freedom House which suggested that Western Europe was almost the only region in the world not to show a decline in freedom of association.

⁴ Only Belgium, France and Luxembourg have yet to ratify this treaty.

⁵ CETS No 124 of 24 April 1986. It has been ratified by the following EU member states: Austria, Belgium, Cyprus, France, Greece, the Netherlands, Portugal, Slovenia and the United Kingdom.

⁶ Denmark, Finland, Italy, the Netherlands and Sweden.

This body of protection has now been enhanced by the adoption of further standards – although not legally binding for most of them.

Firstly the right to freedom of association has been made expressly applicable to the EU as a result of the entry into force in 2009 of Article 12 of the Charter of Fundamental Rights of the European Union⁷. Although the European Court of Justice already considered it to bind EU institutions by virtue of the international commitments of member states, this makes the position clearer and should strengthen its significance for all aspects of EU activity and in particular justice and home affairs.

Secondly in 2007 the Council of Europe adopted the Recommendation of the Committee of Ministers to member states on the legal status of Non-Governmental Organisations⁸ (NGOs). Although not formally binding, the Recommendation – which covers in considerable detail matters such as the objectives of associations, their formation and membership, the grant and revocation of legal personality, their management, fundraising and public support, accountability and the scope for participation in public decision-making – serves both as a standard for political scrutiny of action taken in respect of associations within Europe and as a guide to the interpretation and application of legally binding instruments accepted there and elsewhere⁹.

Thirdly there was the adoption in 2008 of the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities¹⁰. This Declaration builds on an earlier one adopted by the United Nations General Assembly¹¹. It condemned all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors and specifically called on member states to take action to facilitate the work of human rights defenders, to provide effective protection against their being attacked and harassed and to hold those responsible for attacks and harassment through administrative measures and/or criminal proceedings.

Fourthly, also in 2008, revised EU Guidelines on Human

Rights Defenders were adopted and these suggest a range of practical measures for EU member states to support and protect human rights defenders outside the EU, notably the provision of swift assistance, the issuance of temporary visas and the facilitation of temporary shelter.

Fifthly a Code of Good Practice for Civil Participation in the Decision-making Process designed to facilitate the activities of civil society organisations was adopted on 1 October 2009 by the Council of Europe's Conference of INGOs¹². The Code draws upon practical experiences from various countries in Europe concerning relations between NGOs and the authorities, which are based on a principle of independence, transparency and trust. Examples of good practices and tried-and-tested methods for facilitating these relations have therefore been analysed and set out in an operational document.

Finally there have been some useful developments in certain areas of the case law of the European Court of Human Rights (the 'ECtHR'), some of which are noted below under the substantive headings.

The latter case law also reflects a failure on the part of respondent states to implement the right to freedom of association but it equally underlines the need for regional and international mechanisms to secure more effective implementation of the various guarantees.

Within Europe the ECtHR has long had a critical role in stopping EU member states (and other states belonging to the Council of Europe) from backsliding on their commitment to protect freedom of association. However, this work has been reinforced through the conferment of new roles on other institutions already in existence and adoption of entirely new mechanisms.

Foremost amongst the former has been the invitation¹³ by the Council of Europe to its Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders through publishing reports, intervening with state authorities and co-operating with other mechanisms. This authorisation for action by the Commissioner has already contributed to ensuring that threats to the many associations acting as human rights defenders are resisted in a cogent and high profile manner.

This initiative complements the establishment in 2007 by the OSCE Office for Democratic Institutions and Human Rights of a focal point for such defenders and national

7 As a consequence of the Lisbon Treaty entering into force.

8 CM/Rec(2007)14 of 10 October 2007.

9 See, e.g., the OSCE ODIHR Opinion on the Draft Law on Amendments to the Law on Public Organizations of the Republic of Armenia (December 2009) at (<http://www.legislationline.org/topics/topic/1>)

10 Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

11 United Nations Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms of 9 December 1998, General Assembly Resolution A/RES/53/144.

12 CONF/PLE(2009)CODE1.

13 In the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

human rights institutions. The role of the focal point is to closely monitor the situation of human rights defenders, identify issues of concern and seek to promote and protect their interests, as well as to increase their capacity and to improve their knowledge of human rights standards, advocacy, monitoring and strategy formulation skills¹⁴. Particular activities undertaken by the focal point have been: regional roundtables on issues affecting freedom of association and assembly; the publication of Guidelines on Freedom of Assembly; the development of a guidebook on freedom of association; and training for human rights defenders in order to improve their knowledge of human rights standards and to develop their monitoring and advocacy skills.

Finally the Conference of International Non-Governmental Organisations of the Council of Europe in 2008 established an Expert Council on NGO law with a mandate to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO law and its implementation and promoting its compatibility with Council of Europe standards and European good practice. The Expert Council has thus been asked to monitor the legal and regulatory framework in European countries, as well as the administrative and judicial practices in them, which affect the status and operation of NGOs. In approaching its work the Expert Council has so far pursued a thematic approach, reporting firstly on problems relating to the establishment of NGOs and secondly on their internal governance¹⁵.

Formation and membership

In most EU countries it continues to be relatively easy to establish an association - in some, no formal procedure is required and in others, the acquisition of legal personality merely requires the relevant public authority to be notified of the association's formation - but in others there remains a formal registration procedure, although this is generally handled expeditiously. However, such a procedure can also be a means for impeding or preventing the formation of associations.

This has been seen particularly in the way the objectives of proposed associations have been found by the ECtHR to have been evidently misconstrued. Examples include an activity in Greece considered as posing a threat to territorial integrity and/or national security simply because the focus of activity was directed to the Macedonian minority¹⁶ and

in both Bulgaria and Greece as undemocratic because in the former the aim was to make constitutional changes such as restoring the monarchy and 'opening' the border between the former Yugoslav Republic of Macedonia and Bulgaria¹⁷ and in the latter because the aim could be to promote the idea that there was an ethnic minority in that country¹⁸. This situation has led to expressions of concern about both countries by the Council of Europe's Commissioner of Human Rights¹⁹ and by the United Nations Human Rights Committee in respect of Greece²⁰. This is a situation that has not changed for the better in the period under review. After five years of procedure, on 6 May 2010, the French Court of Appeal also released the association Euskal herriko Laborantza Ganbara and its president, who were accused by the Prefect of the Pyrénées-Atlantiques, as a representative of the French State, to have "illegally use[d] the name of the Chambre d'agriculture" (Euskal herriko Laborantza Ganbara means Chambre d'agriculture in French) and to undertake an activity "under conditions creating a confusion with the official departmental Office" - the administrative authorities claimed that the object, the mission, the organisation and the name of the association seemed to familiar with the Chambre d'agriculture of the Pyrénées-Atlantiques, a public Office, and were likely to induce the public in error.²¹

EU countries do not generally restrict the ability of non-citizens to form and join associations but this possibility continues to be restricted in Spain to only those who have been granted a resident's permit or leave to remain²².

The ECtHR has long recognised that a prohibition on membership of associations by persons holding public office could pursue the legitimate aims of protecting national security and preventing disorder. In the period under review it has made it clear that restrictions on membership of associations by persons holding public office should be non-discriminatory in their field of application. This was not found to be the case when Italy required the disclosure of membership in secret Masonic lodges since national security and public order could also be imperilled by certain non-secret associations, such as political parties or groups advocating racist or xenophobic ideas, or sects or associations with a military-type internal structure or those that established a rigid and incompressible bond of solidarity between their

14 See further <http://www.osce.org/odihr/27867.html>

15 For its reports, see http://www.coe.int/t/ngo/expert_council_en.asp. These problems are discussed further below.

16 See the ruling of the Fourth Political Division of the Greek Supreme Court in its judgment 1448/2009 of 30 September 2009.

17 Zhechev v. Bulgaria, no. 57045/00, 21 June 2007.

18 Emin and Others v. Greece, nos. 34144/05, 27 March 2008.

19 In CommDH(2006)6, 29 March 2006, para. 28 and CommDH(2006)13 / 29 March 2006 para. 44.

20 Concluding observations, 25 April 2005, para. 20.

21 See Voir http://www.ehlgdoitvivre.org/docs/arret_cour_appel_pau.pdf

22 Article 8 of the 'organic law on the rights and freedoms of foreigners in Spain and their social integration' of 22 December 2000. This position was criticised in the Report of the Commissioner for Human Rights of the Council of Europe, March 2005, CommDH(2005)8, 9 November 2005, at par. 76.

members or pursued an ideology that ran counter to the rules of democracy, which was a fundamental element of "European public order"²³.

Management

The second annual report of the Expert Council on NGO Law pointed to a number of problems of undue interference with the internal governance of NGOs in a number of European countries²⁴. Such interference was seen as arising from (a) detailed requirements relating to internal governance for all forms of NGOs and the existence of a discretion to impose additional ones at the registration stage; (b) the lack of clarity as to the entitlement of all persons and in particular children and non-citizens to participate fully in the decision-making of NGOs; (c) undue controls over the freedom of NGOs to adapt their internal rules and structures and to establish and close branches which do not have a discrete legal personality; (d) the width of the basis for challenges to the decision-making of NGOs by public authorities; (e) the scope in a few instances for enforced attendance of public officials at internal meetings of NGO decision-making bodies; (f) the lack of clarity and possible inappropriateness of obligations with respect to the auditing of accounts and reporting on activities; and (g) the significant influence exercised over NGO decision-making through the power of authorities to grant or withdraw public funding and through the participation of officials as board members. Recommendations relating to these problems were subsequently adopted by the Conference of INGOs²⁵. Not all of these concerns applied to EU countries; but in Cyprus the establishment of branches must be regulated by an association's statute; in several countries children of any age could not participate in the management of an association; in Estonia certain members of a management body must be resident; and in Cyprus and Ireland dependence on public funding was considered by some associations to influence their decision-making. These are not generally new problems but have been highlighted by the research of the Expert Council. However, the risk of influence exercised, leading to lack of autonomy in decision making and prioritisation, through public funding could become a more general problem because of the absence of sufficient alternative sources to which associations can turn.

Undue interference in the internal management of an association of a very direct kind was found by the ECtHR, where Bulgaria had forced the members

of a religious community under one of the two rival leaderships and suppressed the other one. While recognising the legitimacy of helping to overcome the conflict in the church concerned, this action was seen as disproportionate because it disregarded the position of numerous believers who supported the leadership that was suppressed, thereby interfering with the church's organisational autonomy²⁶. This ruling would be equally applicable to such a means of resolving a dispute within the membership of an association.

Prohibition and dissolution

It is well-established that the prohibition of associations and/or their enforced dissolution is not incompatible with international and regional guarantees where the associations concerned pose a clear threat to democracy and national security. As a consequence the ECtHR has not found such a measure objectionable in the period under review where national courts had a reasonable basis for concluding that certain associations were connected to terrorism after a detailed review of the evidence before them²⁷. This evidence concerned various acts and speeches imputable to the associations which - when taken together - could be seen as having an anti-democratic character, even if they had not directly promoted terrorism.²⁸ A consequential disqualification of the members of the associations concerned from standing for election imposed on account of their activities within them was also upheld²⁹. A similar view can be expected to be taken of the dissolution or prohibition of an association that pursued racist goals³⁰.

Although the ECtHR has undoubtedly been willing to give the benefit of the doubt to a state in cases of this kind, it still requires some evidential basis for taking such a drastic step as dissolution or prohibition. Unfortunately there continue still to be instances in which this has been shown to be lacking; for example in Greece where an association established for over half a century was dissolved for activity purportedly contrary to public policy³¹; and in the former Yugoslav Republic of Macedonia - an aspirant EU

26 Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria, nos. 412/03 and 35677/04, 22 January 2009.

27 Herri Batasuna and Batasuna v. Spain, nos. 25803/04 and 25817/04, 30 June 2009.

28 But see below the approach of the French courts discussed.

29 See *Etxeberria and Others v. Spain*, nos. 35579/03, 35613/03 and 35626/03 and 35634/03, 30 June 2009 and *Herritarren Zerrenda v. Spain*, no. 43518/04, 30 June 2009.

30 Such as, e.g., the ban by France in 2006 of the association "Tribu Ka" on a charge of incitement of racial hatred after the association prohibited its meeting to non-African people; *op.cit.*, n.1 at p. 622.

31 *Tourkiki Enosi Xanthis and Others v. Greece*, nos. 34144/05 and 26698/05, 27 March 2008.

23 *Grande Oriente D'Italia di Palazzo Giustiniani v. Italy* (No. 2), no. 26740/02, 31 May 2007.

24 30 September 2009.

25 CONF/PLE(2010)REC1, 27 January 2010.

member - where an association's articles were annulled on the basis that a negation of Macedonian ethnicity was tantamount to violence³².

Restrictions imposed on associations pursuant to the so-called 'war on terror' have given rise to considerable concern as to their compatibility with the standards just discussed, as well as regards the procedure followed prior to their imposition. Such restrictions often stem from the various UN Security Council resolutions that have required the freezing of the funds and other financial resources, as well as the prohibition on travel, by persons and entities suspected of terrorism³³. This blacklisting is undertaken by a Sanctions Committee comprised of Security Council members and has been strongly criticised by many bodies - notably the United Nations Special Rapporteur on the promotion and protection of human rights while countering terrorism³⁴ and the Parliamentary Assembly of the Council of Europe³⁵ - because this is a political rather than a judicial body, there is no hearing or disclosure of the evidence relied and there is no possibility of any judicial challenge to the imposition of the restrictions despite their indefinite applicability. Similar objections apply to the handling of applications for delisting, although limited and very general information is now being given to those who have been blacklisted³⁶.

The implementation of these restrictions within the European Union pursuant to Common Position 2001/931/CFSP has, after some initial failures³⁷, begun to be successfully challenged by reference to human rights considerations. Thus the listing of some organisations has been annulled by EU courts firstly for the insufficient statement of reasons and the absence of a fair hearing and judicial control³⁸ and secondly for lacking any evidential basis that the entity concerned was a terrorist organisation³⁹.

32 See *Association of Citizens Radko & Paunkovski v. the Former Yugoslav Republic of Macedonia*, no. 74651/01, 15 January 2009.

33 Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006) and 1822 (2008).

34 Protection of human rights and fundamental freedoms while countering terrorism, A/61/267, 16 August 2006.

35 United Nations Security Council and European Union blacklists, Resolution 1597 (2008).

36 See Security Council Resolutions 1730 (2006) and 1735 (2006).

37 See *Segi and Gestoras Pro-Amintia v. Germany et al (dec.)*, nos. 6422/02 and 9916/02, 23 May 2002, in which the ECtHR found complaints about the Common Position inadmissible for not directly affecting the applicant associations and *Case C-354/04 Gestoras Pro-Amintia v. Council*, 27 February, in which the European Court of Justice held that it was not competent to decide on a case brought by the associations because the matter concerned police and judicial cooperation, which then fell outside community issues.

38 *Case T-228/02 Organisation des Modjahedines du peuple d'Iran v Council ('OMPI')*, [2006] ECR II-4665 (ECJ) and *Case T-229/02, Osman Ocalan, on behalf of the Kurdistan Workers' Party (PKK) v Council of the European Union*, 3 April 2008 (CFI).

39 *Case T-256/07, People's Mojahedin Organisation of Iran v. Council of the European Union*, 23 October 2008.

The latter ruling relied upon a decision by the English Court of Appeal on 7 May 2008 to uphold a ruling by the Proscribed Organisations Appeal Commission (the POAC) that the government's decision to maintain the ban on the People's Mojahedin Organisation of Iran (the PMOI) - a member of the coalition National Council of Resistance of Iran and known in the United States as the Mujahedeen-e-Khalq, or the MeK - was "flawed" and "perverse". The POAC had concluded that action by the PMOI against Iranian military and security targets had ended in 2001, that the organisation had no military structure, and that it disarmed in 2003 and had not attempted to re-arm. In upholding this ruling the Court of Appeal stated that "An organisation that has temporarily ceased from terrorist activities for tactical reasons is to be contrasted with an organisation that has decided to attempt to achieve its aims by other than violent means ... The latter cannot be said to be 'concerned in terrorism', even if the possibility exists that it might decide to revert to terrorism in the future"⁴⁰. The proceedings in the EU court followed the reinstatement of a listing of the PMOI after its annulment after a successful challenge to this on the first set of grounds, i.e., for insufficient reasoning and the absence of a fair hearing. The fact that justice and home affairs within the EU have been made more clearly subject to human rights standards following the entry into force of the Lisbon treaty ought to give even greater scope for challenging interferences with freedom of association pursuant to EU measures.

However, separate national measures within EU countries continue also be problematic and some have yet to be challenged before regional courts on human rights grounds. These include laws that have adopted an overbroad approach to the designation of certain associations as supporting terrorism (such as the upholding of the listing of the association *Groupe Islamique Combattant Marocain* as a terrorist organisation by the government, although it had never committed, attempted to commit or even threatened to commit a terrorist act, on the basis that it was sufficient for the organisation to "aspire" to perpetrating such acts under Articles 139 and 140 of the Penal Code⁴¹). Similarly problematic is an arbitrary approach towards their application, an example of which is the refusal by the French of Cassation to extradite *Amaya Recarte*, spokesperson for the association *Segi* (an

40 Following this ruling the British Parliament approved an order by the home secretary to lift the ban on the PMOI with effect from 24 June 2008.

41 The Belgian Court of Cassation its appeal on 7 June 2007. See also the United Kingdom's Terrorism Act 2006 which includes in the 'blacklist' of terrorist individuals and entities, persons who not just commit, participate in, prepare or instigate a terrorist act but also those who incite it. Furthermore it is not necessary to prove incitement through showing that an individual or organisation is consciously encouraging terrorism; persons can be held responsible for the manner in which their statements can be received, whatever their intention might be. Concern about gender-based human rights violations and wrongful gender-based impacts resulting from the overbroad definition of offences related to terrorism was also voiced in the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/64/211, 3 August 2009).

association appearing on the European 'blacklist' as it is considered the youth wing of Batasuna) to the Spanish judicial authorities, as was required by a European arrest warrant which led Amnesty International to conclude that in practice France did not consider the association's activities to amount to terrorist offences that require prosecution. It suggested that this discrepancy called into question not only the consistency of states' practices but also the legitimacy of the lists themselves⁴². The reach of the measures can also be quite surprisingly extensive as can be seen by the conviction in Denmark of six persons for selling T-shirts in order to help fund a radio station for the Revolutionary Armed Forces of Colombia ("FARC") and a PFLP poster printing shop the Popular Front for the Liberation of Palestine ("PFLP"). Both FARC and PFLP are listed as terrorist organisations by the European Union and the United States⁴³.

Both the 'assumed criminality' principle and the criminalisation of opposition movements are legitimate causes for concern⁴⁴ and show how easily the rule of law in Europe can be subverted. Furthermore the ambiguity surrounding the meaning of "support" for a terrorist organisation has been recognised as having a chilling effect upon the public discourse around conflict resolution⁴⁵. As a minimal safeguard against unjustified penalties being imposed it is seen as essential that there be a judicial determination of the nature of the organisation concerned before anyone could be punished for membership in, support of, or association with a terrorist organisation⁴⁶. It is encouraging therefore, that a special mechanism for associations to appeal against their inclusion on the 'blacklist' of terrorist organisation has been established in the United Kingdom as the expertise of a specialist body may make it more prepared to closely scrutinise the case being made for blacklisting⁴⁷.

Harassment of Human Rights Defenders

Significant difficulties continue to be faced by at least some of those working for or with associations that seek to defend human rights in some EU countries. These difficulties range across a wide field. They include (a) action based on the assumption that such associations are a threat to public order, exemplified by the French decree allowing the police to "centralise and analyse information relating to natural or legal persons who apply for or exercise a political, trade union, or economic mandate, or play an institutional role of economic, social or religious significance, provided that such information is necessary for the government or its representatives to exercise their responsibilities" and to "centralise and analyse information relating to individuals, groups, organisations and legal persons who, because of their individual or collective activity, are likely to prejudice public order"⁴⁸; (b) the apparently improper use of (i) tax laws (such as the calling of a Greek Helsinki Monitor ('GHM') member by the competent tax office for an audit "in the framework of the investigation of GHM" following a demand by two parliamentarians for an investigation of GHM by the tax authorities⁴⁹) and (ii) of the criminal law to sanction action taken to defend the rights of certain persons (such as the filing of a criminal complaint for defamation against those who had testified in the investigation

42 IOR 61/013/2005, Counter-terrorism and criminal law in the EU, p 16.

43 Overturning an earlier acquittal. Five employees of the t-shirt company were sentenced to between 60 days and six months in prison. A sixth defendant got 60 days for hosting the company's website on his server but the seventh defendant, a hot-dog vendor who hung a poster advertising the T-shirts on his stand, was acquitted; The Copenhagen Post, 19 September 2008.

44 See the concluding observation of the Human Rights Committee concerning Spain that «the exercise of freedom of expression and association could be unjustifiably hindered by prosecutions before the National High Court for the offences of association and collaboration with terrorist groups... The State party should ensure that any restriction on freedom of expression and association is necessary, proportional and justified, in accordance with article 19, paragraph 3, and article 22 of the Covenant.» (CCPR/C/ESP/CO/5, 5 January 2009, para. 19).

45 Assessing Damage, Urging Action (2009), the Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, an initiative of the International Commission of Jurists.

46 Ibid, echoing a similar call previously made in Report of the Special Rapporteur on Human Rights and Terrorism, UN Doc. A/61/267, 16 August 2006, p. 11.

47 Such as the Proscribed Organisations Appeal Commission in the United Kingdom; see n. 32.

48 The decree - originally adopted by the French Ministry of the Interior to create a new police file Documentary Exploitation and Utilisation of General Information (Exploitation documentaire et valorisation de l'information générale - EDVIGE - thus gave the authorities the power to create files on those belonging to vaguely and broadly defined categories, which could have included human rights defenders, and to gather any personal information concerning them. It was withdrawn on 27 June 2008, following the mobilisation of several civil society and political organisations but it is far from clear that the mentality that led to its original adoption has changed and vigilance against future efforts to adopt such measures is clearly needed. Similarly, concerns were raised after the Conclusions on the use of a standardised, multidimensional semi-structured instrument for collecting data and information on the processes of radicalisation in the EU which aims at "systematically analysing and assessing the extent of radicalisation (...) share information regarding the processes of radicalisation also connected to other regions in the world in which radicalisation may occur" and "identify and systematically analyse the various environments within which radicalisation and recruitment may occur", without defining what radicalisation means. (See <http://www.statewatch.org/news/2010/apr/eu-council-info-gathering-uardicalisation-8570-10.pdf>). See also <http://news.bbc.co.uk/2/hi/technology/7985339.stm>.

49 This occurred after GHM had filed criminal actions against Greece's neo-Nazis, one of whom was convicted for "incitation to racial violence and hatred and for racial insults; GHM press release, 17 August 2008 and World Organisation against Torture (OMCT) press release, 3 September 2008.

just mentioned⁵⁰), (c) other forms of complaints⁵¹ and sanctions⁵², and (d) outright physical attacks (such as the throwing of sulphuric acid on Constantina Kuneva, a trade union general secretary in Athens, resulting in her being seriously wounded and losing the use of one eye and of her vocal chords⁵³). The last of these is still very unusual in EU countries but the instance cited is disquieting because of the apparent official condemnation of it through the absence of any effective action against those directly

responsible for the attack concerned⁵⁴. The others, however, seem to be becoming more general, particularly where associations work for unpopular causes and groups. On December 2009, four activists from the association Greenpeace were detained for 19 days, after they unfurled banners saying: "Politicians talk, leaders act", during the heads of state dinner at the Copenhagen climate summit.

All these forms of action seek to undermine genuine action by an association to protect human rights and the fact that it is initiated or sustained by official institutions could discourage human rights defenders from playing their vital role. Although criminal and other laws must be impartially enforced, a proper appreciation of the legitimacy of human rights defenders should ensure that criminal and regulatory processes are not allowed to be employed in an abusive manner. It would appear that this is not being fully understood in a number of EU countries.

It is not surprising, therefore, that both the Council of Europe's Commissioner for Human Rights and the Organisation for Security and Co-operation in Europe (OSCE) have both voiced considerable concern in the period under review about the position of human rights defenders. Both have called for better protection of human rights defenders and the Commissioner has highlighted the need for a study on how countries are developing legislation to regulate NGO activities, noting with concern the use of extremism legislation against those who peacefully promote human rights⁵⁵. A report prepared by the OSCE reaches similar conclusions about the situation of human right defenders but did identify some good practices, notably physical protection for defenders who are at risk of physical harm, the active prosecution of those

50 The complaint was registered by the courts despite containing racist, anti-Semitic and homophobic statements; see GHM press release, 17 August 2008 and World Organisation against Torture (OMCT) press release, 3 September 2008. See also the prosecution in France of Andre Barthélemy - President of the non-governmental organisation AIG Ensemble pour les Droits de l'Homme - for attempting to stop the deportation of citizens of the Republic of Congo who were claiming that they would be ill-treated on their return. For this protest action M Barthélemy was convicted of the very serious offences of inciting rebellion and interfering with the movement of an aircraft, for which penalties involving both fines and imprisonment could be imposed, although in the event he was fined 1,500 euros See <http://www.elunet.org/spip.php?article8528>. The institution and outcome of these proceedings also underlines the growing concern about the potential impact on human rights defenders of provisions in immigration legislation adopted in both France and Spain in the period under review that makes it an offence to assist persons who are illegally present in these countries. This legislation would potentially include people who assist migrants by giving them advice and basic humanitarian aid. In France, the risk of such prosecution adds to the difficult conditions for associations trying to provide assistance to migrants at airport holding centres and to the use of surveillance against their members. A further possibility of the efforts of such associations being undermined can be seen in the decision to expose one of them - Cimade, which assists persons in detention centres - to a competitive regime despite (or because of) the undoubted quality of its past work on behalf of migrants. See *Observatoire pour la protection des défenseurs des droits de l'homme, un programme de la FIDH et l'OMCT, Délit de solidarité, Stigmatisation, répression et intimidation des défenseurs des droits des migrants* (2009). Finally a complaint has been filed against a GHM employee claiming that with texts that he wrote on the Macedonian minority in Greece - which include references to the European Commission against Racism and Intolerance and United Nations Treaty Bodies concerns and recommendations on the matter - he violated Article 138 paragraph 1 of the Criminal Code, which states: "one who attempts by force or by threat of force to detach from the Greek State territory belonging to it or to include territory of the Greek State in another state shall be punished by death". The Chief Prosecutor of the First Instance Court of Athens has decided that the criminal complaint was not completely unfounded; see GHM press release, 17 August 2008 and World Organisation against Torture (OMCT) press release, 3 September 2008.

51 In addition a complaint has been filed against GHM claiming that it is redundant, illegal and implying its members are foreign agents. This complaint also included racist and defamatory comments but the Chief Prosecutor of the First Instance Court of Athens and in one case the Chief Prosecutor of the Appeals Misdemeanours Court of Athens decided that these criminal complaints were not completely unfounded and launched preliminary criminal investigations. However, more than nine months later, the complaint is still in the phase of preliminary investigation, which according to the law should not last more than four months; see GHM press release, 17 August 2008 and World Organisation against Torture (OMCT) press release, 3 September 2008.

52 See the proposal in Greece to include in the register of NGOs historical data on relations between government and NGOs, which is intended in particular to contain details of supposed slanders by GHM; World Organisation against Torture (OMCT) press release, 18 February 2010.

53 See <http://www.protectionline.org/Constantina-Kuneva-demand-that.html>. The harassment of GHM has included verbal attacks and assaults during the trial referred to in the preceding note but one, in respect of which no action was taken by the court which instead suggested that the victim go to the police station and file a complaint.

54 Thus subsequent to the attack referred to in the preceding footnote there has been concern expressed as to the lack of an effective investigation into the attack by the police and attempts by them to suggest that it occurred because of an inappropriate relationship with the Bulgarian mafia - Press release by Greek Helsinki Monitor, 13 February 2009.

55 Report of the Round-Table on the situation of Human Rights Defenders in the member states of the Council of Europe, organised by the Office of the Commissioner for Human Rights (Strasbourg, 3-4 November 2008), CommDH(2009)15, 20 March 2009. A particular problem noted in the report was the denigration, stigmatisation or smear campaigns that are faced by many human rights activists, especially those dealing with migrant rights, the rights of victims of trafficking of human beings or fighting corruption, those benefiting from foreign support and those undertaking critical analysis or independent monitoring. This treatment comes not only from extremist groups but also from the media and the highest state representatives. The report also noted practical problems in these activists being able to perform their role as a result of denial of access to places of detention, intimidation and physical assaults by state officials and others, death threats and even assassinations in connection with their investigations and the subsequent publication of reports. Furthermore such action against human rights activists was reported often not to be followed by public condemnation or effective criminal investigations. Another source of danger for human rights activists working on combating torture, impunity and promoting Roma and LGBT rights was seen as arising from the circulation on the Internet of their names and addresses. It was suggested that the monitoring of criminal proceedings being brought against human rights activists was needed as a deterrent against them being improperly treated. In addition it was suggested that some international arrangements providing relocation for activists and support for their family members could be needed where they faced serious or imminent threats.

using violence against defenders, authorities publicly speaking out in favour of defenders and the issuing of emergency visas or residence permits to defenders in trouble⁵⁶.

Although specifically concerned with the adequacy of protection for members of trade unions, the ruling of the ECtHR⁵⁷ is potentially important for all who are penalised because of their membership of an association and particularly those belonging to ones seeking to protect human rights. Various techniques had been used by an employer to encourage its employees to relinquish their union membership, including their re-assignment to special work teams with limited opportunities, dismissals subsequently found unlawful by the courts, decrease of earnings, disciplinary sanctions, refusal to reinstate following the court's judgment etc. This resulted in a dramatic shrinking of the union's membership and the clear negative effects that membership of the union had on the applicant members were sufficient to constitute a prima facie case of discrimination in enjoyment of the rights guaranteed by Article 11 of the European Convention. This case was substantiated because the national courts had insisted that criminal rather than civil proceedings be used and the deficiency of the former was that proof of direct intent 'beyond reasonable doubt' had to be established. In the circumstances there was no adequate and practicable redress against the alleged anti-union discrimination. The state had thus failed to fulfil its positive obligations to adopt effective and clear judicial protection against discrimination on the ground of trade union membership.

Concern about terrorist financing has, as already seen, led to the adoption of measures allowing for the funds and assets of associations and other entities to be frozen. It has also led to increased surveillance of associations seeking to send funds abroad⁵⁸. The EU now seems to be moving towards measures aimed at securing increased transparency on the part of associations, notwithstanding that the evidence of abuse is very rare⁵⁹ and research for the EU has shown the effectiveness of self-regulatory action⁶⁰. It is unlikely that the EU proposals will lead to

binding legal measures⁶¹ but vigilance regarding the evolution of the proposals is certainly needed⁶².

Of more pressing concern for associations is not the use but the receipt of funding. This is declining as a result of cutbacks in both public and private funding⁶³ and this may lead to a fall in the numbers of associations in the longer term. Also of concern in this regard is the withdrawal of public funding from associations on account of activities seen as objectionable by governmental bodies, which prefer funding associations that support their politics.

56 Human rights defenders in the OSCE region: challenges and good practices, (2008).

57 Danilenkov and Others v. Russia, no. 67336/01, 30 July 2009.

58 E.g. in France, donations or legacies made to a foreign entity or State by associations, foundations or congregations require an order of authorisation from the Minister of the Interior upon recommendation from the Foreign Minister, Article 3 of order 66-388 Of 13 June 1996.

59 See Statewatch briefing on EU proposals to increase the financial transparency of charities and non-profit organisations (January 2010).

60 ECNL, Recent Public and Self-Regulatory Initiatives Enhancing NPO Transparency and Accountability of Non-profit Organisations (NPOs) in the European Union (2009).

61 See Report on the implementation of the revised Strategy on Terrorist Financing of the EU Counter-terrorism coordinator (5 May 2009) and the EU Action Plan on combating terrorism (26 November 2009).

62 They draw upon the proposal by the Financial Action Task Force (FATF) - intergovernmental body independent of the OECD - that associations be licensed or registered; Special Recommendation VIII, adopted in 1990, revised in 1996 and 2003.

63 See, e.g., 'More than half of charities hit by recession', Daily Telegraph, 17 March 2009. See also the circular issued by the French Prime Minister on 18 January, 2010, imposing limits on support for associations purportedly to meet the requirements of EU restrictions on state aid for economic activities.

The European Union

CONCLUSIONS AND RECOMMENDATIONS

Although the general position regarding freedom of association within EU countries continues to be generally positive and there have been useful elaboration of standards, there is still no room for complacency as some significant difficulties do exist regarding key aspects of this freedom. Most of these difficulties concern just a few EU countries and are not new developments, but restrictive tendencies in more and more countries can easily become generalised so that there is an ever present risk of fresh encroachments being made upon this vital freedom. The availability of both the European Courts as a means of challenging both existing difficulties and these restrictive tendencies is, in particular, of fundamental importance for securing the exercise of the right to freedom of association. It would, however, be better if this right was more effectively implemented through legislation and guidelines for officials and then properly respected by national authorities and courts. Of particular concern is the continuing uncritical acceptance by many courts and public authorities of alleged threats to public security and territorial integrity as a justification for restriction both on the activities of associations and on their very existence.

The problems identified will only be remedied by:

- the adoption in all EU countries of both an appropriate legal framework for the formation and operation of associations and effective implementing and monitoring mechanisms;
- the reinforcement of the positive role played by associations in sustaining a democratic society and addressing social problems;
- the acceptance of the need for a truly evidence-based approach to all decision-making concerned with regulation of associations; and
- positive and effective steps to protect both associations and those belonging to them.



Financing



Photo by Afonso Lima

FINANCING THE ASSOCIATIONS IN THE EURO-MEDITERRANEAN REGION

INTRODUCTION

Apart from the legal, jurisprudential, and factual developments related to the registration, dissolution, and state interference in the management of NGOs/members of associations in the Eastern and Southern Mediterranean which have been discussed above, one important issue has not been covered so far; the financing of associations and the restrictions imposed by national authorities in this field.

Article 22 of the International Covenant on Civil and Political Rights (ICCPR) provides that limiting the freedom of association is only allowed if prescribed by law and in specific cases where, for example, public order and safety, national security or the rights and freedoms of others are in danger¹. Furthermore, the Declaration on Human Rights Defenders (art. 13) states that based on domestic law, the Charter of the United Nations and other international obligations, such as the ICCPR “everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means [...]”². Consequently, laws restricting the funding of associations are violations of the above-mentioned legal declarations.

In many countries of the Eastern and Southern Mediterranean, harsh legal constraints on the dimension of financing are accompanied by practical obstacles that *de facto* work to prevent associations from access to funding. Besides, as described in the country-chapters of this Review, provisions on the registration of an association and administrative regulations have a huge (albeit indirect) impact on financial matters: Only registered associations are eligible for funding after having submitted a request and opened bank accounts. Depending on the nature of the regime in power, practical obstacles in the day-to-day management of NGOs range from lengthy processes, burdensome bureaucratic procedures and intimidation to physical harassment and imprisonment.

The lion’s share of resources available to associations in the Eastern and Southern Mediterranean area consists of foreign funds. In the majority of these countries, however, foreign funding is tightly controlled. Therefore, bearing in mind the context of international laws, it is not only restrictions imposed by national governments on associations which are of interest, but also donors’ reactions to such obstacles that are imposed despite contradicting international laws.

All in all, financing of associations is a highly sensitive issue. It should be mentioned that not only questions of access to funding and its prevention are at stake but also issues of accountability and transparency of NGOs. Some studies have elucidated that organisations sometimes fail to submit correct records of either their activities or their finances. Although it is mainly due to the lack of knowledge of accounting, it may also sometimes be a consequence of corruption³.

In the end, the restrictive attitude of the authorities sadly finds an echo within the associative movement itself. By fear of not being able to obtain financing from abroad and the related difficulties it implies (press smear campaigns have already been launched against representatives of NGO who received funds from abroad), associations from certain countries now avoid requesting foreign funds, preferring the traditional channels of financing, for which, as is specified further in this chapter,

1 International Covenant on Civil and Political Rights (ICCPR), General Assembly Resolution 2200A (XXI), 16 Dec. 1966.

2 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, General Assembly Resolution 53/144, 8 March 1999.

3 TI U4 Anti-Corruption Resource Centre, Civil Society Anti-Corruption Initiatives in MENA Countries, December 2007; Cf. Friedrich Naumann Foundation, Guiding Principles for the Right to Freedom of Association in the Arab World, Lebanon 2009.

exposed them to arbitrary refusals. This debate within the NGO movement of certain countries further complicates the issue of financing NGOs.

I. The relevance of funding

Financing is of key importance and closely related to the aforementioned issues of freedom of association because organisations' access to funding is an integral part of their struggle for an effective exercise of the freedom of association. Many organisations from the southern Mediterranean countries with a comparatively low gross domestic product (GDP) per capita lack the possibility of obtaining a sustainable level of funds through membership fees, private donations or from the government.

However, in many countries of the Eastern and Southern Mediterranean, domestic funding of associations is insufficient, rejected by associations, or non-existent. In this context, associations seek to access foreign funding, that are strictly supervised by the authorities. Hence, restrictions on foreign funding not only result in their weakening or destruction but also diminishes the services provided by NGOs, e.g. in the field of humanitarian aid⁴;

II. Legal framework and implementation in practice

A distinction can be made between strict legislation of NGO laws on the one hand and harsh implementation on the other. In most cases a strict legal framework is accompanied by an even stricter, not to say an arbitrary, implementation in the Eastern and Southern Mediterranean. Binding NGO laws in nearly all cases contradict and violate international human rights conventions due to the relative absence of independence and self-rule they allow to associations.

It must be stressed that eligibility for funding depends on registration with the governments and thus requires associations to be recognised as legal entities within the frame of the respective country. The same holds true for possibilities of tax exemption. Only registered organisations may acquire tax holidays, and they do so under certain circumstances only. There is no scope for action whatsoever for organisations that lack this legal status.

It is a widespread pattern in the Eastern and Southern Mediterranean to register NGOs as non-profit companies, law firms or foundations instead of as NGOs in order to circumvent the strict laws that cripple non-governmental associational life in many parts of the region, inter alia as regards to funding. The Ministry of Economy is in most cases the supervisory institution for those entities which register as private companies (instead of the Ministry of Interior or Social Affairs).

Legal provisions on access to foreign funding vary across the countries concerned. They range from unlimited access to complete prohibition of non-domestic sources. Apart from Lebanon and Morocco (and to a certain degree Palestine, and Turkey), the right to obtain foreign funding is strictly controlled and violations are punished by either fees or imprisonment.

Authorisation prior to receiving funds and the submission of annual audited financial statements and activity reports are mandatory in most countries. Furthermore, throughout most of the region, bank accounts of associations are not confidential in cases of inquiry by the respective ministries (or other supervisory authorities) that are in charge.

Apart from the problematic aspects inherent in the legal provisions themselves, there are many obstacles in the implementation process itself that render financial straits for organisations even worse. Often, authorities exert indirect influence on the budget of associations by demanding time-consuming administrative efforts that are not provided for by any regulations and which often result in organisations' failure to meet deadlines for grant applications.

Four major types of legal provisions and its implementation in practice can be distinguished in the countries of the Euro-Mediterranean region for analytical purposes:

1. Government approval required to receive funding while authorities function as trustee;
2. Government approval required to receive foreign funding;
3. Notification of the receipt of foreign funding with unlimited access to foreign aid;
4. No notification of the receipt of foreign funding is needed.

In practice, these types are intertwined and a country may fall into more than one category.

⁴ Cf. Vernon, Rebecca: Restrictions on Foreign Funding of NGOs. Closing the Door on Aid. In: International Journal of Non-Profit-Law, Vol. 11, No. 4 (2009), pp. 5-29, in particular pp. 12-14.

1. Government approval required to receive funding while authorities function as trustee

Libya is the only country in the Eastern and Southern Mediterranean area, where financial support through domestic or foreign sources is hardly allowed at all. This near prohibition constitutes a heavy threat to freedom of association.

Authorisation is obligatory before foreign funds can be received by Libyan associations. Nevertheless, Law 19/2001 stipulates that fundraising activities are only allowed at the time of the formation of an association (art. 15). The budget of an organisation usually consists of membership fees, donations or income from activities (art. 13). All financial concerns of associations are managed by the government; i.e. funds are distributed exclusively through government channels and no independent management is allowed whatsoever. In practice, this means that Libyan associations remain dependent on the regime. Consequently then, registered organisations may be considered 'Government-Organised Non-Governmental-Organisations' (GONGOs)⁵. The Gaddafi International Charity and Development Foundation (GICDF) is one such GONGO that works in charity, development and human rights. However, no information about its financial management is available.

Instead, government agencies or state-owned banks are in charge of distributing the funds. Through such governmental instruments of control, donors have no guarantee that their funds are actually used for the desired purpose, and associations have no possibility at all to access foreign (and national) funds independently of the political regime in power. Part of the money might be (and often is) held back as "administrative fees", "taxes" or the like, or the transfer could take a prolonged time to take place. The entire financing process thus remains opaque and can result in a severe curtailment of foreign funding. Authorities exert absolute power over the financial management of associations both by law and in actual practice by (a) carrying out the transfers themselves as well as (b) by controlling the channels they run through. This poses a severe violation of international human rights standards.

If the Egyptian-published bill on NGOs also provides for more regime control over the associations' access to their respective budgets, the country would fall under this category as well⁶.

⁵ Interview with the Libyan League of Human Rights, 17 June, 2010.

⁶ It should be pointed out that there is no evidence so far that the bill published is the official one.

2. Government approval required to receive funding

This category comprises most countries of the region. Government approval is required before (legally registered) associations may receive donations from foreign and sometimes even domestic sources. According to international standards and understanding of civil society, associations should be guaranteed independence from the state with regard to their activities and funds on the condition that the latter work in accordance with the law. The prevailing legislation thus does not comply with international law⁷.

Yet, it is not only burdensome legal frameworks themselves that cause difficulties for associations. Often, administrative proceedings pose further obstacles to NGOs - and at times they even violate the already restrictive legal environments. The application process is often lengthy, burdensome and discretionary, and it is far from certain that it may result in an approval.

For instance, in Syria, prior authorisation of any fundraising activity in- and outside the country is required. The spending of funds is also subject to prior approval. In addition, annual financial statements and activity reports must be submitted to the Ministry of Social Affairs and Labour (Law 93/1958, art. 21-23). The receipt of a permission to attain foreign funding is seldom if ever issued. According to a Syrian human rights activist, the situation might be different for GONGOs⁸, which might be allowed to receive foreign funds if the purpose of their activities is in accordance with the government's interests⁹.

Human rights organisations in Syria are particularly badly affected by state control and the lack of resources as they are generally denied registration and thus have no legal status that allows them to open bank accounts, rent offices or apply for funding. However, some non-licensed organisations are *de facto* tolerated and some even manage to gain access to funds, notably through voluntary work¹⁰.

Yet, funds available for registered associations are also often insufficient. Their main revenues are private donations and humanitarian services instead of governmental support. Holding workshops or supplying materials at cost levels in exchange for financial support are just two examples of how associations adapt to the situation and try to cover

⁷ Cf. Survey of Arab NGO Laws, Global Trends in NGO Law, Vol. 1, Issue 4, March 2010.

⁸ See the thematic chapter on the increasing presence of GONGOs in EMHRN Report on Freedom of Association, 2009.

⁹ Telephone interview with human rights activist, 15 May, 2010.

¹⁰ Cf. Atab Hasn, Volunteer Work- Does financial support conflict with principles? 9 June, 2010 <http://nesasy.org/content/view/full/8872/381/> last access 16 June, 2010.

basic current expenditures¹¹.

In the Tunisian case, authorities demand detailed information on the source, amount, purpose and time of funding before they decide on funding requests. Only legally registered associations may apply for public and foreign funding, which means that most of the independent human rights associations are excluded due to their unrecognised and/or independent status. Important NGOs such as the National Council for Liberties in Tunisia (CNLT), International Association for the Support of Political Prisoners (AISPP), Liberty and Equity and the Tunisian Association Against Torture (ALTT), to name but a few, suffer from this restrictive governmental conduct. Furthermore, financial statements and the utilisation of funds are subject to an annual verification process.

Since the passage of the anti-terrorism law in 2003, it has become even more difficult to meet the requirements for foreign funding. Donations from unknown sources are entirely prohibited and foreign funding is only allowed through recognised intermediaries residing in Tunisia (art. 69, 72 of the Anti-Terrorism Law)¹². Moreover, the Tunisian Central Bank functions as gatekeeper for bank transfers from abroad. Only after the relevant authority has issued permission and forwarded a copy of it to the Central Bank are transfers licit¹³.

The Tunisian Association of Democratic Women (ATFD), for example, has faced enormous problems in recent years. It has been unable to obtain approval for foreign funding for i.e. projects in cooperation with the European Commission and with two private foreign foundations. Funds from the European Commission were arbitrarily frozen by the Central Bank for more than a year and afterwards released in part only. Regarding the projects led in cooperation with foreign foundations, the allocated sum was, in one case, withdrawn from an association's account, and, in another case, the sum was "put on standby". In both cases, neither the association nor its partners were informed about this decision. Several attempts were made by the association to overpass these obstacles, but alas, in vain.¹⁴ Similarly, since 2003, the LTDH has undertaken a restructuring project funded as part of the European Initiative for Democracy and Human Rights (EIDHR). In addition to structural reorganisation, the project included the opening of regional section offices to enhance

efficiency and facilitate proximity with the public and the dissemination of a human rights culture. One year after the beginning of the project, 11 offices were opened and equipped. However, since 2003, regulatory and judicial measures have been used to ban all fund-transfers to the LTDH and judicial harassment has continuously stalled the League's normal activities. Despite these difficulties, 10 sections were able to continue renting offices thanks to self-financing. LTDH however urgently needs financial support to continue its activities.¹⁵

In Jordan, associations obtain more room for manoeuvre than those in Syria or Tunisia. The Jordanian government introduced amendments to its Societies Law in 2009 (Amending Law No. 22/2009) but foreign funding remains restricted as was the case before. Amendments aiming at facilitating the application process for foreign donations were introduced, but the cabinet rejected it and still demands its approval to every single application. The authorities are also able to monitor NGO budgets, activities, and foreign funding.¹⁶

In practice, associations are forced to hand in more proof and certificates than legally stipulated by the law. Numerous records and documents on activities and funding (e.g. place, time, source, amount, mode of transfer and utilisation) are required additionally and are in many cases difficult to submit in ways that would satisfy local authorities.

On top of that, time-frames until an approval is obtained sometimes exceed the legal respites of 30 days by far (art.17, revised Law on Societies 2009). As our research indicates, it often takes up to four months until authorities announce an approval. Consequently, existing deadlines of possible donors expire and the submission of funding proposals becomes difficult or impossible.

A related and frequent complaint made by organisations is that when applying for registration or a permit to access funds, receipts that would later prove that an association actually *has* submitted such an application are not issued by the authorities. According to Jordanian law, an application is considered legally approved if the authorities fail to announce a decision to the contrary within 30 days. However, since authorities sometimes do not issue receipts of submissions, associations are unable to prove that the time-frame foreseen by the law has elapsed. This means that they either lack a legal possibility to apply for and access funds – or else (in case they still do

11 Cf. Atab Hasn, Volunteer Work- Does financial support conflict with principles? 9 June, 2010.

12 The fight against terrorism and money laundering as pretence for the imposition of restrictions is prevalent in several countries of the region and also by donors.

13 Kristina Kausch, Tunisia: The Life of Others. Project on Freedom of Association in the Middle East and North Africa, Working Paper 85, June 2009, p. 6.

14 Telephone interview with a foreign foundation, 1 June, 2010; telephone interview with EMHRF, 1 June, 2010.

15 Unfortunately, the ATFD and the LTDH are not the only civil society organisations to be subjected to this kind of situation. The same holds true with the Syndicat National des Journalistes Tunisiens, founded on 2008.

16 Cf. Al-Arab al-Yawm, 13 June, 2009, http://www.alarabalyawm.net/pages.php?news_id=171528; Jordan Times, 14 July, 2010, <http://www.jordantimes.com/?news=18392>; Freedom House, Freedom in the World 2010, Jordan.

apply for funds and gain access) they lack the necessary evidence that they actually accessed their funds *legally*¹⁷. However, it has been reported that since the beginning of 2010, funds allocated by the EU and USAID to Jordanian NGOs have gone through smoothly.

Egyptian and Algerian associations also suffer from discrepancies between the laws and their practical implementation.

For example, the Egyptian Organisation for Human Rights (EOHR) has faced the threat of being dissolved in April 2009 after having submitted an application to obtain funding for a conference from the Centre of Media Freedom in the Middle East and North Africa in July 2008 which remained unanswered by the Ministry of Social Solidarity. Technically, EOHR acted according to the law as the time-frame of 60 days passed by without a response by the Ministry and thus the application should have been considered approved according to the law (art.16, 17). Yet, in practice authorities deny the EOHR the possibility to receive funds until officially approved. In contrast, the authorities accused the organisation of having received foreign funds without authorisation¹⁸. Meanwhile, organisations have to borrow money at times from other projects in order to be able to become operational¹⁹.

The same holds true for two other projects the EOHR wanted to conduct, one in cooperation with the EU and one with support from the Dutch Embassy. The request has been submitted in February 2010, but up to the time of writing (late June 2010), EOHR had not received any response²⁰.

In 2007, the Ministry of Social Solidarity and Cairo Governorate dissolved the Association for Human rights and Legal (AHRLA) allegedly for breaching the Law on Associations No. 84 of 2002 on the pretext of receiving foreign funds or donations without prior permission from the authorities. On 26 October 2008, a Cairo Administrative Court rescinded the government's decision to dissolve the association.

The Egyptian government is considering amendments to the NGO law (84/2002) that would create a strict monitoring system for foreign funding under the surveillance of the General Federation of Civic Associations (GFCA), and by doing so would enhance regime control over non-governmental associations even more. This might potentially include a ban on direct funding to Egyptian NGOs as the semi-state GFCA might function as

supervising entity and trustee²¹.

In Israel, prior authorisation is necessary for receiving domestic funds, but not for foreign support. Associations need a 'certificate of good governance' from the responsible Registrar prior to receiving domestic funding and being granted tax exemptions. Interestingly, these requirements are neither listed in the Law on Associations of 1980 nor in any other related law. They therefore represent an extra-legal and arbitrary practice of the respective processes²². In August 2010, the Knesset's Law and Justice Committee approved a first reading of a bill requiring Israeli NGOs, on a quarterly basis, to report funds received directly or indirectly from foreign governments, and to declare details of the fund on their public statements and website²³. The bill grew as a reaction to the Goldstone Report and the controversial report by the Breaking the Silence group, and was proposed by seven Parliament Members following a conference with the conservative groups, NGO Monitor and the Institute for Zionist Strategies. The current bill removed more restrictive language requiring any organisation seeking to influence public opinion in Israel to register with the Political Party Registrar, thereby losing its tax-exempt status²⁴, but it still imposes invasive and stringent financial reporting requirements. Furthermore, the bill, which may be passed by the end of the year, is discriminatory and targets human rights organisations that depend primarily on foreign government funds²⁵. Their ability to receive donations even from institutions such as the EU will also be threatened²⁶; but according to the information received, mechanisms like EIDHR however would allow the EU to indirectly continue their funding²⁷.

21 Cf. NGO Law Monitor: Egypt, June 2010, www.icnl.org/knowledge/ngolawmonitor/MonitorEgypt.pdf; Correspondence with EOHR, 8 June 2010; EMHRN, EU-Egypt Association Council: The EU should call on the Egyptian Government to Respect Freedom of Association, June 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4271.html

22 Cf. EMHRN, Monitoring Report 2009, p.32.

23 The Jerusalem Post, Knesset Law Committee okays controversial NGO funding bill, by Dan Izenberg, August 17, 2010, <http://www.jpost.com/Israel/Article.aspx?id=184998>

24 JNews, Modified bill to monitor funding of Israeli NGOs discussed, July 16, 2010, <http://www.jnews.org.uk/news/modified-bill-to-monitor-funding-of-israeli-ngos-discussed>.

See also EMHRN, Open Letter: Restricting the space of Human Rights Defenders and Organisations working in Israel and the Occupied Palestinian Territories, March 12, 2010, http://en.euromedrights.org/index.php/news/emhrn_releases/67/4182.html. See also Foreign Policy, Civil Society and human rights in Israel (and elsewhere), by James Ron, March 10, 2010, http://walt.foreignpolicy.com/posts/2010/03/09/civil_society_and_human_rights_in_israel_and_elsewhere

25 See: Adalah, Stop the ban on foreign funding to NGOs in Israel: Joint statement of 11 human rights organizations, December 2009, <http://www.adalah.org/newsletter/eng/dec09/dec09.html?navi=%2Fnewsletter%2Feng%2Fdec09%2Fdec09.html>

26 It is common for many foreign governments that the use of their donations to NGOs to pay taxes is not allowed.

27 Conversation with EuroAid (EC), July 2010; Rabbis for Human Rights, Position Paper Government-backed legislation curtailing foreign funding seeks to undermine civil society in Israel, <http://www.rhr.org.il/page.php?name=article&id=37&language=en>

17 Telephone interview with human rights activist, 16 June, 2010.

18 EOHR under threat of dissolution, IFEX/EOHR, May 2009; http://www.ifex.org/egypt/2009/05/01/eohr_under_threat_of_dissolution/

19 Telephone interview with CIHR, 21 June 2010.

20 Correspondence with EOHR, 10 June, 2010.

3. Notification of the receipt of foreign funds with unlimited access to foreign aid

Only in four countries in the Eastern and Southern Mediterranean (Lebanon, Morocco, Palestine, and Turkey) is no prior authorisation necessary in order to receive foreign funding. Instead, associations have to submit a notification form on their financial status. Source, amount, purpose and use of funds must be listed and made transparent to the authorities. But even if there is no restriction on the receipt of foreign funding, hindrances can and do occur, and improvements are desirable.

In Turkey, non-governmental associations have to complete standard forms and submit them to the government at least one month before they receive or utilise foreign funding, while foundations are obliged to submit their notification within one month after having used foreign funding (Law No. 5253, art.22). Some actors (e.g. the Nationalist Movement Party (MHP), local authorities or media companies) try to intimidate organisations that work in specific fields such as minority rights (e.g. of ethnic, religious or homosexual groups) and thereby prevent them from applying for funds, raise suspicion about such external funds, and about projects in such issue areas more generally²⁸.

Palestinian Law (1/2000) encourages the work of associations and no noticeable restrictions on funding exist. NGOs are only requested to inform the Palestinian Ministry of Interior about foreign funding and on the bank where the money is deposited (art.31). Even more, tax and customs exemption are granted to organisations using their funds in accordance with the law and their statutes²⁹. In practice, however, several hindrances have been reported. First, the Ministry of the Interior and the Monetary Authority issued memoranda between 2001-2004 which instruct the banks to open accounts only with a permission of the relevant ministry, and to freeze those of certain groups. These instructions represent severe breaches of the law as only the court may abrogate the confidentiality of bank accounts³⁰. Due to the worsening security situation in the West bank and Gaza strip since 2007 in particular, freezes on bank accounts and the denial of banks to open accounts without the written consent of the relevant ministry became more frequent, particularly in the Gaza strip and for groups suspected of supporting

terrorism³¹.

It is important in this context to mention that the Israeli draft bill on foreign funding discussed earlier would also apply to Palestine to a certain degree. Even though the Palestinian Law on Associations does not restrict foreign funding, organisations registered in Israel but working in the Palestinian Occupied Territories might be denied access to funds as they will be subject to the said Israeli law.

In Morocco cases where associations face difficulties to receive or utilise foreign funds are rare. Most problems regarding receiving funding occur for NGOs that are denied registration and thus have no legal basis to open bank accounts or apply for funding³².

Finally, Lebanon is the country in the East and South Mediterranean with the least restrictions on domestic and foreign funding, as there are none. Additionally, associations are not required to pay income taxes and notification procedures are simple. The submission of an annual financial statement reportedly is a mere formality³³. While this seems good news, there is also a problematic dimension to this low level of regulatory requirements and the inability of the authorities to oversee them as a lack of transparency and accountability may in some cases even represent, as in other countries, an incentive for corrupt behaviour, consolidating the debate about how to monitor the budget³⁴.

4. No notification of the receipt of foreign funding is needed

None of the aforementioned countries in the East and South Mediterranean pertain to this category. In contrast, some member-states of the European Union belong to this category.

According to law, no notification of the receipt of foreign funding is obligatory in most countries of the European Union. Regulations of the operation are almost entirely administrative in nature, i.e. rarely lead to active interference in the management of associations. However, there is no

28 Correspondence with IHD, 8 June, 2010; CIVICUS Civil Society Index Country Report for Turkey.

29 Cf. EMHRN, Freedom of Association Monitoring Report 2007, 80ff; Kareem Elbayer, NGO Laws in Selected Arab States, in: International Journal of Non-Profit Law, Vol. 7, No. 4, 2005, p. 22.

30 Cf. ICHR, Report on Freedom of Association in the Palestinian controlled Territory 2008, pp.26-32.

31 Correspondence with the ICHR, 20 June, 2010; Interview with the PCHR, 5 June, 2010; TI U4 Anti-Corruption Resource Centre, Civil Society Anti-Corruption Initiatives in MENA Countries, December 2007; for further details also see EMHRN, Freedom of Association Monitoring Report 2009.

32 Correspondence with AMDH, 2 June 2010.

33 Correspondence with TI, 17 June 2010; Telephone interview with a political consultant, 21 June 2010.

34 Cf. UNDP et al., Assessment of Capacity Building Needs of NGOs in Lebanon, 2009, <http://www.undp.org.lb/communication/publications/downloads/Capacity%20Building%20Needs%20Assessmentfor%20NGOs.pdf>, p.23.

common legal framework as to how the financial reporting should look like in the EU. Reporting and accounting vary from one country to the other. Generally, the question in European countries is less of the permission to attain funds but more about accountability and transparency. In nearly all EU-countries new regulations improving accountability and transparency of associations have been drafted/are in the progress of being drafted³⁵.

In England and Wales for example, charities with an income above £5,000 (ca. 6,000 EUR) are obliged to register with the Charity Commission. The submission of annual reports is obligatory for those charities with an income in excess of £10,000 (ca. 12,000 EUR)³⁶.

However, in light of the ‘war on terror’ measures to freeze funds and financial assets of individuals and associations suspected of terrorism have been adopted but their implementation seems to be very arbitrary³⁷.

In European countries, a more pressing concern for associations is the receipt of funding. This is declining as a result of cutbacks in both public and private funding³⁸ and this may lead to a fall in the numbers of associations in the longer term. Also of concern in this regard is the withdrawal of public funding from associations on account of activities seen as objectionable by governmental bodies, which prefer funding associations that support their politics.

III. International donors

International donors have proven to be cautious not to destabilise incumbent political Arab regimes and therefore often remain calm and cautious (little pressure on governments in diplomatic relations and political dialogue; reluctance to implement effective political conditionalities;

etc.)³⁹. They tend to engage in other subject areas and – as state actors who are forced to interact with their partner governments – usually cannot cooperate with associations that are not registered or outlawed by local governments.

According to some sources, some donors have even given up financial support to rights groups, e.g. in Tunisia, because of the substantial control and punishment of associations and thus surrendered to autocratic regimes’ efforts at outlawing and oppressing their civil societies⁴⁰. Similarly, donors in most cases do not have objections to deal with government-organised non-governmental organisations (GONGOs). On the contrary, dealing with GONGOs poses less administrative hindrances and is less labour-intensive because these organisations often do not need an approval for foreign funding, conference attendance and the like.

There are fewer mechanisms to deal with a generally difficult political environment for donors like the EU or USA who are less flexible than actors who are at least formally non-governmental such as foreign bi- or multi-lateral (political) foundations and other networks, be they based within the region or outside. However; in 2007 the European Commission introduced in the context of the European Instrument for Democracy and Human Rights (EIDHR) new financial regulations that allow for more flexibility and scope of action when problems occur in receiving funds, i.e. relying on international organisations that can work with informal partners or re-/sub-grant certain amounts set aside for this in the budgets of their submitted projects, becomes possible⁴¹. It is also vital that donors wonder whether the association is independent enough from their governments to raise problematic or critical issues.

35 Cf. European Centre for Not-For-Profit-Law, Study on Recent Public and Self-Regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organisations in the European Union, April 2009.

36 Cf. European Centre for Not-For-Profit-Law, Study on Recent Public and Self-Regulatory Initiatives Improving Transparency and Accountability of Non-Profit Organisations in the European Union, April 2009.

37 Cf. EMHRN, Freedom of Association Monitoring Report 2007; Claudio Travaglini, Financial Reporting in European NPOs: Is Now the Time for a Common Framework?, in: International Journal of Non-Profit Law, Vol. 11, No. 1, 2008.

38 See, e.g., ‘More than half of charities hit by recession’, *Daily Telegraph*, 17 March 2009. See also the circular issued by the French Prime Minister on 18 January, 2010, imposing limits on support for associations purportedly to meet the requirements of EU restrictions on state aid for economic activities.

39 Cf., e.g., Imco Brouwer 2000: US Civil-Society Assistance to the Arab World, The Cases of Egypt and Palestine, EUI RSC 2000/5; Oliver Schlumberger, ‘Dancing With Wolves’: Dilemmas of Democracy Promotion in Authoritarian Contexts, in: Jung, D. (ed.): Democracy and Development. New Political Strategies for the Middle East and North Africa, New York: Palgrave, 2006, 33-60; Richard Youngs/Michael Emerson (Eds.), Democracy’s plight in the European Neighbourhood, CEPS, 2009.

40 Kristina Kausch, Tunisia: The Life of Others. Project on Freedom of Association in the Middle East and North Africa, Working Paper 85, June 2009, p. 6.

41 Conversation with a programme manager, EuropeAid Co-operation Office (AIDCO), July 2010; cf. Calls for Proposals Guidelines on Objective 1 (CFP number 126352) and Human Rights Defenders (number 129204).

Financing

RECOMMENDATIONS

The EMHRN calls upon governments in the Eastern and Southern Mediterranean region to:

- As obtaining legal personality is a precondition for receiving funds, ensure that associations are able to be registered without any obstacles;
- Ensure that legislation allows associations to receive funding without prior authorisation and without arbitrary and excessive control on the use of such funds;
- Make sure that administrative procedures run according to the (where relevant, amended) law and run smoothly: Issue application receipts, avoid unnecessary burdensome requirements and the passing of time limits;

The EMHRN calls upon governments from both the North and South Mediterranean region to:

- Define specific legal conditions to access public funds ;
- Ensure the independence of associations receiving public funds;

The EMHRN calls upon government agencies to:

- Ensure that the issue of funding of NGOs is raised at a matter of priority in bi-lateral cooperation meetings with the relevant government;
- Maintain suitable contacts with human rights defenders, including activists from unregistered associations, by receiving them in embassies and EU Mission and visiting their areas of work;

The EMHRN calls upon target associations to:

- Keep transparent records and documents of resources and submit records to a certified auditor.



Foreigners



*Nigerian workers discuss their wages, before commencing work on a building site, Algeria, 2008
by Swiatoslaw Wojtkowiak*

THE FOREIGNERS' RIGHT TO ASSOCIATION IN THE EURO-MEDITERRANEAN REGION

INTRODUCTION

As described in the country-chapters of this Review, the full realisation of freedom of association in the selected 11 countries is still a long way off for nationals of these countries and it is almost completely denied to foreigners, including migrant workers, refugees and asylum seekers.

Most countries' constitutions of the Euro-Mediterranean region provide for the right of association. However, NGO laws and other security laws restrict this right for nationals, and also particularly for foreigners. In most countries of the 11 South and East Mediterranean, NGO Laws stipulate specific provisions for non-nationals who wish to engage in associations. In other countries, the right of association of non-nationals is included in the concept of "foreign association", which then embraces not only all entities featuring associations who have their headquarters outside the country, but also those that are run by or are composed of foreigners and are active in the country. As it will be developed further, rules that apply to foreign associations are generally more restrictive than the ones that apply to "national" associations.

Additionally, this chapter will also analyse this other category of migrant workers' right to association, in law and in practice. As explained below, Labour Laws make it extremely difficult for migrant workers to create associations and unions or join already existing ones, despite the provisions of the International Labour Organisation Convention No. 97 that enshrines the right to association for migrant workers. This paper ends with a note about the right to freedom of association of refugees, mentioned in the 1951 Convention relating to the status of refugees, but unequally implemented in practice.

At this stage, it may be noted that EU countries do not generally restrict the ability of non-citizens to form and join associations, but this possibility continues to be restricted in Spain to only those who have been granted a resident's permit or leave to remain.¹ In addition, five EU countries have accepted Article 3 of the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level which guarantees, inter alia, freedom of association to foreign residents².

As this chapter examines a subject which has not before been handled in the annual reviews, it does not intend to tackle all the issues related to the right to association of foreigners in the Euro-Mediterranean region, but it mainly aims to shed light on this broad and complex issue.

1 Article 8 of the 'organic law on the rights and freedoms of foreigners in Spain and their social integration' of 22 December 2000. This position was criticised in the Report of the Commissioner for Human Rights of the Council of Europe, March 2005, CommDH(2005)8, 9 November 2005, at par. 76.

2 Denmark, Finland, Italy, the Netherlands and Sweden.

1. The right to association of non-nationals according to NGO laws

A. Countries where regulations related to association apply to everyone, including foreigners

In **Turkey** and in **Israel**, the regulations related to association are applicable to all, including to foreigners. In Israel, the 1980 Law of Associations provides for the right for freedom of association to every person (Article 15)³. In Turkey the Associations Law No. 5253 of 2004 also states “The real persons or legal entities possessing the capacity to act are entitled to establish associations without need to obtain permission beforehand” (Article 3), confirming that foreigners can establish associations under the same conditions as Turkish nationals can. Nonetheless, the fact that associations have to use Turkish language in their books and records (Article 31) may discourage non-Turks from forming associations.

The situation is, legally speaking, similar in **Libya** and in **Syria**, where the legislations (Article 3 of Libyan Law 19 of 2001 and Article 3⁴ of the Syrian Law 93 of 1958), acknowledge the right of non-nationals to form associations. However, the very strict legal frameworks governing national associations in those two countries makes it near impossible for foreigners to engage in independent associations⁵; for instance, in **Libya**, the legal framework prohibits the formation of any group that would promote ideas that undermine the Revolution, and anyone who would create, join or support an association prohibited by law are punishable by death.

B. Countries where the right of association of foreigners is strictly regulated by specific provisions

In **Egypt**, Article 2 of the Law 84/2002 on NGOs stipulates that “non-Egyptians shall have the right to become members of associations in accordance with the rules stipulated in the executive regulations of the law”. However, regarding board members of an association, Paragraph 2 of Article 32 further stipulates that “the percentage of board members of associations holding Egyptian nationality shall be similar at least to their ratio to the total number of members participating in the

association”⁶. The Law 84/2002 is said to be replaced by a new law, but according to the information available⁷, the new law will not affect this legislation.

In **Jordan**, the Societies Law No. 51 of 2008 and its amendments of July 2009, has also limited the right to association of foreigners. According to Article 7 of the law, founding members of associations must be Jordanian citizens. However, Article 11 also states that “the Board [of the association] should obtain the approval of the Cabinet for the registration application [...] if there is a non-Jordanian person among the founding members”. Registration of any kind of the above associations can take up to 75 days due to the complicated registration process. The Council of the Society Register has the right to reject any application without stating a justification⁸. According to the new law, all associations in existence on the effective date of the law must re-register within a timeframe not exceeding one year from the effective date of the law. In 2009, associations were granted another year to re-register according to the new law and its amendments. The Societies Registrar has met on several occasions and decided on 150 registration applications, 98 of which were approved⁹. According to different sources new restrictions were imposed on foreigners; they have to declare their budgets, and if they are below a certain amount, their associations will not be registered.

C. Countries where freedom of association of foreigners relies on rules applying to “Foreign NGOs”

Usually, a “foreign NGO” refers to an NGO with its headquarter located outside the country. However, in some countries under review, the legislation applicable to “foreign NGOs” also applies to foreigners. This is the case in Palestine, where Article 2 of the Law on Charitable Associations and Civil Society Organisations from 2000 defines a foreign association or organisation as “any foreign charitable association or civil society organisation which has its main headquarters or centre of activities of which is located outside the Palestinian territories, or the majority of whose employees are not of Palestinian nationality”. This is also the case in

6 For the full text of the law, see: <http://www.arab-laws-reform.net/index.php/legal-library/egypt/75-2002-ngo-law> (in Arabic).

7 In March 2010, the newspaper Al-Dostor published a leaked version of the law. Copy in Arabic of draft law as carried by Al-Dostor, March 7, 2010, <http://dostor.org/politics/egypt/10/march/7/8677>.

8 <http://www.icnl.org/knowledge/ngolawmonitor/jordan.htm>, Jordan, last updated 5 July 2010.

9 The author was not able to get any information on the nature of associations that were not approved and the reasons for not approving them.

3 For a full copy of the law in English, see: <http://www.icnl.org/knowledge/library/downloadfile.php?ref=http://www.icnl.org/knowledge/library/index.php?from=home&file=Israel/amutot.pdf>

4 Paragraph A of Article 3 stipulates that the statutes of the association should contain the names of founding members, titles, age, nationality, profession and country of origin.

5 See country-chapters for more details.

Morocco, which legislation defines foreign associations as “commissions that have the advantages of an association, and has headquarters abroad, that are run by foreigners, or half of the members are foreigners, or actually run by foreigners while its headquarters are in Morocco” (Article 21); in Tunisia, where a foreign association is defined as “an association which has its headquarters located abroad, or an association where its headquarter is located within Tunisia, but that is directed by a management committee of which at least half of them are foreigners” (Article 16 of the Tunisian Law No. 59-154 of 7 November 1959¹⁰); in Lebanon, where Article 4 of the Decree No. 369 dated of 21 December 1939, still in force today, states a foreign association is a group composed of “individuals with the capacities and characteristics of associations and which are based abroad, function in Lebanon or Syria but are affiliated to foreign associations, are run by foreigners, or have foreigners consisting of at least one quarter of their membership”; and in Algeria where the law stipulates that “any association, regardless of its structure or purpose, that has its head office abroad or that, having its head office in the national territory, is managed in full or in part by foreigners, is considered to be a foreign association”. Although the law 90-31 is really ambiguous as Article 4 states “founding members of any association should be holders of the Algerian nationality”.

In **Morocco**, the law is liberal as Article 23 stipulates that “Any foreign association may consist or proceed with its activities in Morocco only after presenting a prior application within the provisions stated in article five” which makes provision for a notification of the existence of the association only. However in 2005, the “Conseil des Migrants Subsahariens au Maroc” (CMSM) tried to register but without any success. Since then, the association has been struggling, with no possibility to rent an office to gather, open a website or a bank account¹¹.

In **Palestine**, foreign associations have to obtain the approval of the authorities before being able to operate. Article 34 of the Palestinian law stipulates that “Any foreign association or organisation may submit an application to the Ministry to open one or more branches of the association or organisation in the Palestinian Territories to carry out any social services provided these services are compatible with the interests and aspirations of the Palestinian people. Such applications shall specify the name of the foreign association or organisation, its main headquarters; address, names of founders and members of its board of directors, its main purposes, and the names of the persons in charge of the proposed branch and their nationalities, and the manner in which the funds of the branch will be disposed of upon dissolution of the branch

or liquidation of its operations or its withdrawal provided the process may not exceed two months from the time the application had been accepted. The Ministry shall consult with the Ministry of Planning and International Cooperation regarding the application for registering the foreign Association or Organisation.”¹²

The **Algerian** and **Lebanese** legislations are stricter. Article 40 of the Algerian law stipulates that “foreign associations require the prior approval of the Ministry of Interior in order to be registered”. Furthermore, Article 42 stipulates that “the Ministry shall have the right to suspend the work of the foreign association if it engages in activities other than those listed in its statutes or contrary to the country’s constitution, national unity, religious beliefs and public order”. Similarly, any foreign association can be suspended if it fails to submit any information needed regarding its activities and finances to relevant authorities. Similarly, in Lebanon, the Decree No. 369 dated of 21 December 1939 indicates that “No foreign association may be established or may function in Lebanon and Syria without a prior permit issued by the Deputy High Commissioner” (Article 1), given that “the permit may be withdrawn through an order issued by either the high commissioner or his deputy at any time” (Article 2). The Lebanese law stipulates imprisonment sentences up to three years for those involved in any unlicensed foreign association.

The situation is stricter in Tunisia, as the law states that foreign leaders of associations must be titular of an ID card with a “normal term”, without defining this vague concept. It further stipulates that they may be created or may operate in Tunisia only after having obtained a special authorisation delivered by the Minister, under recommendation of the Minister of Foreign Affairs (Article 17), while Article 19 emphasises that “a license can be granted on a temporary basis or on a periodically renewable basis and the license can be annulled any time.” Finally Article 22 criminalises “any person who manages a foreign association that has no license” and punishes the lawbreaker “to 1-5 years imprisonment and a fine of 10 – 100 dinar”.

The situation is all the more complex that most countries of the region prohibit unregistered associations, thus preventing foreigners (and national) to engage in de facto associations. For example in Algeria, foreigners – as is the case with nationals – cannot operate in an association before it is formally registered. Article 45 of the law specifies sanctions for those who manage or participate in the activities of an unregistered or suspended NGO ranging from fines to two years imprisonment. Similarly, in Jordan if the Societies law does not specify a sanction against unregistered groups, Penal Code No. 16 of 1960 stipulates that unregistered societies are illegal, and that individuals who conduct activities for such unregistered

10 For the full text of the law in Arabic: [http://ar.jurispedia.org/index.php/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A7%D9%84%D8%A%D9%85%D8%B9%D9%8A%D8%A7%D8%AA_\(tn\)](http://ar.jurispedia.org/index.php/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A7%D9%84%D8%A%D9%85%D8%B9%D9%8A%D8%A7%D8%AA_(tn))

11 Interview with representatives of Conseil des migrants, July 2010.

12 For the full text of the law, see: http://www.ngoregnet.org/Library/Palestinian_NGO_law_2000.pdf, (in English).

groups or become members therein are subject to a penalty of up to two years' imprisonment. As a result, no groups in Jordan are known to have attempted to form unregistered associations.

D. A Specific case: Freedom of association of foreigners involved in "Foreign NGOs" (i.e. an NGO with its headquarter located outside the country)

In most countries of the region, a formal approval from authorities is required for foreign NGOs before they can start their activities.

Article 48 of the law organises Arab and foreign organisations working in Libya. It stipulates that "the Secretariat of the General Peoples' Conference shall be responsible for registering Arab and foreign organisations in Libya and endorsing their basic laws", given that Article 41 stipulates fines and imprisonment penalties for those who participate in the activities of unregistered associations¹³.

As with national associations, any foreign association in Syria also needs to apply for registration. In most cases, they do not receive an official answer, leaving them with the interpretation that "no answer is not a prohibition", but without the official registration number, they remain in a sphere of illegality and uncertainty. Additionally, travel and visa restrictions have limited the ability of many foreigners who work in development and human rights to enter Syria and implement related activities. For instance, the representative of a German foundation was denied an entry visa to Syria and an employee of the same foundation was forced to return to Jordan when he arrived at the Syrian borders¹⁴. The foundation has approached the Ministry of Foreign Affairs many times but received no positive or negative answer.

In Turkey, Article 5 of the Associations Law refers to foreign associations - which may compose of foreigners - who "may operate or establish cooperation in Turkey, or open representations or branches, or form associations or supreme organisations or may join already founded associations or supreme organisations with the permission of the Ministry of Interior subject to the opinion of the Ministry of Foreign Affairs". Paragraph G of Article 32 however stipulates that a "fine up to five hundred million lira is imposed on those who open representations or branches of foreign associations in Turkey without the permission of the concerned authorities; those who

establish cooperation with these associations or admit members to these associations. The representations and branches which are opened illegally are closed by the competent authorities".

Article 1 of the Egyptian law stipulates that "foreign NGOs can practice the work of societies and civil institutions under this law and according to its provisions. The permission is issued by the Ministry of Social Affairs upon the agreement concluded by the Ministry of Foreign Affairs with these organisations." Some international NGOs seeking to establish branch offices in Egypt have faced difficulties, while others have not had any problems¹⁵.

Similarly, according to Paragraph (a) of Article 9 of the Jordanian law, "a branch of an association registered in a foreign country may register to provide services in the Kingdom. The main office of the society and all its branches shall be non-for-profit, shall not bring any gains for any of its members, and shall not have any religious or political aims." Paragraph (b) stipulates that the branch should be registered according to the provisions of the law and Paragraph (d) bans branches from collecting any donations from inside the Kingdom without a prior approval of the Prime Ministry¹⁶. Generally speaking, the authorities have until now tolerated the activities of foreign NGOs but monitored them very closely. Instructions are often given to public places, including hotels, not to host any event without receiving a confirmation that the event is licensed. It has however eased visa and residency requirements for foreigners working for these NGOs.

In Lebanon, there are a significant number of foreign NGOs working in Lebanon without facing any problems, although the cabinet's approval has on some occasions been slow¹⁷. However, the situation for Palestinians residing in Lebanon is different. With the exception of the Palestinian Red Crescent Society (PRCS), Palestinian NGOs are indeed forbidden to operate in Lebanon by the decree mentioned above. They must register as Lebanese NGOs, serve both Lebanese and Palestinians, and have a Lebanese majority of employees¹⁸. However, several NGOs operate inside the Palestinian refugee camps without formal registration and the authorities have tolerated their work, as they provide the inhabitants of the camps with services the government is unable to provide. In early 2010, the Minister of the Interior and Municipalities requested the Directorate General of Internal Security Forces to investigate unlicensed centres and offices for

13 For the full text of the law in Arabic, see: <http://www.justice-lawhome.com/vb/showthread.php?t=2233>

14 Interview with a Syrian civil society activist.

15 The International Centre for Not-for-Profit Law, NGO Law Monitor: Egypt, <http://www.icnl.org/knowledge/ngolawmonitor/MonitorEgypt.pdf>

16 For the full text of the law in Arabic, <http://www.pogar.org/publications/other/laws/associations/jor-law-08a.pdf>

17 Interview with OING activist, July 2010

18 <http://www.forcedmigration.org/guides/fmo018/fmo018-3.htm>

humanitarian and social organisations in the destroyed Nahr al-Bared refugee camp, and required 23 associations to apply for licenses or risk legal sanction.¹⁹

In Algeria, representatives of foreign NGOs continued to experience delays in obtaining visas, and outright refusals occurred²⁰. Some were also prevented from conducting their activities. For example, the authorities cancelled a civil society meeting sponsored by the German Friedrich Ebert Foundation and the LADDH October 5, 2008 to discuss the 20th anniversary of the 1988 riots²¹. According to the Ebert Foundation, officials gave no documented reason for the cancellation. The Foundation has therefore decided to freeze of all the public conferences and debates activities²².

In Israel, recent legal improvements have been a source of concern for international activists. Foreign associations that may be composed of non-Israelis usually operate without supervision of the Israeli authorities²³. Recently, the Ministry of the Interior has stopped granting work permits to foreign nationals working in most international NGOs operating in the Palestinian territories, including East Jerusalem²⁴. In an apparent overhaul of regulations that have been in place since 1967, the Ministry started granting NGO employees tourist visas only, which bar them from working. Organisations affected by the apparent policy change include Oxfam, Save the Children, Doctors without Borders, Terre des Hommes, Handicap International and the Religious Society of Friends (a Quaker organisation). Bowing to international pressure, the Ministry of Interior has announced it will resume granting work permits to foreigners working in most international NGOs in the Palestinian territories, including East Jerusalem²⁵.

2. Restrictions on migrant workers' right to associate

In this part of the paper, a migrant worker is defined according to Article 11, Paragraph 1, of ILO Convention No. 97 as "a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment".

"Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:... membership of trade unions and enjoyment of the benefits of collective bargaining"

Out of the 11 countries under examination, only Algeria and Israel have ratified the C97 Migration for Employment Convention, dated from 1949. However, Algeria did not amend its national laws to conform with the provisions of the convention, while Israel has started to do so. In addition, the Labour and Residency laws in the remaining 9 countries (with the exception of Palestine, which has no Labour law) severely restrict the rights of migrant workers to enjoy rights stipulated in article 6 of C97.

A. Countries that prohibit migrant workers' right to association

In Jordan, migrant workers are not allowed to join trade unions, and, as a result, these workers are banned from joining the 17 nationwide unions. A draft law was submitted to the parliament in 2009, which proposed an amendment to allow migrant workers to join trade unions but it was not passed. It is expected that a new amendment will be introduced, in the form of a temporary law in the absence of the parliament.

In Lebanon, the 1946 Labour law limits the right to trade unions' membership to holders of the Lebanese nationality. Article 91 stipulates that "All those wishing to join a union should fulfil the following requirements: (1) Have Lebanese nationality and enjoy civil rights...". According to the law provisions, migrant workers do not enjoy the right to join the Lebanese unions. There are believed to be around 300,000 unregistered Syrian workers in Lebanon. Syrians working in Lebanon have no official status, often endure dangerous working conditions, and earn about 300€ a month doing jobs shunned by most Lebanese. In 2006, the Labour Ministry issued just 471 work permits to Syrian nationals, meaning some 299,500 Syrian workers remain unregistered. Syrian workers became the victims of an

19 Decree of Minister of the Interior and Municipalities Ziad Baroud, No. 4286. February 15, 2010. Source, Unwelcome guests: Palestinian refugees in Lebanon, <http://electronicintifada.net/v2/article11388.shtml>

20 www.state.gov/g/drl/rls/hrrpt/2009/nea/136065.htm

21 The 1988 October Riots were a series of street-level disturbances and riotous demonstrations by Algerian youth, in the autumn of 1988, which indirectly led to the fall of the country's single-party system and the introduction of democratic reform, but also to a spiral of instability and increasingly vicious political conflict, ultimately fostering the Algerian Civil War.

22 www.highbeam.com/doc/1G1-185706554.html

23 Prof. Benjamin Gidron, 1,500 foreign foundations operate in Israel, most without supervision or transparency. Ziv Crystal, 2 Feb, 2006. <http://web.bgu.ac.il/NR/rdonlyres/1E0D5C5B-934C-46A4-908C-BA4FED423FCF/0/ForeigndonationtoIsrael.pdf>

24 Amira Hass, Ha'aretz, 20 January 2010, <http://palsolidarity.org/2010/01/10862/>

25 Israel to resume issue of visas for foreign NGO workers in West Bank, <http://www.haaretz.com/print-edition/news/israel-to-resume-issue-of-visas-for-foreign-ngo-workers-in-west-bank-1.264362>

unprecedented low in relations between the two countries in the wake of the 2005. Their lack of status prevents them from joining associations and from forming associations to protect their rights.

B. Countries that restrict migrant workers' right to association

Algeria's Labour law 90-11 of 1990 regulates labour affairs and trade unions. The law grants limited freedom of association. According to the law, workers who have held Algerian nationality for at least ten years have the right to form trade unions²⁶.

In Libya, the Labour Code 58 of 1970 and its amending Act 7 of 1997 regulates labour affairs in Libya. Paragraph (1) of Article 118 of the law stipulates that "candidates for trade union office must be of Libyan nationality." The same article stipulates that "non-Libyan workers may join unions according to terms and conditions set by a decision to be issued by the Minister of Labour and Social Affairs. Membership of a non-Libyan worker ends after one year of being unemployed"²⁷. However, foreign workers have no right to be members of decision-making bodies of unions and existing unions are not equipped to defend the rights of migrant workers.

C. Countries where migrant workers' right to association is acknowledged

The 2003 Labour Code governs labour affairs in Morocco. According to the law, workers are free to form and join trade unions without prior authorisation, despite cumbersome administrative procedures.

In Egypt, Law 12 of 1995 does not put any conditions on migrant workers' rights to join trade unions. Foreign workers enjoy the same trade union rights as Egyptian nationals²⁸. However, it is extremely difficult to obtain work permits, which makes it very hard for foreigners to work and reside in Egypt.

In Israel, all workers are free to join and establish trade unions and to organise and bargain collectively. According to the law, Palestinians from the West Bank and Gaza Strip who work in Israel have the right to organise their own

unions in Israel or to join Israeli trade unions. However, the Palestinian members of Histadrut may not elect, or be elected to its leadership bodies²⁹. Some employers breach the labour law. Palestinian workers in Israel, even with permits, are sometimes hounded by the authorities³⁰. It is worth noting though, that the Constitution has recently been amended to allow migrant workers to be full union members – the Constitution used to limit membership to workers who are residents of Israel only. The decision came into effect on March 1, 2010³¹.

3. Restrictions on refugees, illegal workers and stateless people's right to association

In this paper, a refugee is defined according to Article 1 of the 1951 convention relating to the Status of Refugees as a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country..."

Article 15 of the 1951 Convention - Right of association

"As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances."

Only six countries among the eleven under examination³² have ratified the 1951 convention. These are Algeria, Egypt, Israel, Morocco, Tunisia and Turkey.

A. Countries not party to the 1951 Convention relating to the status of refugees

The 1951 Convention relating to the Status of Refugees (1951 Convention) provides Palestinian refugees seeking protection in third countries with the right to "ipso facto" refugee recognition under certain circumstances (Article 1D). The 1954 Convention relating to the Status of Stateless

26 ITUC, Annual Survey of Violations of Trade Union Rights, 2010, http://survey.ituc-csi.org/?page=legal&id_pays=14

27 For the text of the law in Arabic, see http://lawoflibya.com/new/index.php?option=com_content&task=view&id=202&Itemid=

28 For the full text of the law in Arabic, <http://www.aljazeera.net/NR/exeres/35A2F958-0E61-4B96-89CD-41CDB42107D0.htm>

29 ITUC, Annual Survey of Violations of Trade Union Rights, 2007, <http://survey07.ituc-csi.org/getcountry.php?IDCountry=ISR&IDLang=EN>

30 <http://survey09.ituc-csi.org/survey.php?IDContinent=5&IDCountry=ISR&Lang=EN>

31 http://www.histadrut.org.il/index.php?page_id=1330

32 Palestine is not a member state.

Persons (1954 Stateless Convention) also provides Palestinian refugees with a right to protection, based on their status as stateless persons. However, Lebanon is not party to the convention. Lebanon considers the Palestinians within its territory to be refugees under the care of UNRWA and other humanitarian organisations. However, this does not nullify the responsibility of the Lebanese state, which has ratified other relevant international and regional human rights conventions³³. Effectively the state has disavowed most legal and humanitarian commitments to the Palestinians residing within its territory. Lebanese laws and regulations do not provide any legal description or definition of refugees in general and Palestinian refugees in particular. In practice, Palestinians have been treated as refugees at times, and at others as foreigners and as persons who do not hold the nationality of a recognised state. On 17 August 2010, a law granting civic rights to Palestinian refugees has been adopted; however, there is still a long way before they enjoy the right to association, as formulated in the 1951 Convention³⁴.

In Syria, the status of Palestinians is regulated by Law no. 260 of 1957 which stipulates that Palestinians living in Syria have the same duties and responsibilities as Syrian citizens, other than that of nationality and political rights. They have the right to join associations and labour unions.

In addition, the Syrian government accepts the UNHCR designation of Iraqis as prima facie refugees. The prevailing view of Iraqis in Syria is however that they are temporarily in the country pending the restoration of peace in Iraq. There are no plans for integrating them legally, economically or politically, and thus they do not fully enjoy the rights stipulated in the 1951 Convention, specifically the right to form or join associations.

The number of Kurds in Syria is nearly 1.5 million according to recent estimates i.e. approximately 9 percent of the total population of 22 million. Since 1962, Kurds in Syria have been categorised into three major demographic categories: Syrian Kurds holders of Syrian nationality; foreign Kurds registered in official archives as foreigners; and 'concealed' Kurds not registered. Moreover, there are undocumented Kurds who reside in Syria but have no citizenship. Concealed Kurds carry only a residence bond, which is used to identify the holders but grants them no official status³⁵. Unregistered Kurds face enormous discrimination in the job market. They cannot work as lawyers, doctors, engineers, journalists, or in most other

professions, since employment in these fields requires affiliation with unions or professional syndicates, which almost all Kurds are denied. Harassment against Kurds has increased after they held large-scale demonstrations in 2004 and since then, the government has banned cultural and political activities³⁶, including their right to association, related to Kurds³⁷.

The Jordanian government refused to accept the prima facie designation. Instead, it insisted on going back to the terms of a 1998 Memorandum of Understanding stating that persons registered with UNHCR, including Iraqis, would be defined as asylum seekers rather than given prima facie refugee status. The "asylum seeker" status implies a smaller claim on protection than the prima facie refugee status does. Thus, most of the Iraqi refugees in Jordan are denied legal status. The only way for Iraqis to obtain a Jordanian residency card is by placing more than US \$100,000 on hold in a special account. Without a residency card, the refugees do not have the right to work and thus they tend to work in the informal sector where they enjoy no rights whatsoever, including their right to freedom of association³⁸.

As international funds have been offered for Iraqi assistance, Jordanian officials have debated the terms under which they should be accepted and how they should be channelled. Along with Jordanian reluctance to apply or even use refugee terminology, the government has been cautious about international initiatives targeted for Iraqi assistance. The government still discourages donors from funding projects that establish a refugee category and is ambivalent with regard to an expanded UNHCR role based on donor funds for assistance activities. The worry is that assistance to Iraqis could give rise to parallel structures or programmes that are not already Jordanian priorities, or to activities managed by non-Jordanian organisations³⁹.

Libya hosts about 18,900 refugees⁴⁰, but Libya is not a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. However, it ratified some of the African Union conventions that provides for the protection of refugees and asylum seekers, but has not passed laws to implement them. The government has not established a system for providing protection to refugees or asylum seekers. Domestic laws do not recognise asylum seekers or refugees as classes distinct from migrants in the country without residency permits. As such, refugees and asylum

33 Most notable the 1965 Casablanca Protocol on the Treatment of Palestinians in Arab Countries, 11 September 1965.

34 See Le Monde, « Le Liban octroie des droits civiques de base aux réfugiés palestiniens » http://www.lemonde.fr/proche-orient/article/2010/08/18/le-liban-octroie-des-droits-civiques-de-base-aux-palestiniens_1399982_3218.html

35 United States Institute for Peace, Special Report, The Kurds in Syria, Fuelling Separatist Movements in the Region? 2009.

36 HRW, A Wasted Decade Human Rights in Syria during Bashar al-Asad's First Ten Years in Power, July 2010, <http://www.hrw.org/en/reports/2010/07/16/wasted-decade-0>

37 See country-chapter for more precisions

38 USCRI, World Refugee Survey

39 Ibid, p.11.

40 USCRI, World Refugees Survey, <http://www.refugees.org/countryreports.aspx?id=2359>

seekers are subject to laws pertaining to illegal migrants.

B. Countries party to the 1951 Convention relating to the status of refugees but restricting refugees' right to association

In Tunisia, the Constitution provides for the granting of asylum or refugee status in accordance with the 1951 Convention and its 1967 Protocol, and Tunisia is party to the Convention and its Protocol. However, the government has not instituted measures to protect refugees and has not granted them status, preventing them to enjoy the right to association. The government has to a certain degree cooperated with the office of the UNHCR and other humanitarian organisations in assisting refugees and asylum seekers. The Government has not officially provided temporary protection to foreign nationals who do not qualify as refugees under the 1951 Convention and 1967 Protocol. It is therefore very difficult for refugees in the country to enjoy the right to freedom of association.

A substantial minority of immigrants to Morocco has migrated for reasons that fall under the 1951 Convention but the Moroccan government assumes that sub-Saharan immigrants in Morocco are "economic migrants". This means asylum-seekers are commonly rejected at the border or deported as "illegal economic immigrants". Under the influence of increasing immigration, the UNHCR has recently been seeking to expand its operations in Morocco. However, state authorities often do not cooperate and generally refuse to grant residency and other rights to refugees recognised by UNHCR, preventing them to enjoy the right to association. The example of the Conseil des migrants mentioned above shows that it is difficult for refugees in Morocco to enjoy freedom of association.

Turkey maintains a geographic reservation to the 1951 Convention that excludes non-European asylum-seekers from refugee status in Turkey⁴¹. As a European Union candidate country, Turkey has made a conditional commitment to lift its reservation to the 1951 Convention, although this is not foreseen to happen in the near future. Non-European refugees are provided only with temporary asylum pending UNHCR's efforts to find long-term solutions for them. The government has generally cooperated with international organisations such as the UNHCR, and the IOM; however, some international human rights workers have reported that the government has harassed them or raised artificial bureaucratic obstacles to prevent their work⁴². This situation negatively impacts the right to association of refugees based in Turkey.

According to different estimates, Algeria hosts around 96,500 refugees and asylum seekers. Algeria is party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, but it fails to live up to its commitments under the Convention and its Protocol with respect to the rights of Sahrawi refugees. The Government considers all sub-Saharan asylum seekers without visas to be illegal immigrants, preventing to enjoy the right to associations⁴³.

Egypt is party to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, but it maintains reservations to the 1951 Convention's rights to personal status, rationing, public relief and education, labour legislation, and social security. The largest refugee group in Egypt is the Sudanese; estimates of the number of Sudanese refugees vary widely from 500,000 to 3 million. Very few are granted refugee status, but even those do not enjoy many benefits because of Egypt's reservations on the 1951 Convention. From the early 1980s Palestinians have been treated as foreigners, despite the fact that they come under the mandate of UNHCR. Until recently, no protection or assistance was provided to them. Recently, a number of refugee associations emerged across all refugee nationalities. Most of these associations are not formally registered with the government, thus it is difficult for them to operate freely in Egypt.

41 <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48e0fa7f>

42 <http://akgul.bilkent.edu.tr/us-human/2006/78844.htm>

43 USCRI, World Refugee Survey, <http://www.refugees.org/countryreports.aspx?id=2315>

Ratification of UN Related Conventions

		CERD	CCPR	CESCR	1951 Convention	1967 Protocol
1	Algeria	√	√	√	√	√
2	Egypt	√	√	√	√(reservations)	√
3	Israel	√	√	√	√	√(reservations)
4	Jordan	√	√	√	X	X
5	Lebanon	√	√	√	X	X
6	Lybia	√	√	√	X	X
7	Morocco	√	√	√	√	√
8	Palestine	Not a member state	Not a member state	Not a member state	Not a member state	Not a member state
9	Syria	√	√	√	X	X
10	Tunisia	√	√	√	√	√
11	Turkey	√	√	√	√	√(reservations)

1. Convention on the Elimination of All Forms of Racial Discrimination
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Cultural Rights
4. 1951 Convention on Status of Refugees
5. 1967 Protocol on Status of Refugees

Ratification of ILO Related Conventions

		C87	C97	C98	C100	C105	C111	C138	C143	C154
1	Algeria	√	√	√	√	√	√	√	X	X
2	Egypt	√	X	√	√	√	√	√	X	X
3	Israel	√	√	√	√	√	√	√	X	X
4	Jordan	X	X	√	√	√	√	√	X	X
5	Lebanon	X	X	√	√	√	√	√	X	X
6	Lybia	√	X	√	√	√	√	√	X	X
7	Morocco	X	X	√	√	√	√	√	X	√
8	Palestine	Not a member state	Not a member state	Not a member state	Not a member state	Not a member state	Not a member state	Not a member state	Not a member state	Not a member state
9	Syria	√	X	√	√	√	√	√	X	X
10	Tunisia	√	X	√	√	√	√	√	X	X
11	Turkey	√	X	√	√	√	√	√	X	X

1. ILO Convention C87 Freedom of Association and Protection of the Right to Organize, 1948
2. ILO Convention C97 Migration for Employment Convention (Revised), 1949
3. ILO Convention C98 Right to Organize and Collective Bargaining, 1949
4. ILO Convention C100 Equal Remuneration Convention, 1951
5. ILO Convention C105 Abolition of Forced Labour, 1957
6. ILO Convention C111 Discrimination (Employment and Occupation) Convention, 1958
7. ILO Convention C138 Minimum Age Convention, 1973
8. ILO Convention C143 Migrant Workers (Supplementary Provisions) Convention, 1975
9. ILO Convention C154 Collective Bargaining, 1981. Convention concerning the Promotion of Collective Bargaining

Statistics



NUMBER OF ASSOCIATIONS

Country	Number of Associations	
	2007	2009/2010
Algeria	78947	81000
Egypt	17000	30000
Israel	23650	30000
Jordan	1006	1200
Lebanon	5000	6000
Lybia		
Morocco	80000	80000
Palestinien Territoires	1300	2100 (in West Bank) 943 (in Gaza Strip)
Syria	600	1500
Tunisia	8000	9517
Turkey	77000	84,782

NUMBER OF ASSOCIATIONS PER 1000 INHABITANT

Country	Number of associations per 1,000 inhabitants	
	2007	2009/2010
Algeria	1.5	2
Egypt	0.2	0.5
Israël	4	4
Jordan	0.2	0.2
Lebanon	1.3	1.4
Lybia		
Morocco	2.4	2.5
Palestinien Territoires	0.4	0.7
Syria	0.03	0.1
Tunisia	0.8	0.9
Turkey	1	1
European Union	6	6

2007 2008 2009 2010

Since its inception in 1997, the Euro-Mediterranean Human Rights Network (EMHRN), with its 80 member organisations active in Northern and Southern countries of the Mediterranean, has taken an active interest in the crucial issue of freedom of association – the “mother of all freedoms”. Since 2006, the EMHRN Working Group on Freedom of Association has been monitoring the improvement of the NGOs’ situation, in law and in practice, throughout the Euro-Mediterranean region on a daily basis. The Working Group is made up of representatives of 15 member organisations of the Network¹, including international organisations, based in 12 countries of the Northern and Southern Mediterranean (Algeria, Denmark, Egypt, France, Italy, Jordan, Lebanon, Morocco, Switzerland, Syria, Tunisia and Turkey). This activity, which gives rise to an annual report written by independent experts in cooperation with members of the Working Group, serves as a basis for advocacy initiatives throughout the region as well as solidarity actions in favour of organisations and their members who are exposed to different types of pressure, attacks and other violations that threaten their associative commitment.

1 The 15 organisations are: the Collectif des Familles de disparu(e)s en Algérie, Algeria; the Danish Institute for Human Rights, Denmark; the Cairo Institute for Human Rights Studies (CIHRS), Egypt; the Ligue des droits de l’Homme (LDH), France; Intercenter, Italy; the Sisterhood Is Global Institute, Jordan; the Mouawad Foundation, Lebanon; Solida, Lebanon; the Association Marocaine des Droits Humains (AMDH), Morocco; the Organisation Marocaine pour les Droits de l’Homme (OMDH), Morocco; the World Organisation against Torture (OMCT), Switzerland; Committees for the Defense of Democratic Freedoms and Human Rights (CDF), Syria; the Comité National pour les Libertés en Tunisie (CNLT), Tunisia; the Ligue Tunisienne pour les Droits de l’Homme (LTDH), Tunisia; the Human Rights Association (IHD), Turkey.



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