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الشبكة الأوروبية ـ المتوسطية لحقوق الإنسان

Freedom of Association in the Euro-Mediterranean Region

60 Years after the Universal Declaration of Human Rights

Monitoring Report

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EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
Vestergade 16 - 1456 Copenhagen K - Denmark
Tel : + 45 32 64 17 00 - Fax : + 45 32 64 17 01
E-mail : info@euromedrights.net
Website : www.euromedrights.net

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by Malcolm Smart

Introduction

The right of individuals to come together and form associations - political parties, social and cultural associations, human rights organisations, trade unions, charitable welfare associations and the like - was clearly established in international law some 60 years ago when the United Nations (UN) General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948. Article 20 of that Declaration - the UDHR - states that "Everyone has the right to freedom of peaceful assembly and association."

Several south and east Mediterranean states - Egypt, Lebanon, Syria and Turkey -participated in that historic General Assembly debate and all were among the 48 states that voted to adopt the UDHR. The Charter was overwhelmingly approved: only six states abstained and no state registered a negative vote. Subsequently, all 11 south and east Mediterranean states covered by this report became party to the two main international human rights treaties that followed the UDHR, the International Covenant on Civil and Political and Rights and the International Covenant on Economic, Social and Cultural Rights.

Despite this auspicious start, 60 years on, the rights and principles enshrined in the UDHR - including the right to freedom of association - are inadequately respected in practice, including by the states of the south and east Mediterranean which are the subject of this report. In addition, for the most part, these states have yet to incorporate their obligations under international human rights law into their national legislation, and thereby make these obligations enforceable by their national courts.

As the country chapters that follow plainly show, governments in these countries continue to use all manner of legal and other obstacles to impede the universal rights to freedom of association and the associated rights to freedom of expression and assembly. Through these means they deny their critics, including human rights defenders and organisations, the means to challenge them or their policies and to press for legal reform, and they severely constrain media freedom and reporting, as well as the development of robust civil societies. In most countries, laws have been created or are applied so as to obstruct freedom of association; in some, state authorities frequently resort to illegal means, including violence, to deny the right of association to citizens or others within their jurisdiction. In short, six decades after the adoption of the UDHR, governments continue to pay little more than lip service to their obligations to promote and respect freedom of association.

In the year under review here - 2007/2008 - there were few signs of positive change. On the contrary, several governments moved to further tighten restrictions on the formation of associations, notably those seen as likely to criticise state policies and repression, and to assert greater, more intrusive control over those that already exist, and to threaten their very continuance. At the same time, governments across the south and east Mediterranean region continued to clamp down on expression and dissent. Using vague and broadly-framed insult laws or specious "national security" grounds, they prosecuted journalists, bloggers, human rights defenders and others who spoke up for rights and justice. They banned or forcibly dispersed peaceful protests, and they allowed all-powerful security forces to harass, arrest and detain critics and, sometimes, to torture or otherwise ill-treat them with impunity.

ANTI-TERRORISM

This grim picture was part of a much wider trend established following the 9/11 attacks on the United States of America (USA), which sparked the so-called War on Terror. This brought a sea-change in policy on the part of Western states, which has seen human rights much more clearly and emphatically subordinated to the interests of states' counter-terrorism strategies. The governments

of the USA and other Western democracies who formerly espoused the importance of human rights have now downgraded their approach and sacrificed such principles in the name of the fight against terrorism, particularly Islamist terrorism. At home in these states, the change has been reflected by the introduction or strengthening of anti-terror laws, heightened surveillance of ordinary citizens, stricter border controls, and detentions and deportations of untried or acquitted terrorism suspects. Internationally, meanwhile, it has seen them move to establish closer links and cooperation with governments such as those in the south and east Mediterranean, whose poor human rights records they previously criticised. Their desire to share anti-terrorism intelligence with such states - and sometimes to benefit from the abusive methods for which the secret police in countries such as Algeria and Syria have long been notorious - has tended to cause the former critics now to be far less vocal, or to look the other way, when confronted with evidence of continuing torture or other serious rights violations in such countries, especially when committed in the name of counter-terrorism.[1]

More particularly, the detentions and ill-treatment at Guantanamo Bay, Cuba, and its use of "renditions" - secret, unlawful transfers of uncharged suspects from one secret place of detention to another - has cut away any moral high ground that the US government previously occupied. The reputations of European states too have been mired by their complicity in "renditions," a complicity shared by most south and east Mediterranean states, and by their own direct actions against alleged terrorism suspects. The United Kingdom (UK) government, for example, has agreed "Memorandums of Understanding" with the authorities in Jordan, Lebanon and Libya to enable them to return terrorism suspects at risk of torture in contravention of the UK's obligations under the European Convention on Human Rights.[2] In doing so, it has sought to co-opt local NGOs in the three countries to provide a check that those returned are not tortured; in Libya, where the government tolerates no independent associations or organisations which could challenge Colonel Mu'ammar Qaddafi's rule, the organisation in which the UK government plans to rely for this is one established and run by one of the Libyan leader's sons.[3] Meanwhile, other EU states, such as France and Sweden, have forcibly transferred terrorism suspects to Tunisia and Egypt in breach of their obligations under international law not to return individuals to countries where they are likely to be tortured.

This trend towards closer collaboration on intelligence gathering and exchange between the Western democracies and the governments and intelligence services of the south and eastern Mediterranean countries has helped them to justify their authoritarianism and further entrench their resistance to human rights reform, justice and democratic accountability.[4]

FAILING TO HONOUR INTERNATIONAL AND REGIONAL COMMITMENTS

The UDHR, when it was adopted 60 years ago by the then infant UN, laid the foundations for the current system of international human rights law. Subsequently, the rights it set out have been more fully articulated and defined in a series of international human rights treaties, particularly the two International Covenants, one addressing Civil and Political Rights (ICCPR) and the other Economic, Social and Cultural Rights (ICESCR), which came into force in 1976.[5] Article 22 of the ICCPR states that "Everyone shall have the right to freedom of association with others", and Articles 19 and 21 respectively guarantee freedom of opinion and expression and the right of peaceful assembly. The former states that freedom of expression includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, wither orally, in writing or in print, in the form of art, or through any other media" of an individual's choice. These rights are capable of restriction but any limitations must be prescribed by law and be necessary to protect national or public security or public order, public health or morals or the rights and freedoms of others.

All 11 of the states being considered in this report have ratified the two International Covenants and are States Party to these international treaties. In other words, they have entered into an obligation to adhere to the requirements of the treaties and to protect and promote the rights they set out.[6] Yet, they continue to fail to do so. This was reflected in the successive sessions in late

[1] Visiting Tunisia on 28 April 2008, French President Nicolas Sarkozy commended the Tunisian government's counter-terrorism policies, saying that they had helped to prevent the emergence of a "Taliban-type" regime in north Africa, and suggested that the government had increased the level of personal freedom.

[2] In practice, to date, UK courts have declined to allow the UK authorities to forcibly return individuals to Jordan, Lebanon or Libya under the terms of the respective Memorandums of Understanding.

[3] However, the MOU has been rejected by the UK courts as not being sufficiently independent of the regime so as to be effective when most needed

[4] On 26 September 2001, US Secretary of State Colin Powell expressed appreciation for Egypt's "commitment" to dealing with "the scourge of terrorism," adding *"Egypt... is really ahead of us on this issue" and "we have much to learn from them and there is much we can do together."*

[5] They were both opened for signature, ratification and accession by the UN General Assembly in 1966 and both entered into force early in 1976 after they each had been ratified by 35 UN Member States.

[6] The Palestinian Authority, which lacks the status of a Member State of the UN, cannot formally become a State Party to the ICCPR and the ICESCR.

2007 and early 2008, in which the Human Rights Committee (HRC)[7] examined the periodic reports of Algeria, Libya and Tunisia. In all three cases, the HRC criticised serious abuses of human rights, including violations of freedom of association, expression and assembly, and called for urgent steps to be taken by the three governments to bring their law and practice into compliance with the requirements of the ICCPR.

In its concluding observations on Libya, for example, the HRC pointed to continuing "extensive limitations" on freedom of opinion and expression, both in law and in practice, imposed on peaceful critics and opponents of the government. It called for urgent reform of the Publication Act of 1972, criticised legal and other restrictions which prevent exercise of the rights to freedom of association and assembly and called on the Libyan authorities to "to guarantee the exercise in practice" of these rights.[8]

With regard to Algeria, the HRC called for the repeal of provisions in the Ordinance enacting the Charter for Peace and National Reconciliation which infringe freedom of expression and the right to an effective remedy for those subject to human rights violations and questioned the "particularly broad definition" of terrorist and subversive acts contained in the Criminal Code, warning Algeria not to "deny the legitimate expression of rights" established in the ICCPR. The Committee also expressed concern about state harassment and intimidation of journalists and called for the repeal of Criminal Code provisions which criminalise defamation of state officials and are used to prosecute and imprison journalists. It complained too about official restrictions which prevent human rights defenders and organisations from freely pursuing their legitimate activities, including by denying their right of peaceful demonstration, and which prevent official registration of associations. The Committee urged the Algerian authorities to respect the rights to freedom of association and assembly and to guarantee the right of any association to appeal against any refusal of registration.[9]

The HRC considered the report of Tunisia at its first session in 2008. It addressed a similar list of issues, noting the "particularly extensive" definition of defamation in the Press Code and its application to prosecute journalists and others who criticise the government or state institutions, and the "very limited number of independent associations [that] have been registered officially by the authorities." The Committee urged the authorities to end "direct and indirect restrictions on freedom of expression" and to amend the Press Code; to end "acts of harassment and intimidation" and to respect and protect the peaceful activities of human rights organisations and defenders"; and to ensure that human rights organisations are officially registered or provided with "effective and prompt recourse" if their applications are rejected.[10]

The human rights records of Algeria and Tunisia, as well as that of Morocco, were also reviewed in early 2008 under the new Universal Periodic Review (UPR) process established by the UN Human Rights Council. Under the UPR, all 192 UN member states have committed to have their human rights records considered by the Council over a four-year cycle. The system provides that, in addition to the state report, the Council also has access to information compiled by the UN's Office of the High Commissioner for Human Rights (OHCHR), both a compilation of UN information drawn from the reports of the Special Procedures mechanisms and including the recommendations of UN Treaty Bodies, and a summary of submissions made by other stakeholders, such as non-governmental organisations (NGOs) and national human righst institutions (NHRI).

ARAB CHARTER ON HUMAN RIGHTS

In March 2008, a new human rights instrument, the Arab Charter on Human Rights, came into force after it obtained it seventh state ratification. Among south and east Mediterranean states, Algeria, Jordan, Libya and Syria are parties to the Charter, as is the Palestinian Authority. Unfortunately, while it contains some progressive provisions, the Charter, which was revised in 2004, waters down some of the rights contained in the main international human rights conventions - for example, requiring that the rights to freedom of opinion, expression and access to information be exercised "in conformity with the fundamental values of society," a term obviously open to wide interpretation by state authorities eager to clamp down on their critics.

A further sign of the rights-restricting tendencies manifest among south and east Mediterranean governments occurred in February 2008 at a meeting in Egypt of Ministers of Information. The Ministers, all representing member states of the Arab League adopted a

[7] The Human Rights Committee, established under Article 26 of the ICCPR, is the 18-member body which considers States Party's periodic reports on their application of the Covenant.
[8] Human Rights Committee, Ninety-first session, CCPR/C/LBY/CO/4
[9] Human Rights Committee, Ninety-second session, CCPR/C/TUN/CO/5
[10] Human Rights Committee, Ninety-first session, CCPR/C/DZA/CO/3

set of "Principles for Organizing Satellite Broadcast and Television Transmission and Reception in the Arab Region." Opposed only by the Lebanese government representative and that of Qatar, home to Al-Jazeera, the Principles have the status only of non-legally binding guidelines, but if implemented, they would impose new controls on media freedom and access to information. Apparently a reflection of rising governmental concern about the popularity of pan-Arab satellite TV broadcasters in opening up public space for debate, they urge state regulatory authorities to require satellite broadcasters to put state and political interests before the public's right to know. This, they propose, should be done by insisting that satellite broadcasters' reports do not "negatively affect social peace, national unity, public order, and public morals" or "defame leaders, or national and religious symbols," echoing the broad terminology used in national laws to limit or penalise other legitimate expression. Further, the Information Ministers' Principles would have licensing authorities require satellite broadcasters to "protect the supreme interests" of Arab states and "respect the principle of national sovereignty," and prescribe fines or other penalties for those who fail to do so.

RIGHTS IN PRACTICE: THE YEAR IN REVIEW

Throughout 2007-2008, advocates of freedom of association, expression and other human rights in the countries of the east and south Mediterranean countries continued to face many and diverse obstacles. Although most states recognised the importance of freedom of association and expression in their constitutions, in practice they maintained a battery of other laws which cut away these rights and placed their exercise under degrees of control beyond those permissible under international law or human rights treaties such as the ICCPR to which they are party.

Such laws included those which impose excessive conditions on the formation of non-governmental organisations and associations, requiring them to obtain official authorisation, which may often be delayed or withheld by state authorities without good reason, and impose penalties on those who join or participate in the activities of "illegal" organisations. In a sort of "catch 22" situation, some governments obstruct or prevent human rights defenders and other critics from officially registering organisations - for example, by directly refusing to accept their registration submissions, as has been a practice of the Tunisian government - and then prosecute them for exercising their right to freedom of association "unlawfully." Most states also have national laws which criminalise expression - newspaper reports, weblogs and other media - which the authorities deem to be offensive to the state, its leaders or institutions, or to religious or other national or cultural values. Across the region in 2007-2008, editors, journalists, human rights defenders and others were prosecuted on such grounds, and in some cases sentenced to prison terms - inevitably having a "chilling" effect on freedom of expression and media freedom. Brief examples - regrettably, they are far from constituting an exhaustive list - are cited below.

Several states - Jordan, Morocco, Tunisia - also possess anti-terrorism laws that contain overly broad definitions of terrorism, which may also be used to restrict or suppress legitimate dissent and expression. For example, Tunisia's law on terrorism, introduced in 2003, opens the way for terrorism charges to be brought against those deemed to be responsible for illegitimately "disturbing public order," while Jordan's 2006 Prevention of Terrorism Act can be used against persons accused of "damaging infrastructure."

On top of these restrictions, three of the states considered here - Algeria, Egypt and Syria - remain under long-running states of emergency. These equip the authorities with far-reaching emergency powers that they can exercise in addition to those found under statutory law - to arrest and detain critics, often effectively indefinitely, and deny them fair trial or any trial; to search homes and confiscate property; to ban organisations or protests on vague and arbitrary grounds; and to censor the media and to close down newspapers.

Algeria's state of emergency has been in force continuously since 1992. Egypt's, in force continuously since 1981 (and which was preceded, save for a break of a year or so, by a previous long-running state of emergency), was renewed for a further two-year period in May 2008. Following controversial constitutional amendments pushed through by President Mubarak's government in 2007, however, a new anti-terrorism law is expected to be introduced that will import the worst features of the current, ostensibly temporary, emergency powers into Egypt's statute law, so rendering any renewal of the state of emergency redundant. Syria's state of emergency is of even longer duration, having been in force continuously since 1963, since when the country has also been under martial law.

The long duration of these national emergencies flies in the face of international law. This allows states to declare states of emergency when there is a "public emergency that threatens the life of the nation," but requires that they should be maintained for no longer

than is genuinely necessary. In practice, there can be little doubt but that the governments of Algeria, Egypt and Syria maintain their states of emergency because these provide a convenient pretext for suppressing opposition and dissent or the exposure of information - for example, regarding high-level corruption, failures of government policy or gross violations of human rights - that they consider could be damaging to them.

In Algeria, the government has gone farther, legislating a Charter for Peace and Reconciliation to give impunity to military and security forces and officials and others responsible for the thousands of politically-motivated killings, enforced disappearances and other gross abuses committed during the internal conflict which ravaged Algeria in the 1990s. Under the Charter, perpetrators of the most heinous crimes are afforded impunity, but those who dare to speak out against the Charter are made liable to prosecution and imprisonment. In other words, while the worst criminals go free those who denounce their crimes are made criminals in their place. As reported above, the Human Rights Committee has called for the repeal of these constraints on legitimate freedom of expression. However, as yet, the Algerian authorities have taken no steps to comply and those who continue to speak out about the gross abuses of the past and to demand truth and justice do so at risk of being prosecuted and imprisoned. Two cases described in the Algeria chapter of this report underscore the reality of this risk: human rights defender Cherifa Kheddar was dismissed from one of her positions within the Algerian civil service in May 2008 on account of her activism in support of transitional justice, while Mohamed Smain, a member of the Algerian League for the Defence of Human Rights (Ligue Algerienne pour la Defense des Droits de l'Homme, LADDH) had his original two-month prison sentence re-imposed. He had first gone on trial seven years before for allegedly "denouncing imaginary crimes" (he had disclosed publicly the discovery of a mass grave containing the bodies of some 20 people who had been abducted and apparently murdered, then secretly buried by state-armed militia) and the case had been through various stages of appeal over the years, during which the threat of imprisonment continued, as it still does, to hang over him.

FREEDOM OF EXPRESSION

Most south and east Mediterranean states maintained laws which penalise legitimate expression on widely couched grounds such as damaging the reputation of the nation or spreading false news and were used to prosecute and penalise government critics and human rights defenders. In Egypt, the distinguished academic Dr Saad Eddin Ibrahim was just one of those targeted; he was convicted of damaging the national interest by suggesting that foreign assistance should be used to press for democratic reform, and sentenced to a jail term in August 2008. Bloggers too were jailed in Egypt, Morocco and Syria. While in Turkey, where Article 301 of the Penal Code has long been used to suppress expression, a human rights activist was sentenced to prison for "denigrating the Turkish army", and members of a children's choir were prosecuted for singing a Kurdish anthem at a music festival in the USA. In Morocco, the authorities accused a human rights defender of "disseminating false information" after he publicly disclosed allegations that security forces had committed serious human rights violations, including rape, while suppressing protests in the southern city of Sidi Ifni in June 2008.

THE RIGHT TO PEACEFUL ASSEMBLY

All across the region, people who sought to gather together peacefully to exercise their right to protest were hindered by government bans on such activity or were punished for their temerity by heavy handed-police and security forces. In Algeria, the authorities used their emergency powers to ban demonstrations by those opposed to the Charter for Peace and National Reconciliation, whose adoption provided immunity against prosecution to perpetrators of the gross abuses committed during the 1990s, while in Lebanon people calling for investigations into thousands of enforced disappearances by Syrian forces were brutally dispersed by police when they sought to protest against a visit by the Syrian Foreign Minister. The Jordanian government refused to permit an Islamist organisation to hold rallies to commemorate the Nakba, when Palestinians were forced to leave their homes by Israeli forces 60 years before, and the Syrian authorities arrested members of the Kurdish minority when they sought to demonstrate on International Human Rights Day in December 2007. 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. In the OPT, both PA and Hamas forces killed and injured people mounting protests: in November 2007, at least six people were killed and others injured in the Gaza Strip when Hamas forces fired on a rally being held by Fatah supporters on the third anniversary of the death of former Palestinian President Yasser Arafat, while at least one person was shot dead by PA forces at a demonstration in Hebron in the West Bank. In

Morocco, government forces violently broke up a demonstration in Sidi Ifni in June 2008 and maintained tight controls on protests by Sahrawi advocates of autonomy in Western Sahara. All too often, the space allowed for open and democratic debate was severely limited and those who tested the limits were made to pay a heavy price.

THE GENDER GAP

The obstacles and risks confronting human rights defenders who seek to form independent associations and join together in the south and east Mediterranean countries to advocate for the realisation in practice of their and others' rights are daunting. But for the women, as one of the following chapters describes, the challenges are infinitely greater than they are for men. This is due to a complex of factors, but stems, essentially, from pervasive gender inequality, which remains one of the most marked and enduring characteristics of the region. In most countries, women remain subordinated under the law and in their daily lives are subject to social,cultural and religious values and pressures, as well as education and economic deficits, which make it especially difficult, even dangerous, to take an active or leadership role in public affairs. Improving the status of women and enhancing their opportunities to access the full range of human rights on an equal footing with men remains one of the foremost challenges confronting the south and east Mediterranean countries.

FREEDOM OF ASSOCIATION

Human rights defenders and others faced serious obstacles in obtaining legal registration of their associations and organisations in most south and east Mediterranean countries. In both Lebanon and Israel, registration was relatively straightforward, although in the former some organisations have experienced delays while they are being checked by the security authorities.

In both **Libya** and **Syria**, however, those wishing to exercise their right to freedom of association to address human rights violations or press for political or other reform faced huge challenges. The Libyan authorities continued to clamp down hard on all those who expressed dissent, as exemplified by the case of Idriss Boufayed and 11 others, who were sentenced to prison terms ranging from six to 25 years in June 2008, solely for the peaceful exercise of their rights to freedom of association and expression. In January 2007, Boufayed and others announced on a website their intention to hold a peaceful sit-in protest to commemorate the deaths of at least 12 people, killed by security forces a year earlier during a protest in Benghazi. Before they could even hold the sit-in, they were arrested, and later they were tried before the newly-formed State Security Court on broad and vaguely-worded charges, such as "spreading false rumours" and "attempting to overthrow the political system." Independent political parties, trade unions and NGOs are banned in Libya under a 1972 law. Despite serious ongoing human rights abuses, negotiations on a future Framework agreement started in autumn 2008.

In **Syria**, the Ministry of Social Affairs and Labour continued its refusal to allow the legal registration of human rights organisations and pro-reform groups, and those wishing to hold political forums or discussion groups were required to obtain prior government approval and to furnish the authorities with a list of participants. Several human rights groups existed, nevertheless, but their members ran a constant risk of arrest and prosecution or were subject to other harassment, such as travel bans. The security police launched a series of arrests following a meeting of longstanding advocates of political reform in Damascus in December 2007. Subsequently, 12 of them were charged with "weakening national sentiment" and sent for trial before the Damascus Criminal Court. On 29 October 2008, they were sentenced to two and a half years in prison. Regrettably, theirs is only the latest in a long series of trials of human rights defenders, minority rights activists, political commentators, bloggers and others that have been held in Syria in recent years, though, at least, they are not facing trial, as so many others have done, before the notoriously unfair supreme State Security Court.

In **Tunisia**, human rights defenders were also subject to frequent harassment and intimidation by state security officials and the authorities interfered in the operation of associations deemed critical of the government. This reality belied the far more positive image on human rights that the government sought to cultivate at the international level - evidently with considerable success given the easy ride it got when presenting its record under the UPR process before the UN Human Rights Council and the misjudged, rosy comments of French President Nicholas Sarkozy when he visited Tunis in April 2008. In practice, the authorities impeded the activities of human rights organisations in multiple ways. No such organisations have been able to obtain legal registration for

some 20 years, and those that have registration which predates that, such as the Tunisian Human Rights League (Ligue Tunisienne des Droits de l'Homme, LTDH) faced constant harassment. Organisations denied registration by the authorities, who continued to prevent them filing documents required to comply with the law or to issue receipts acknowledging their submission, existed in a form of legal limbo. Their phones and internet links were frequently cut to disrupt their communication with one another and people abroad. Their leaders and activists were arrested, threatened, had their property vandalised, and with their families were harassed by overt, heavy surveillance of their homes. The LTDH, meanwhile, was undermined by lawsuits filed ostensibly by dissenting members, and police and security officials sometimes physically blocked access to its offices to prevent them being used for meetings. In short, and contrary to the image sold by the government internationally, its approach at home was directly counter-conducive to human rights and the promotion of a climate in which freedom of association, expression and other key rights are respected in practice.

In **Jordan**, the government moved to tighten controls on NGOs, introducing a new law on Charitable Societies and Social Institutions. This creates a new stage of approval to be obtained when seeking to register an organisation, offering potential for official delay or refusal. It also prohibits organisations from accepting foreign funding - a main source of income for most Jordanian human rights organisations - without first obtaining prior government approval, criminalising any infringement with up to three months' imprisonment, and empowers the government to order legally registered organisations to be dissolved on various, relatively minor grounds.

In **Algeria**, where the authorities have a record of blocking the registration of human rights organisations by refusing to issue the official receipt required under the Associations Act of 1990 to confer legal status, the Interior Minister hinted that the act should be reviewed in order to create more restrictive registration criteria.

The government of **Egypt**, which introduced a controversial new associations law (Law 84 of 2002) in 2002, amended its Executive Regulations in July 2007 to allow the authorities to order the dissolution of a legally registered organisation without awaiting confirmation from the administrative court. The government then promptly ordered the dissolution of an organisation providing legal assistance to victims of human rights abuse, on the grounds that it had received foreign funding without authorisation. Formerly, organisations had been able to contest orders for their dissolution before the administrative courts. Indeed, this is what had occurred when the government ordered the closure of three branches of a workers' rights organisation earlier in 2007, only for this to be overturned by an administrative court ruling in March 2008.

In **Turkey**, the country's Constitutional Court decided by a narrow vote in July 2008 to reject an application from the chief prosecutor for an order requiring the dissolution of the ruling Justice and Development Party, and to ban the country's President and other party members from participating in politics for five years. The prosecutor had argued that the party was engaging in anti-secular activities and planned eventually to establish an Islamic state. While denying the petition, the court ordered a cut in the state funding for the party. The court had previously ordered the banning of more than 20 political parties since it was created in 1962, for breaching the principle of secularism, advocating religious fundamentalism or for promoting Kurdish ethnic identity, deemed to threaten Turkey's territorial integrity. The chief prosecutor is also seeking the banning of the Democratic Society Party.

The authorities also took action against gay and lesbian activists. In May 2008, a local court in Istanbul ordered the closure of Lambda Istanbul after the Istanbul governor's office brought a complaint claiming that its objectives were against Turkish "moral values and family structure." The court did not examine the substance of the claim, but ordered the organisation's closure on procedural grounds relating to articles in the Law on Associations and Civil Code concerning failure to "remedy errors and deficiencies" in an organisation's statutes, but without identifying these.

In **Israel**, the Defence Minister banned Al-Aqsa Association for the Restoration on Muslim Holy Sites in August 2008, using emergency powers on the grounds that this was "necessary" to protect state security, public welfare and public order. In the Occupied Palestinian Territories (OPT), both the Fatah-led Palestinian Authority (PA) and Hamas suppressed organisations affiliated or considered sympathetic to the other. This occurred as the situation in the OPT underwent a further marked deterioration due to the deep rift between the rival Palestinian political organisations.
The conflict between Fatah and Hamas, which culminated in June 2007 with Hamas's forcible seizure of power in the Gaza Strip, added significantly to the impact of the suffocating restrictions on movement - checkpoints, road blocks and other oppressive measures imposed by Israel, which also critically impede Palestinians' ability to exercise their rights to freedom of association and

assembly. **In the West Bank**, the PA ordered the dissolution of organisations connected with Hamas, while the Hamas de facto administration **in the Gaza Strip** took similar measures against pro-Fatah groups.

HUMAN RIGHTS DEFENDERS

Ten years ago and 50 years after the adoption of the UDHR, the UN General Assembly also adopted the UN Declaration on Human Rights Defenders, as it is generally known, on 9 December 1998. The Declaration, which received such wide support that it did not need to be voted in the General Assembly, recognises the importance of the role of the human rights defender. This is the person who "individually and in association with others, promotes and strives for the protection and realization of human rights and fundamental freedoms at the national and international levels." The Declaration stresses the importance of their being able to exercise their rights to freedom of association, expression and assembly while working to defend and promote human rights.

In June 2004, the European Union (EU) adopted its own Guidelines on Human Rights Defenders, which similarly recognise the importance of the role of those working to protect and promote human rights both at home and abroad, and calls on the European Commission and EU Member States to take practical measures to assist human rights defenders and also uphold their fundamental rights.

Within the south and east Mediterranean countries, as this report shows, human rights defenders, as well as others who call for reform, openly dissent or even divulge information which the executive powers do not wish exposed, face many risks and challenges. Yet, despite this, the human rights movement is alive and well, active and undaunted in most of the countries of the region and undaunted in its pursuit of the ideals of the UDHR. Sixty years on, much is still to be achieved, but the dedication and commitment of the many men, women, even children, who struggle gives real hope for the future. This report both acknowledges and honours them and their work.

INTRODUCTION TO 2008 INDICATORS

Last year, six criteria were chosen to measure the level of respect for and implementation of freedom of expression in law and in practice (presence of independent associations, prior authorisation to register, dissolution, interference, access to foreign funds, and other elements). For each of them, a distinction was drawn between a system of freedom (for countries in which the overall situation is satisfactory: respect or few serious violations of internationally-recognised standards and principles) and a regime of control or repression (for countries in which the overall situation is not satisfactory: lack of respect or numerous serious abuses of internationally-recognised standards and principles) (see below).

The 2008 indicators must be read in light of those published in 2007, as they aim to assess progress and setbacks between 2007 and 2008. They were drafted with the aim of linking quantitative and qualitative statements to avoid the risk of misunderstandings. (For example, an increase of legal complaints in the South or East Mediterranean countries may be a positive development if it reflects an improvement in the functioning of the judiciary, whereas it would necessarily be viewed in a more negative light in Europe, where the judiciary has been stable for quite a long time.)

This year, with a view to being more specific and better reflect what freedom of association is in practice, we have not only decided to increase the number of criteria, but we have also further developed the five of the six criteria mentioned above. We have also removed the indicator related to the presence of independent associations, because it appeared to be too vague a criterion.

Three new categories have been introduced:

- New legislation in 2007-2008: Has a new law on associations been drafted? / Has the national government introduced amendments to the legislation on associations? Has a new law affecting associations been drafted by the national government? If yes, does it comply with international standards on human rights?
- Evaluation by UN bodies: Have the UN Human Rights Committee or Special Rapporteurs congratulated/condemned the respective country with regard to freedom of association?

- Freedom to assemble: Between 1 September 2007 and 1 September 2008, have meetings/demonstrations organised by associations been prevented/repressed by the authorities?

Regarding the five criteria mentioned above, the analysis is based on the following list of basic principles:

- Registration of associations: Between 1 September 2007 and 1 September 2008, have groups wanting to establish an association obtained their receipt easily/faced refusal or delays from authorities?
- Interference/campaign of harassment: Between 1 September 2007 and 1 September 2008, have members of associations been free to carry out their activities/subjected to campaigns of harassments by the authorities (material damages, physical or psychological harassment (including restrictions on movement, but also arrests, etc.))?
- Access to foreign funds: Between 1 September 2007 and 1 September 2008, have associations wanting to access foreign funds easily received funds/faced refusal or strict control from the authorities?
- Dissolution of associations: Between 1 September 2007 and 1 September 2008, have grounds for the dissolution of associations been justified with regard to international standards?/ Does the authority responsible for dissolving associations comply with international standards?
- Other elements: Is emergency law in force in the country? Does the counter-terrorism law comply with international standards on human rights? To what extent is it possible to criticise the government?

Based on these additional indicators, a distinction is drawn between three groups:
Since September 2007, freedom of association has generally been respected and the citizens have effectively enjoyed this freedom (green colour); freedom of association has been limited for everyone or severely restricted or denied to targeted groups (orange colour); freedom of association has been denied or severely restricted for everyone without any distinction (red colour)

We hope that these new indicators will allow us to assess progress and setbacks in the area of Freedom of Association in the region after a year. The report calls for regular updates, and the indicators will be even further developed for the next edition.

Based on these indicators, we urge the national governments of the 11 South and East Mediterranean countries to take appropriate measures and find remedies for the present violations.

2007 Report

Countries	Presence of independent associations	Prior authorisation	Dissolution	Interference	Access to foreign funds	Other elements
Libya						
Syria						
Egypt						
Algeria						
Jordan						
Palestinian Territories						
Tunisia						
Israel						
Lebanon						
Turkey						
Morocco						

2008 Report

Countries	New legislation in 2007-2008	Evaluation by UN bodies	Freedom to assemble	Registration of associations	Dissolution	Interference / Campaign of harrasments	Access to foreign funds	Other elements
Libya	not relevant							
Syria	not relevant							
Egypt								
Algeria	not relevant							
Jordan		not relevant				n/a		
Palestinian Territories	not relevant	not relevant						
Tunisia	not relevant							
Israel			n/a					
Lebanon	not relevant	not relevant						
Turkey	not relevant							
Morocco	not relevant							

RECOMMENDATIONS

We call upon the authorities of the 11 South and East Mediterranean countries to:

- *Act in conformity with the letter and the spirit of the Universal Declaration of Human Rights, article 20 of which states "Everyone has the right to freedom of peaceful assembly and association";*

- *Implement the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly on 9 December 1998, and particularly its Article 1, which provides 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", as well as the 5 December 2005 Resolution of the African Union on human rights defenders in Africa;*

- *Abide by the International Covenant on Civil and Political Rights, which recognises the rights to freedom of assembly (article 21) and freedom of association (article 22), and take into account the relevant jurisprudence of the United Nations Committee on Human Rights.*

We call upon the European Union to:

- *Comply with its own human rights commitments in its relations with the Mediterranean partner countries, recalling that, according to Article 6 of the Treaty on the European Union, "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law", and that all policies and actions undertaken by the European Union's institutions have to be based on such principles;*

- *Take all necessary measures to implement article 2 of the Association Agreements;*

- *Condition any further progress in its relations with the partner countries on real and lasting improvements in the human rights situation, as well as on concrete and measurable commitments to further improve its policies in this field.*

- *Ensure that priorities related to freedom of association, as identified by the ENP Action Plans, are implemented, by translating the Action Plans' general objectives into specific actions, according to a set agenda and with previously agreed-upon actors;*

- *With the partner countries, take concrete steps to guarantee freedom of association in the implementation of all areas covered by the Action Plans of the European Neighbourhood Policy (ENP);*

- *Give urgent priority to freedom of association in all political and diplomatic discussions with the governments of the EMP, as well as in the discussions of a more technical nature within the sub-committees comprised of the EU and the Mediterranean countries;*

- *Ensure the respect of the EU Guidelines on human rights defenders with regard to freedom of association;*

- *Exert pressure on the 11 South and East Mediterranean countries to ensure their full compliance with the international standards on human rights, especially with regard to freedom of association and respect of Human Rights Defenders;*

- *Through the EU missions, establish and maintain contacts with human rights defenders at risk in the EuroMed region in order to document human rights violations and provide strong support when necessary.*

Freedom of Association in **Algeria**

by Amine Sidhoum

RECOMMENDATIONS

The Algerian government is urged to:

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

- *End the state of emergency which has been in force for 16 years and is used to arbitrarily restrict enjoyment of freedoms of association and assembly;*
- *Amend Articles 144 to 148 of the criminal code on the offense of defamation, as well as Article 46 of Law 06-01 of 27 February 2006, which criminalise statements critical of the criminal acts committed by the State in the 1990s;*
- *Comply with the recommendations of the UN Human Rights Committee, which calls on the authorities to "respect and protect the activities of human rights organizations and human rights defenders. It should ensure that any restrictions imposed on the right of peaceful assembly and demonstration and on the registration of associations and the peaceful pursuit of their activities are compatible with articles 21 and 22 of the Covenant".*

2. With regard to the legislation and practice related to freedom of association

- *Amend Law No 90-31 of 1990 on association so that it conforms to and guarantees international standards on the right to association, particularly ensuring that:*
  - *Associations can be established by notification without the need for a prior license;*
  - *Jail terms for founders of an unapproved, suspended or dissolved association (art.45) are eliminated, as they are contrary to the spirit of the notification system;*
  - *Article 28 is amended to allow the acquisition of foreign donations without prior approval from the authorities - and associations can obtain funds allocated by the EU support programmes;*
  - *Effective judicial remedies can be assessed within a reasonable period in cases of the violation of the fundamental rights of members of associations and human rights defenders.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

Freedom of association in Algeria is governed by Act No. 90-31 of 1990, which provides for a formal freedom that is not guaranteed in practice. The freedom to form an association and the freedom to engage in community activities are restricted, to a certain extent, by the law itself and by administrative manoeuvres.

The state of emergency, which has been illegally upheld in Algeria for 16 years, does not promote the full and complete exercise of fundamental freedoms. It is a pretext for a number of restrictions that limit freedoms related to associations, in particular with the demonstration ban currently in force, and is widely invoked against human rights associations or against those who denounce the current policy of reconciliation. On the other hand, meetings and demonstrations initiated by associations of the government (GONGOs) are authorised, if not altogether encouraged. This demonstrates the extent to which the state of emergency can be accommodated and is a tool in the hands of the government, used to muzzle any type of opposition.

In June 2008, the Minister of Interior and of Local Authorities, Mr Noureddine Yazid Zerhouni, estimated the number of registered associations to be around 81,000. He added, however, that 95% of these associations in Algeria *"have never submitted their official report of activities, as requested by the law"* and *"have never submitted their financial report"*, without specifying whether these associations were prosecuted by the administration for failure to act or for breach of the Associations Act. He continued by complaining that associations' activities lacked effectiveness and did not have much of an impact on society.[1]

The government's response to this observation has been to work on a reform project of the 1990 Act that will provide more restrictive registration criteria in order to select associations that will work with public authorities: *"The country needs credible associations - that are committed to work with the communes and the wilayas to improve the daily life of citizens."*

Paradoxically, at a time where political figures denounce the public authorities for illegally refusing to register certain organisations, although they fulfil the legal criteria, the government seeks to restrict the freedom to form an association. It thus negates the recommendations of the Human Rights Committee, published in November 2007, following the CFDA/FIDH shadow report submitted during the review of Algeria with regard to the application of the International Covenant on Civil and Political Rights: *"The Committee is concerned that many human rights organizations and human rights defenders are not able to pursue their activities freely, including their right of peaceful demonstration, and are often subjected to harassment and intimidation by State officials (Covenant, arts. 9, 21 and 22).*
The State party should respect and protect the activities of human rights organizations and human rights defenders. It should ensure that any restrictions imposed on the right of peaceful assembly and demonstration and on the registration of associations and the peaceful pursuit of their activities are compatible with articles 21 and 22 of the Covenant and also that the Information Act (No. 90-07) of 3 April 1990 is in conformity with the Covenant. In this connection, the State party should guarantee the right of any association to appeal against any refusal of registration." [2]

Almost a year after these recommendations, there has been no significant, noticeable improvement regarding associations' freedom in pursuing their activities.

Almost a year after these recommendations, there has been no significant, noticeable improvement regarding associations' freedom in pursuing their activities. The state of emergency is maintained, and restrictions on the right to demonstrate remain the rule.

Part One
FORMATION OF ASSOCIATIONS

The conditions for the establishment and the registration of associations are the same as those described in the first EMHRN Review on Freedom of Association. In theory, these rules respect freedom of association as guaranteed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, since the 1990 Act provides a declaratory system, that is to say that one does not require prior authorisation from the State to establish an association. Article 7 states that an association is duly established after the submission of a declaration of establishment to the *wilaya* of the province where the association has its headquarters (in the case of local associations) or to the Ministry of Interior (in the case of national associations). The competent authority should issue a document acknowledging receipt of the application within 60 days of the date of submission, after examining the conformity of the association with legal provisions. According to Article 8 of the Act, the public authority is not competent to refuse the registration of an association and can only refer the matter to the administrative chamber of the competent court if it considers that the nature of the association is illegal. The tribunal must decide within 30 days from the day it has been referred to. In the absence of a referral to the judiciary by the administrative authority, the association is deemed duly established at the end of the time period provided for the issuance of the registration receipt.

In practice, and in the absence of clear and uniform regulatory norms, government officials act on a case by case basis and/or under instructions from their hierarchy.

Associations working in a field the government does not approve of can be illegally refused registration, i.e. without the public authorities referring the file to the judiciary to rule on whether an association's statute complies with legal requirements. In certain cases, the authorities do not even issue the receipt for the submission of the establishment file, in other cases they simply refuse to accept delivery of the file. In such cases where the refusal has not been officially notified, the remedies are limited. Despite the provisions of Article 8 of the Act, according to which an association is deemed duly established if the competent authority has not issued a registration receipt without referring the matter to the judiciary, an association that is not in a position to present the registration receipt is not, in practice, a legal

[1] Madjid Makedhi, *"les dégâts de la politique de l'allégeance"*, in El Watan, 14 June 2008
[2] UN Human Rights Committee, final observations, CCPR/C/DZA/CO/3/CRP.1, 1 November 2007, n°25

entity, since it cannot appear in court, open a bank account or apply for funding. In other words, it is not duly established.

Article 45 of the Act provides that *"Anyone who manages, administers or is active within an unapproved, suspended or dissolved association or encourages the meeting of members of an unapproved, suspended or dissolved association shall be punished by three (3) months to two (2) years in prison and a fine of 50.000 DA to 100.000 DA (between €550 and €1.110) or to only one of these two penalties"*. The ambiguity of this article has led to much controversy. Contrary to Articles 7 and 8, which describe a declaratory process, Article 45 uses the term "unapproved" and penalises the activities of unapproved associations. One can only wonder about the value of the registration receipt, which does not seem to be proof of the declaration of the association, but rather an authorisation for groups to act as an association.

Part Two
LIFE OF ASSOCIATIONS

Associations close to, or even created by, the government, enjoy state subventions and a large freedom of action in exchange for their support for the government's policies. These organisations enjoy large privileges (residence, assistance, subventions, etc.), freedom of assembly and the right to demonstrate, which are banned for other organisations on the grounds of the state of emergency. Independent organisations are indeed subjected to different restrictions that significantly hamper their activities.

Restrictions on freedom of expression

Articles 144 to 148 of the Criminal Code, which establish the offence of defamation against the President of the Republic, state institutions and the judiciary, do not encourage the media to report the activities of associations that denounce the illegal practices of the authorities and of certain state institutions.

Article 46 of Ordinance No. 06-01 of 27 February 2006 enacting the Charter for Peace and National Reconciliation provides that, *"Anyone who, by speech, writing, or any other act, uses or exploits the wounds of the National Tragedy to harm the institutions of the Democratic and Popular Republic of Algeria, to weaken the state, or to undermine the good reputation of its agents who honourably served it, or to tarnish the image of Algeria internationally, shall be punished by three to five years in prison and a fine of 250,000 to 500,000 Dinars (€2.800 to €5.550)."* Since the entry into force of the texts applying the Charter, human rights associations opposed to the reconciliation policy have been prohibited from expressing their views on the history of their country and are liable to prosecution if they do. In addition, they enjoy a considerably weakened echo in the local media since journalists are subjected to the same law.

Restrictions on the right to demonstrate and freedom of assembly

The year 2007-2008 was marked by a series of strikes organised by autonomous trade unions that were systematically repressed in violation of the right to strike and to demonstrate. Again, this shows that maintaining the state of emergency, which prohibits any gathering in a public place, is a pretext for the restriction of freedom of association.

On 15 April 2008, after two days of strike, members of the Autonomous Inter-Union of the Civil Service (Intersyndicale autonome de la fonction publique) requested a meeting with the Prime Minister, Abdelaziz Belkhadem, to inform him of their disagreement regarding the wages review plan, which had been developed by the government without consulting the trade unions. Since the Republican Security Units (*Unités républicaines de sécurité*, URS) blocked this meeting, the trade unionists disregarded the demonstration ban, in force since 2001, and organised a gathering in the Grande Poste square, where they displayed banners protesting against the government. Police officers, caught unprepared, intervened aggressively to seize the banners and pushed, insulted and assaulted the demonstrators while riot police, who had been called to the rescue, baton-charged demonstrators. An activist of the Council of High Schools of Algeria (*Conseil des lycées d'Algérie*, CLA) and Mr Nouar Larbi, member of the National Autonomous Council of Secondary and Technical Education Teachers (*Conseil national autonome des professeurs de l'enseignement secondaire et technique*, CNAPEST) were violently assaulted. In total, 10 people were arrested, interrogated and then released a few hours later. Since the police drafted minutes of these interrogations, subsequent prosecution against the arrested demonstrators could be expected.

Police officers, caught unprepared, intervened aggressively to seize the banners and pushed, insulted and assaulted the demonstrators while riot police.

During a gathering in support of substitute teachers on hunger strike since 14 July, the police beat citizens and activists who had joined the teachers in their protest against the Ministry of

Education. On this occasion, the police crossed new boundaries: they beat the journalists who had come to cover the event and confiscated their cameras and mobile phones. Three activists were arrested, interrogated at the police station and then released. Representatives of political parties (FFS-MDS-PST), who supported the movement since its beginning, were present at this gathering, as were representatives of associations (RAJ-LADDH-CCDR) and autonomous trade unions (CLA-SNAPAP).

Harassment of human rights defenders due to their activities

To serve the government, Algerian laws are instrumentalised to intimidate activists and force them to stop or limit their activities as soon as they are not in line with the regime or if they denounce human rights violations.

Mr Mohamed Smaïn is a board member of the Algerian League for the Defence of Human Rights (Ligue Algérienne pour la Défense des Droits de l'Homme), led by Hocine Zehouane, and is investigating for forced disappearance cases in Algeria. In 2000, his research led him to the discovery of mass graves containing bones of persons abducted by members of the militia commanded by the infamous Fergane. Fergane and his partisans took civil action against Mr Smaïn for defamation, insults, and malicious and false accusations before the tribunal of Relizane. On 29 December 2001, after a high-security trial, Mr Smaïn was sentenced to two months in prison, to payment of compensation totalling 10,000 DA (€110) and to a 5,000DA (€55) fine. Mr Smaïn appealed the decision and, at the end of a hearing under intense pressure (access forbidden to the public, deterrent and threatening presence of security forces), the court of Relizane aggravated Mr Smaïn's sentence to "1 year" imprisonment, 30,000 DA (€330) compensation for each plaintiff and a 5,000 DA (€55) fine. An appeal has been submitted to the Court of Cassation. The decision of the court of Relizane was annulled for violation of the law and contradiction of grounds. On 20 October 2007, Mr Smaïn appeared before the court of Relizane, now differently composed, to which the case was referred. Though the verdict was supposed to be delivered on the same day, it was postponed to the following week. On 27 October 2007, while all the other decisions were delivered at the beginning of the session, Mr Smaïn's case was postponed until late at night. Eventually, and after much hesitation, the court annulled the decision that had aggravated the sentence of Mr Smaïn to one year of imprisonment and confirmed the first decision of the tribunal of Relizane of 29 December 2001, which had sentenced him to two months' imprisonment, 10,000 DA (€110) compensation for each plaintiff and a 5,000 DA (€55) fine. At first glance, this new decision reduced the sentence pronounced against Mr Smaïn, but in reality, it confirmed the intolerable impunity that covers perpetrators of crimes against humanity, and even worse, the persecution and condemnation of human rights defenders.

Another example is Cherifa Kheddar, President of the Djazairouna association. Coming back from a training session on transitional justice in Rabat, Morocco, she was unofficially informed that she had just been relieved of her position as a high-level civil servant at the Blida Prefecture and was no longer entitled to the wages and advantages this position entailed. This information was confirmed on 30 May 2008 by an unnotified decision of the Blida Wali. Mrs Kheddar was allowed to keep her second post - as administrator - until further notice, provided that she would cease any "obtrusive activity". She continues to perform her former duties, although her wages have been drastically reduced and she was ordered to leave the official accommodation she had occupied for more than 12 years. Mrs Kheddar never was informed about the decisions of the prefectorial order, which left her unable to appeal against them. The authorities have also targeted Mrs Kheddar in a defamation campaign attempting to discredit her vis-à-vis her co-workers and Algerian civil society, and have created an embezzlement file against her. This is due to several public events on "national reconciliation" (on Al Jazeera TV news in March 2008, organisation of a workshop on national reconciliation and transitional justice in the Djazairouna offices in partnership with the "SOS disparu(e)s Association," participation in a training on transitional justice in Rabat). Mrs Kheddar had previously been harassed for her community activities. A dismissal procedure had notably been started against her following her participation in the "Truth, Peace and Conciliation" seminar held in Brussels (after it was banned in Algiers), which the Djazairouna association had helped to organise.

As regards to their funding, Algerian associations (with the exception of associations close to the establishment) do not have easy access to state subsidies.

Article 28 of Act No. 90-31 of 1990 provides that funding from abroad can only be collected after prior agreement from the responsible public authority. This provision constitutes a way of reducing associations' incomes and of restricting their activities. Another way to control the foreign resources of Algerian associations consists of entering into agreements known as "partnerships" between the foreign funder and the Ministry of Solidarity on the one hand, and the beneficiary association on the other. Under the pretext of supporting the beneficiary association in the expenditure of these funds and in the implementation of projects, this system gives the authorities an excellent opportunity to monitor and influence the expenditures of associations.

by Essam El-Din Mohamed Hassan

RECOMMENDATIONS

The Egyptian government is urged to:

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

- *End the state of emergency enforced since 1981;*
- *Ensure that any legislation aiming at fighting terrorism respects human rights standards. Such legislation should not prescribe any restrictions on peaceful activities. The pretext of fighting terrorism should not be used to deprive persons of the right to appear before common law judges;*
- *Ensure that members of associations can benefit from freedom of expression.*

2. With regard to the legislation and practice related to freedom of association

- *Amend Law No. 84/2002 on NGOs in order to comply with international standards on the right to association, particularly ensuring that:*
  - *Associations can be established by simple notification without a need for prior license;*
  - *General assemblies have the sole jurisdiction of setting association policies, bylaws and forming/dismissing boards of directors. The administrative agencies should not undermine or interfere with this right;*
  - *The law recognises 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;*
  - *The law recognises the right of associations to select their fields of activity freely;*
  - *Associations may only be dissolved or blocked by final judgments after all other legal measures have been exhausted;*
  - *Associations can hold meetings inside and outside their headquarters without any interference;*
  - *Associations can receive the funds necessary for financing their activities without prior license, and subject only to notification, as long as all foreign exchange and customs laws have been satisfied.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

Since the adoption of the latest constitutional reforms in April 2007, the state has abandoned its relative tolerance vis-à-vis critics, the independent media and various forms of political and social activism. Indeed, the authorities have been more eager to employ counter-terrorism legislation to undermine independent expression and peaceful assembly, and to increase pressure on civil society and NGOs.

In spite of official pledges to end the state of emergency, which has been in force since 1981, the Parliament approved the government's request in May 2008 to extend the state of emergency for another two years. The fact that the government had not yet completed the draft anti-terrorism law, which would replace the state of emergency, was used to justify the proposal.

However, the proposed anti-terrorism law would in effect integrate the exceptional powers the security agencies currently

hold under the emergency law, so that the (theoretically temporary) state of emergency would become permanent. The authorities paved the way for this with Article 179 of the Constitution, which allows the security agencies to disregard Constitutional guarantees in the name of the fight against terrorism. This Article, introduced with the latest Constitutional amendments, confirms the exceptional powers of the President of the Republic, which allow him to refer suspected terrorists to extrajudicial military courts or to any special courts that might be created by the anti-terrorism law. These powers have become ever more dangerous as the government has been adopting a vague definition of terrorism and terrorist acts, and the President's powers might be used against political enemies and various forms of expression, peaceful assembly and association.[1]

In this context, Article 10 of the draft law is especially noteworthy, as it mandates a prison sentence for "whosoever establishes, founds, organizes or directs an association or body or organization or group or gang the purpose of which is to call by any means for thwarting the provisions of the Constitution or the laws or preventing one of the government institutions or public authorities from exercising its functions, or injuring national unity."

This provision can easily be instrumentalised so as to criminalise the right to peaceful assembly, and to harass social groups, movements and human rights organisations, if the security agencies decide that demands for constitutional and legislative reform constitute a call to undermine the provisions of the Constitution and the law. Furthermore, it would be easy to interpret this provision to restrict associations that fight against discrimination on the basis of religion or belief.[2]

Regulation of associations and NGOs continues in accordance with the provisions of Law No. 84/2002. This law gives the administrative agencies of the executive authority, i.e. the Ministry of Social Solidarity, a wide scope for arbitrary intervention.
A particularly worrying aspect of the law under consideration is that the administrative authority's power to dissolve associations has become even greater since the Ministry of Social Solidarity's introduction on 31 July 2007 of a substantial amendment to Article 97 of the Executive Regulations to the Associations Law. The new amendment prescribes that decisions to dissolve associations should be executed promptly, without waiting for the relevant administrative judges' decision regarding the legitimacy of the dissolution. Prior to the amendment, procedures to dissolve any given association had to be halted if the decision was challenged during a grace period specified by law.

Some have suggested that this significant amendment was introduced specifically to allow for the dissolution of the Association for Human Rights and Legal Aid (AHRLA), which has been active in fighting against torture for 13 years. A decision to dissolve the association was issued only four days after the amendment to the Executive Regulations was published in the Official Gazette. The association was dissolved and all its assets and funds were distributed to NGOs specified by the administrative agencies, even while the Administrative Court was still considering the challenge the association had filed against the arbitrary dissolution decision.[3]

It appears that the administrative agencies have increased pressure on associations to an extent that far exceeds the powers legally enjoyed by these agencies.

Although the current Associations Law has been widely criticised since its inception, the government's plans to amend it (as repeatedly stated since mid-2007) raise concerns that these amendments would impose further restrictions on freedom of association.

These fears seem to be corroborated by the limited information that was publicly available towards the end of 2008:

1. The amendments will entail the adoption of a more restrictive attitude towards forms of legal regulation of NGOs that have emerged outside the framework of the Associations Law, i.e. where NGOs established under the Civil Law are referred to as non-profit companies.
2. The amendments show a tendency to limit the right of associations to choose their field of work and to restrict them to a handful of fields only.
3. The proposed amendments grant additional powers to the General Federation of NGOs and Foundations (GFNF), converting it into a representative body of the administrative agencies in several areas, where the Federation now has to be consulted. The proposed amendments require associations to inform the Federation of the decisions taken by their boards or general assemblies. It should be noted that the GFNF was not voluntarily established by associations, but that it was imposed by law. In accordance with the current law, the Federation's board of directors comprises 31 members, and the President of the Republic is in charge of appointing the chairman of the board and one third of the members of the council.

[1] In Article I, the draft law defines a terrorist act as any threatening or terrorising act that aims to disturb the public order, hinder the enforcement of the provisions of the Constitution, the laws and regulations, or that hinders the public authorities from performing their duties. Article VI of the draft law amended the crime of incitement (explicit or implicit) to commit terrorist acts. Article II paved the way for the use of the exceptional powers, by virtue of this law, for any felony punishable by the Penal Code or any other law, if committed by using terrorist means.

[2] The provisions of the draft law were published in *ElMasry El Youm* newspaper on 20 February 2008.

[3] Based on the defence memorandum presented by the Association of Legal Assistance for Human Rights to the Administrative Court in Cairo, challenging the administrative decision to dissolve the Association, issued on 4 September 2007.

4. The amendments would allow the authorities to infiltrate associations and would prohibit associations from having a closed membership.

Part One
FORMATION AND DISSOLUTION OF ASSOCIATIONS

Associations have to register with the executive authority represented by the Ministry of Social Solidarity. This continued to be the case from September 2007 through September 2008, and the authorities in several cases acted arbitrarily in deciding whether to legalise groups working in fields closely related to human rights.

Article 97 of the Executive Regulations to the Associations Law allowed for the dissolution of the Association for Human Rights and Legal Aid (AHRLA) by an administrative decision in early September 2007, before any decision could be reached regarding the appeal filed by the Association. However, a decision from the Administrative Court in Egypt, on 26 October 2008, allowed the association to continue its activities.

The following cases are prominent examples:

- The Centre for Trade Union and Workers' Services (CTUWS) was established as a non-profit civil company in the late 1980s and pursued its activities and defended labour rights under this status until Law No. 84/2002 was issued. The CTUWS unsuccessfully tried to register in accordance with the NGOs Law. In March and April 2007, the authorities issued decisions to close the CTUWS offices in El-Mahala El-Kobra, Nagaa Hamady and Helwan. CTUWS officials tried to re-open the Centre by once again beginning the registration process, but the Ministry of Social Solidarity issued a decision in August 2007 and rejected the application, citing security reasons. CTUWS appealed and, on 30 March 2008, the Administrative Court ruled in CTUWS's favour, halting implementation of the administrative decision and calling on the Ministry to register the CTUWS, in accordance with the law. However, the Ministry delayed execution of the court order for three more months.[4]
- In January 2008, "Egyptians against Discrimination in One Nation", an anti-discrimination association, was denied registration. The administrative authorities based their rejection on the grounds that the institution's objectives were in contradiction with the provisions of Article 11 of Law No. 84/2002. This Article prohibits an association's objectives from including anything that might threaten national unity or incite discrimination among citizens. The Administrative Court began to consider the challenge filed against the decision in June 2008.
- For the same reasons as above, the Association of Citizens against Religious Discrimination continues to face difficulties in obtaining a licence from the Ministry of Social Solidarity.
- As previously mentioned, the amendment to Article 97 of the Executive Regulations to the Associations Law allowed for the dissolution of the Association for Human Rights and Legal Aid (AHRLA) by an administrative decision in early September 2007, before any decision could be reached regarding the appeal filed by the association.[5] However, a decision by the Administrative Court in Egypt, on 26 October 2008, allowed the association to continue its activities.[6]

Part Two
THE ADMINISTRATIVE AUTHORITIES' INTERVENTIONS IN ASSOCIATION ACTIVITIES

It appears that the administrative agencies have increased pressure on associations to an extent that far exceeds the powers legally enjoyed by these agencies.

In February 2007, the Social Solidarity Department in Menya distributed a bulletin to associations, which instructed them not to disclose any data or information to any agency without prior consultation with the Department. Moreover, associations were told not to accept any invitations from, or to hold any meetings with, other associations, irrespective of the purpose of the meeting. Another brochure from the Social Solidarity Department in Menya was distributed to associations in 2007 with the aim of turning all associations into affiliates of the Department. When recruiting for funded projects, associations are obliged to notify the administrative agency prior to announcing any vacancies, so that the agency can revise procedures and follow up on the activities of the recruitment committees and supervise them (using the pretext of ensuring equal employment opportunities). A third newsletter drew associations' attention to the fact that

[4] For further details, see: NGO Campaign in Defense of "Freedom of Association" - The Civil Society in Egypt, Second Report on Violations, July 2008.

[5] The dissolution decision was taken on the grounds of financial violations, based on the fact that the association received foreign funds in 2005/06 without approval by the administrative agencies as stipulated by the Law. The Association had, however, applied for approval and the administrative agency had not responded within the two-month period stipulated by the Law (which did not specify whether failure to respond within these two months meant approval or rejection). It is also worth mentioning that past members of the board of directors were accused of these violations, rather than the board members at the time when the dissolution decision was issued.

[6] For more information, see *http://www.euromedrights.net/pages/511/news/focus/62462* .

any decisions taken by their boards of directors would not be effective until approved by the administrative agencies.

Intervention by the Security Services

According to the second report of the NGO Campaign for Freedom of Association, the administrative agencies asked the Freedom of Social Development Association in one of the Dakahleya villages to dismiss the head of its board of directors upon the request of the security agencies, a few months prior to the registration of the association. The chairman of the board was forced to resign after being subjected to severe pressure and being threatened with having evidence fabricated against him.

The security agencies also cancelled a number of seminars, including one on the amendments to the Child Law, which was organised by the New Woman Foundation and was to be held in Hawamdeya, Giza, in April 2008. The New Woman Foundation was subjected to pressure and security threats to cancel the annual celebration of Egyptian Women's Day and International Women's Day. This was mainly due to the fact that the event would have commended women leaders in the syndicates and labour unions, some of whom had significantly contributed to the organisation of recent protests.

The Arab Center for the Independence of the Judiciary and Legal Profession, in turn, could not complete a seminar in Alexandria, which would have debated means to enforce the International Covenant on Civil and Political Rights. The hotel management apologised for not hosting the third day of the workshop (which was held in mid-May 2008) due to pressure from the security services.

In July 2008, the associations in Greater Cairo received a letter which told them they could not accept invitations from foreign or Arab states without seeking security approval first. The associations were also told to seek the advice of the National Security Agency prior to sending out or accepting any invitations, irrespective of their purpose. The associations were warned that any negligence in this respect would be dealt with very harshly.

Harassment of Human Rights Defenders

Human rights defenders have been subjected to physical assault. The head of El-Nadeem Center for the Rehabilitation of Victims of Violence and Torture, Dr Magda Adly, recently was a victim of physical aggression. The assault occurred while she was accompanying a human rights delegation on a visit to four detainees in Kafr El-Dawar, who alleged they had been tortured under the supervision of Kafr El-Dawar's Chief of Investigations. Adly had photos in her bag that documented physical evidence of torture and showed the victims' blood-stained clothes. She presented the photos to the judge during the court hearing of these men, who were accused of subversive activities. When she left the courthouse, a man in civilian clothing assaulted her and seized her bag, causing her to lose consciousness. Her head was bleeding and she sustained a two-part fracture to her shoulder. Some of those present managed to apprehend the man, who acknowledged he had attacked her following orders from the head of investigations. He changed his statement when questioned by the Prosecution, but was arrested, pending investigation of the incident, on 30 April 2008.

Legal restrictions on the freedom of expression and the circulation of information constrain human rights defenders as well. Among the most significant cases in this context this year was the ruling in early August 2008 against the prominent activist Saad Eddin Ibrahim, the Director of the Ibn Khaldun Center for Development Studies. Mr Ibrahim was convicted of damaging Egypt's reputation and harming national interests. These charges were based on his opinions, published in US newspapers, on the deteriorating freedoms in Egypt, and on his calls on the US administration to make USAID programme s in Egypt conditional on democratic reform. He was sentenced to two years in prison and a bail of EGP 10,000 (about EUR 1,400) to halt execution of the punishment.

Similarly, the Secretary General of the Centre for Trade Union and Workers' Services (CTUWS), Kamal Abbas, was threatened last year with a one-year prison sentence following allegations that the newsletter issued by the Centre included libel and slander against one of the members of the ruling National Democratic Party. Mr Abbas appealed, and a final judgment was issued on 27 February 2008, revoking the ruling against him.

Freedom of Movement: Restricting Participation in International Meetings

On 10-11 June 2008, the Egyptian Initiative for Personal Rights (EIPR) was prevented from taking part in a United Nations General Assembly high-level meeting on HIV/AIDS in New York. EIPR was nominated to participate in the meeting, but the Egyptian government requested that it be excluded from the list of participating NGOs.

In June, the authorities obstructed a training event for human rights activists organised by the Egyptian Association for Developing Legal Awareness and funded by Freedom House. While some Freedom House members were allowed to enter Egypt, Ms Wafaa Bin Haj Omar, of Tunisian origin and a member of the Freedom House delegation, was denied entry and held

at the Cairo airport for almost 14 hours. The security agencies justified cancelling the event by arguing that Freedom House did not have a representative office in Cairo.

The Press and NGO Relations

There has been a general increase in independent newspapers' and satellite channels' coverage of the activities of human rights NGOs, which has not been matched by the state-led newspapers. Certain government newspapers and private newspapers that have close ties to the security agencies constantly launch new defamation campaigns against human rights NGOs, casting doubt on their patriotism. A major example is an article published in *Roz Al-Yousef*, a pro-government magazine, which commented on some NGOs' observations regarding Egypt's membership in the UN Council on Human Rights. The writer stated that "these NGOs developed the notion of seeking external support and use old stories about torture, violation of the freedom of the press, military courts and other issues to receive dollars, even if in return they mar the image of their country and trigger animosity at the United Nations."

Foreign Funding - The Position of the Administrative Agency

The law prohibits associations from receiving any foreign funds unless approval is given by the Minister of Social Solidarity within two months from the date of application by the associations. However, in reality, the process of receiving approval takes from six to eight months. Decisions regarding applications for foreign funds for new projects are usually conditional upon financial and administrative inspection of the associations by the administrative authorities and on review of previous projects' files. However, there is no data to prove that associations have been barred from receiving funding, since the organisations prefer not to publicly disclose the difficulties they encounter in obtaining government approval. They hope that, by doing so, they will escape further pressure from the administration and that these problems will be resolved over time. Thus, they refrain from taking legal action to put an end to the arbitrariness of the administrative agencies.

Fair Trials - and the Possibility of Judicial Redress

The Associations Law theoretically allows all associations to challenge administrative decisions before the administrative court of the State Council. Such challenges can be filed regarding establishment procedures, dissolution or other interventions hindering association activities. However, although there are independent judges in Egypt, the organisation of the judiciary allows for various loopholes that the Ministry of Justice can use to intervene in the affairs of the judiciary. The President of the Republic appoints the Head of the State Council, the Chief Justices of the Courts of Cassation and the Supreme Constitutional Court, as well as the Public Prosecutor. Journalists, opposition members and human rights advocates are unlikely to receive a fair trial when they are prosecuted for their opinions and statements. There is nothing in the emergency law or the new draft anti-terrorism law that denies activists the right to appear before a civil court, whose judges are relatively independent. However, they can also be referred to exceptional courts.

Freedom of Association in **Israel**

by Rina Rosenberg

RECOMMENDATIONS

The Israeli government is urged to:

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

- *Cease using the Emergency (Defense) 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; Reform the Law for the Prohibition of Terror Funding - 2005 as it ignores fundamental principles of criminal law (such as the requirement of "intent", since the law provides that "to compensate for terror acts" includes the situation in which the recipient of the funds did not commit any terror act nor did he intend to do so).*

2. With regard to the legislation and practice related to freedom of association

- *Ensure that the period of time between filing an application for registration of an association and the receipt of the certificate of association is reasonable;*
- *Ensure the freedom of movement of members of associations;*
- *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 his website and 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.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

Since the Registrar of Associations (the "Registrar") in Israel was established in 1981, around 49,000 applications to register non-governmental organisations (NGOs) have been submitted.[1] According to the Israeli Center for Third Sector Research, around 23,650 NGOs were active in Israel as of 2005.[2] While the website of the Registrar lists information on each registered NGO by name or registration number, no data is available on the total number of registered operating NGOs in Israel today. Further, there is no possibility on the Registrar's website to search for the number of organisations closed down in the last year, for example, or for what reasons.

As of 2002, the annual expenditures of NGOs reached US $14 billion, or roughly 13.3% of the country's GDP, while employment in the sector amounted to almost 11% of the total workforce.[3] In the Hopkins Project's comparisons between 22 countries, Israel ranked fourth (behind Holland, Ireland and Belgium) in the relative size of its Third Sector within the larger economy. Israel's Third Sector works predominantly in four fields: religion, culture and education, education and research, and welfare and philanthropy. Public funding from the government was the Third

[1] See: the website of the Registrar of Associations: *www.justice.gov.il/MOJHeb/RashamAmutot/odot.htm (Hebrew).*

[2] «The Israeli Third Sector at a Glance,» The Israeli Center for Third Sector Research, Ben Gurion University of the Negev, March 2007. Available at: *http://web.bgu.ac.il/NR/rdonlyres/BA858A30-8095-4140-B09E-DED534B2583A/27847/ataglance_4.pdf*

[3] Ibid.

Sector's main revenue source (52%) in 2002.[4] However, no clear written standards or criteria are in place to ensure equal access to these funds for all NGOs. Donations from individuals and businesses, especially from abroad, amount to around US$1. billion per year and are responsible for 19% of the non-profit sector's funding.[5] There are no GONGOs in Israel.

Part One
LEGISLATION

Israel has ratified all of the major international human rights conventions, which guarantee the right to freedom of association. In particular, Israel ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991; Article 22 of the ICCPR protects the right to freedom of association. The ICCPR has not been incorporated into Israeli domestic law, and is thus only persuasive authority.

In February 2008, for the first time, the Israeli government presented its policy regarding the non-profit sector.

Israel lacks a formal written constitution or a bill of rights. Over the years, the Israeli parliament (the Knesset) enacted a series of Basic Laws to delineate the separation of powers. In 1992, the Knesset passed two important Basic Laws - The Basic Law: Human Dignity and Liberty, and The Basic Law: Freedom of Occupation - which, for the first time, contained "constitution-like" protections for some civil liberties. However, these Basic Laws, considered a mini bill of rights by some Israeli legal scholars, do not enumerate the right of freedom of expression or the right of freedom of association. Thus, Israel has no law that constitutionally guarantees the right of freedom of association.

Under Israeli law, international human rights covenants are not binding unless they are incorporated into domestic law.

The Law of Associations - 1980 is the main statute that governs the establishment and functioning of NGOs in Israel.

While the Israeli Supreme Court has recognised freedom of association as a fundamental right, three types of statutory laws restrict the exercise of this right. The first type is found in statutes that regulate the formation and operation of NGOs, corporations, and cooperative associations, such as the Law of Associations - 1980 and the Companies Law - 1999. The second type of restriction involves criminal laws such as the Law on the Prohibition of Terror Funding - 2005 and the Prevention of Terrorism Ordinance - 1948, and the Defense (Emergency) Regulations - 1945 which aim to prevent the establishment or activity of "illegal associations" (namely those groups deemed to be a security risk or to constitute a terrorist organisation). The third type involves direct or indirect restrictions on the freedom to form professional associations or the requirement that certain professionals belong to such an association in order to practice their profession (e.g., the Bar Association for lawyers).

The landmark case in Israeli legal history which set forth the right of freedom of expression as a fundamental right was Kol Ha'am, delivered in 1953. The first case which related directly to the right of freedom of association was brought by an Arab group in 1960, when they applied to the Registrar of Companies to obtain permission to register their company, "El-Ard Ltd." in 1964. In this case, the Supreme Court decided that the "security of the state" was not an explicitly stated purpose in the law, and thus the Registrar for Companies did not have the authority to consider security reasons as a basis for his decision to refuse to register the company. The Supreme Court ruled that the right to freedom of association was a fundamental right which could only be limited by express legislative authorisation; in this specific case, the court ruled that the Registrar had exceeded his power in denying permission and had to allow the company to register.

In February 2008, for the first time, the Israeli government presented its policy regarding the non-profit sector.[6] Pursuant to this decision, it was determined that the government will:

- Formulate social criteria for government tenders to operate social services and increase the involvement of non-profit organisations in operating social services;
- Hold roundtable forums to increase consultation with the non-profit sector in the process of policy planning;
- Supervise and regulate social services provided by non-profit organisations;
- Encourage businesses to donate to non-profit organisations by increasing the maximum donation limit (to US $5 million per year) and providing tax benefits.

The government emphasised the need for an independent, accountable, professional, and law-abiding non-profit sector. The government also reiterated the enactment of a new law that came into effect on 1 January 2008 and which cancelled the discriminatory Employers' Tax on NGOs.[7] Prior to the passage of the law, NGOs were required to pay a 4% tax on employees' salaries to the Income Tax Authority; all other employers (except for NGOs), including private sectors businesses, had been exempt from the tax for years.

[4] Ibid.

[5] See: «The Role of Philanthropic Foundations and their Impact on the Civil Society in Israel,» The Israeli Center for Third Sector Research, Ben Gurion University of the Negev, 2006 (Hebrew).

[6] See: The Prime Minister's Office, «The Civil Society and the Private Sector: Partnership, Empowerment and Transparency.» Policy paper, February 2008 (Hebrew); see also: «Government Approves PMO Policy on Relations between Sectors in Israel,» Prime Minister's Office Press Release, 24 February 2008, available at: *http://www.pmo.gov.il/PMOEng/Communication/Spokesman/2008/02/spokemigzar240208.htm*

Part Two
LIFE OF AN ASSOCIATION

In the second half of 2007, the Knesset passed Amendment No. 6 to the Companies Law, which primarily concerns the incorporation of companies for the purpose of a "public benefit" (i.e., a non-profit company). One of the main provisions of the new law revokes the regulator's authority in determining what a "public benefit" is; now the new law lists the missions that will be regarded as "public benefit". The new law also contains new provisions which increase the regulator's powers, in particular those related to changes in mission and those related to reporting requirements. First, the new law gives registrars special standing in decisions concerning the introduction of changes to the mission of a public benefit company or a non-profit association. Prior to the amendment, the registrar did not have the discretion or the authority to approve or disapprove a change in mission of public benefit companies. While such a provision already existed in the Law of Associations - 1980, the new law further entrenched the registrar's authority. Second, the new law demands increased accountability; it added additional reporting requirements, stating that both public benefit companies and non-profit associations will be required to submit an executive report in addition to the annual financial report. According to Adv. Ophir Katz, an expert in non-profit law and the chair of the Israeli Civic Leadership Association, "The strengthening of the Registrars' authority in the case of a change in mission cannot be justified. The need to apply for approval of the regulator for a change in mission implies that the parliament doesn't trust decision-makers in the non-profit sector to make proper use of donations, and therefore the state has to supervise them. This stance is not correct and should not be tolerated."[8]

On 15 January 2008, the Knesset passed Amendment No. 11 to the Law of Associations - 1980 entitled "Donation from a foreign political entity".[9] The law defines a "foreign political entity" as including a foreign country or union of foreign countries, the Palestinian Authority (PA), and a corporation established by statute of one of the bodies of a foreign country or the PA. The amendment imposes new and more detailed reporting requirements and obligations on NGOs for sums over NIS 20,000 received from foreign political entities. Under the new law, if an NGO receives these donations, it will note in its financial statement: "a) the identity of the donor; b) the sum of the donation; c) the goal or purpose of the donation; and d) the conditions of the donation, if there are such." The law also requires the NGO to "do its utmost" to determine whether the donation came from a foreign political entity, and the obligation to report under this section applies "if it knew or should have known that the donation is from a foreign political entity." The law provides that the NGO will publish this information on its Internet site.

In August 2008, the Israeli Minister of Defence, Ehud Barak, ordered the closure of the Al-Aqsa Association for the Restoration of Muslim Holy Sites (located in Israel) and declared the association to be illegal. The closure order, the declaration as well as the seizure of the association's property, were given pursuant to the Defence (Emergency) Regulations – 1945.

Part Three
DISSOLUTION OF AN ASSOCIATION

In August 2008, the Israeli Minister of Defence, Ehud Barak, ordered the closure of the Al-Aqsa Association for the Restoration of Muslim Holy Sites (located in Israel) and declared the association to be illegal. The closure order, the declaration as well as the seizure of the association's property, were given pursuant to the Defence (Emergency) Regulations - 1945, on the grounds that such measures were «necessary in order to protect state security, public welfare, and the public order."[10]

The Al-Aqsa Association is one of the main Arab charities in Israel. It plays a very important role in collecting and distributing alms to Muslims in need, as well as in restoring Muslim holy sites, cemeteries and educational institutions. The damage caused by the closure of the organisation is made all the greater by the fact that the order came shortly before the beginning of the holy month of Ramadan, the month during which most alms are gathered and distributed. These steps constitute a violation of the rights to freedom of expression, religion and association, to the association's members and to the Arab minority in Israel in general. The Defence Minister's use of emergency powers is also extremely dangerous, particularly because these Mandatory-era powers are draconian and strip those damaged of their constitutional right to due process. While a clear mechanism

[7] Draft Laws 335 dated 15 October 2007, p. 76. Economic Arrangements Law 2008 - Revocation of the Employers Tax 24. Employers Tax, 1975 – is revoked.
[8] See Adv. Ophir Katz, «Does amendment no.6 to the Law of Companies-2007 mean more regulation?,» Israeli Center for Third Sector Research, Ben Gurion University of the Negev, Newsletter, No. 28, February 2008, available at:
http://cmsprod.bgu.ac.il/NR/rdonlyres/9429631C-F4EA-41AA-B7FA-B679646F94BA/0/newsletter28.pdf
[9] The bill and explanations were published in the Knesset legislative proposals 182 of 19 November 2007 p. 41.
[10] On its website, the Israeli Defense Ministry publishes a list of «close down» declarations and «seizure of property» orders submitted under the Emergency (Defense) Regulations - 1945 against organizations starting in 1964. For the complete list, which also includes the order to close down the Al Aqsa Association see:
www.mod.gov.il/pages/general/pdfs/terror.pdf

exists in the Law of Associations - 1980 for the cessation of an NGO's activities, which provides organisations with a proper judicial opportunity to defend themselves, the Defence Minister chose instead to impose an arbitrary, sweeping administrative action to close down the organisation.[11]

[11] See: «Adalah Demands that Defence Minister Ehud Barak Revoke his Decision to Close Down the Al-Aqsa Association and to Proclaim it an Illegal Organization,» Adalah News Update, 25 August 2008, available at: *http://www.adalah.org/eng/pressreleases/pr.php?file=08_08_25*. To date, Adalah has not received a response to its letter from the Defence Minister.

by Ghosson Rahhal

RECOMMENDATIONS

The Jordanian government is urged to:

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

- *Any legislation aiming at fighting terrorism should respect Jordan's international human rights commitments and other relevant standards. Such legislation should not prescribe any restrictions on peaceful activities. The pretext of combating terrorism should not be used to deprive persons from their right to a fair trial before a Common law judge.*
- *Revise the existing Law on Public Gatherings and ensure that there is genuine and inclusive participation by all sections of civil society (together with the provision of appropriate assistance by international human rights law experts). Ensure that the newly drafted law incorporates international standards of the right to association, particularly in relation to:*
  - *Abolition of the requirement for prior approval of any public meeting or demonstration;*
  - *Defining the meaning of "public gathering" to include only those taking place in publicly accessible places or those that are open to the public.*

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

- *Draft a new law on freedom of association which, in line with international standards, ensures that:*
  - *Associations can be established by notification without a need for prior license;*
  - *The government's ability to appoint founding members or impose any form of governmental management is removed;*
  - *Associations may not be dissolved, boards of directors dismissed or temporary boards appointed by administrative decisions;*
  - *No associations be dissolved or blocked unless by final judgment in a court of law after exhausting all available means of appeal;*
  - *The law enforcement powers of the Ministry of Social Development to enter NGO premises and access files at will are removed;*
  - *Associations have the right to receive the necessary funds for financing their activities without prior license as long as all foreign exchange and customs laws have been complied with.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

On 7 June 2008, the parliament adopted the modified Public Meetings Law after introducing some amendments.[1] These amendments included the following provisions:

- A public meeting was defined as any meeting aimed at discussing the public policies of the state. In practice, this made it illegal for associations to organise meetings to discuss any political issue or to criticise the state's foreign policy. The previous definition had stated that a public meeting was a meeting for the purpose of discussing a public issue.
- The amended law reduced the waiting time to obtain permission to hold a public meeting from three days to 48 hours.
- The amended law also reduced from 48 hours to 24 hours the period within which the governor has to respond to a request

[1] Al Arabelyom newspaper, 7/6/2008.

for a meeting to be held. Moreover, if the governor fails to respond, the public meeting will be considered to have been approved.

On 6 July 2008, both Houses of Parliament passed a new law on NGOs ("Societies Law"). The law was ratified by King Abdullah II of Jordan on 17 September, despite heavy criticism from civil society actors[2] that it would allow the government to further extend its control over the activities of associations.

1- The law introduced an additional step associations now have to take to obtain legal status, which might delay the registration process. Article 5 of the law established a "Registry" within the Ministry of Social Development which is to be supervised by the "Controller of the Registry". The responsibilities of the Controller are not clearly defined. Article 5/3 states that "special regulations" should determine the responsibilities of the Controller, which will, in fact, make it easier to simply change or amend them by a ministerial decision.

2- By raising the required number of founding members from 7 to 11 (Article 6), the law made it more difficult to establish an association.

3- The procedure for the registration of associations remains subject to prior authorisation, contrary to the spirit and letter of Article 20 of the International Covenant on Civil and Political Rights.

4- Article 14. C.1 of the law stipulates that certain decisions taken by an association's general assembly cannot be considered valid until they are approved by the authorities. Article 14. B.1 of the law moreover stresses that, if the association does not notify the relevant minister and the Controller of the date, agenda and place of its general assembly at least two weeks before the meeting, the association's meeting will be considered unauthorised. Finally, associations also are required to submit an annual action plan (Article 16), which will allow the authorities to intervene in their activities.

5- Article 17 obliges all associations to declare in their annual reports any grants or donations they have received from Jordanian individuals, and requires them to obtain authorisation from the relevant ministry before receiving any donations or funding from non-Jordanian sources. The Minister of Social Development also has the power to impose penalties and order various measures, including dissolution, against associations which do not comply with these procedures. In addition, associations do not enjoy banking confidentiality (contrary to what is stipulated in other regulations).

6- Articles 19 and 20 of the law give the Minister of Social Development a wide range of rights, including the dissolution of associations for various reasons,[3] and the suspension of associations' elected boards and appointment of a temporary board of directors. This is particularly the case if an association receives donations or grants without the required prior approval.

On 6 July 2008, both Houses of Parliament passed a new law on NGOs ("Societies Law"). The law was ratified by King Abdullah II of Jordan on 17 September, despite heavy criticism from civil society actors that it would allow the government to further extend its control over the activities of associations.

Part One
FORMATION OF AN ASSOCIATION

Civil society associations' activities continue to be regulated by Law Number 33 on Associations and Social Institutions of 1966, amended by Law Number 2 of 1995. Under the current law, the authorised ministry must give its written approval for the establishment of an association or institution. Unlicensed or unregistered associations are deemed unlawful, and their members are subject to criminal prosecution and up to two years' imprisonment. In October 2007, for example, the State Security Court found ex-parliamentarian Ahmad al-Abbadi guilty of belonging to an unlawful group because the Jordan National Movement (a group of people who share certain political and economic views and share their thoughts on a website accessible on the Internet) had not obtained official authorisation and was not legally established. Abadi was convicted of "attacking the prestige of the state" for an online article accusing the Interior Minister of corruption, and was sentenced to two years in prison without any investigation into the allegations. According to a royal court official, "the charges filed against Abadi by the government sought to avoid violence within the large 'Abbadi tribe'."[4]

In January 2008, the founders of the "Jordanian-Syrian Fraternity Association (Ekha')", whose goal is to develop the cultural relationship between Jordanian and Syrian writers and intellectuals, failed to obtain the approval of the Ministry of Culture to formally register their association. The Minister

[2] See the joint letter issued by the EMHRN and HRW published on July 30th, 2008 *http://www.euromedrights.net/pages/511/news/focus/58204 and the press release dated of 1st August 2008 http://www.euromedrights.net/pages/511/news/focus/58202*

[3] Such a right violates Article 17 of the Arab Declaration of Freedom of Association, which states that the right to dissolve any association should be exclusive to its general assembly or to a final judicial verdict.

[4] Human Rights Watch, "Shutting Out the Critics," *http://hrw.org/reports/2007/jordan1207/3.htm*

of Culture rejected their application on the grounds that the Ministry of Culture had no jurisdiction. The Minister explained that they should have submitted their request to the Ministry of Interior. The founders, in turn, explained that, even though the association's goal was to strengthen cultural ties between Jordanian and Syrian intellectuals, it was merely a local association founded by Jordanian citizens. They emphasised that Syria was not involved in the association, either formally or informally, and that, therefore, the association's registration fell under the jurisdiction of the Ministry of Culture.[5] The Ministry of Interior is currently handling the registration application and should already have contacted the intelligence department to interview the associations' founders and to examine their activities.[6]

Part Two
LIFE OF ASSOCIATIONS

The assembly law restricts the right of civil society to assemble and associate. The Law on Public Gatherings of 2004[7] requires that demonstrations or public meetings receive prior approval by the governor. In most cases, governors have refused requests for approval, without providing any justification. NGOs that have urged the governor to exempt their activities from needing advance authorisation were informed that only meetings inside their own premises could be exempted by a special regulation. Other public meetings, for example in hotel facilities, still require advance authorisation from the governor.[8]

In September 2007, the Islamic Action Front (IAF) requested permission to hold a demonstration in front of the Prime Minister's office to protest the continued detention without trial of seven of its members by the General Intelligence Department. Amman's governor denied permission, forcing party members to protest in a private space in front of their party headquarters.[9] It is also worth mentioning that, in July 2007, Amman's deputy governor refused the Afaf Society (which is run by Abd Allateef Arabiat, a former three-time president of parliament) permission to hold a conference entitled "The Family is the Nursery of Values and Identity". The rejection was likely due to Mr Abd Allateef Arabiat's former role as head of the "Shura" Council of the opposition Islamic Action Front.

On 26 October 2007, the governor of Amman denied the NGO The New Jordan (al-Urdun al-Jadid) permission to hold a workshop in the Jerusalem International Hotel the following day, which was to discuss the role of civil society in monitoring Jordan's parliamentary elections scheduled for 20 November 2007. The governor reversed his decision the same day, but the workshop had to be cancelled due to the confusion. Hani al-Hourani, the director of The New Jordan, said that this was the fourth time in two months that the governor had denied permission for such a workshop.[10] Moreover, police forces twice surrounded the "Professional Association" compound to stop members from performing the prayers of Eid Al-Fitr on 12 October and Eid Al Adha on 21 December 2007.

Hani al-Hourani, the director of The New Jordan, said that this was the fourth time in two months that the governor had denied permission for such a workshop.

On 14 December 2007, the Islamic Action Front claimed that 20 of its supporters had been arrested for trampling the country's flag during a protest that had been officially authorised. A university student was arrested and detained for 14 days, charged with "fuelling national discord, inciting sectarianism, and dishonouring the national flag." The State Security Court tried this student under The Prevention of Terrorism Act, which criminalises acts "disrupting public order" or "endangering public safety" in peaceful demonstrations. The Court of Cassation found him not guilty of these charges.[11]

On 14 May 2008, Amman's governor, Saad Manasir, turned down a request by the Islamic Action Front to organise public rallies to commemorate the 60th anniversary of the Nakba, "the catastrophe of the Israeli occupation of Palestine and eviction of thousands of Palestinian people", without providing an explanation. The ban apparently was not intended to curtail Nakba commemorations, but rather to restrict the influence of the Islamic Action Front (IAF).[12]

[5] The Italian broadcasting news, 2/1/2008
[6] Electronic interview with the writer and human rights activist Khalid Qurran, 1/6/2008
[7] The Law of Public Gathering 2004 was in force until 30 June 2008
[8] Human Rights Watch Response to Ministry of Foreign Affairs Critique New York, February 19, 2008 *http://hrw.org/english/docs/2008/02/19/jordan18117.htm*
[9] Human Rights Watch, "Shutting Out the Critics" *http://hrw.org/reports/2007/jordan1207/3.htm*
[10] Ibid.
[11] Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices 2007", released on 11 March 2008
[12] Suha Philip Ma'ayeh, "Jordan bars IAF from protesting", Jordan Times Newspaper, 14 May 2008

Freedom of Association in **Lebanon**

by Jad Yacoub

RECOMMENDATIONS

The Lebanese government is urged to:

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

- *Abolish exceptional courts, military tribunals and the council of justice*

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

- *Implement Circular No 10/am/2006 which facilitates the formation of associations;*
- *Ensure that the registration system is merely a declaratory one;*
- *Ensure that non-Lebanese citizens can become members of an association;*
- *Ensure, by way of an adequate consultation system, that all associations can have the opportunity to participate in the decision-making process on policies of public interest.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

In Lebanon, freedom of association is guaranteed by the Ottoman Law of 1909, directly inspired by the French 1901 law on associations and enshrined in Article 13 of the Constitution. The Ottoman Law, known for being liberal, has adopted a notification system (also called declaration system) for the setting up of associations.

The Lebanese notification system applies to all associations with the exception of those regulated by specific Lebanese provisions which require prior licensing. Despite its liberal character, the Lebanese law prohibits any "secret association" (undeclared) and provides the government with the power to dissolve an association by virtue of a decree issued by the Council of Ministers.

The liberal character of the 1909 Law has not always been well received by the authorities. In fact, since Lebanese independence in 1943, the administrative practice concerning associations has often been arbitrary, particularly in the post-war period (1990-2005), during which the administrative practice established a system to monitor the emerging civil society.

Two attempts were made to amend the Associations Law to make it more restrictive. If this had been successful, the amendments would notably have replaced the notification system with a licensing mechanism.

In April 2005, Syria withdrew from Lebanon. In the following months, new associations were established and several already operational groups went to the Ministry of Interior to register.

In May 2006, the Ministry of Interior, under pressure from and in close collaboration with civil society, issued Circular No. 10/am/2006, which established a new notification mechanism in order to facilitate obtaining an *"Ilm wa Khabar"* (receipt). Yet, in Lebanon, not all legal provisions are respected by the administration. This applies in particular to the Ministry of Interior, which has been systematically transforming the declaration system into a licensing system, and thus has been turning the Lebanese legal system into a tool of the state. It is hoped that the appointment of an independent nominee from civil society to head the Ministry of Interior will lead to changes.

Lebanon has not yet adopted any counter-terrorism legislation.

Part One
FORMATION OF ASSOCIATIONS

In its decision dated 18 November 2003, the State Council stated that, upon receiving the declaration mentioned in Article 6 of the 1909 Law, the *"Ministry of Interior is obliged to issue the `Ilm wa Khabar in return without any delay and it does not enjoy any discretionary powers in this respect."* A mere notification is therefore sufficient.

In Lebanon, not all legal provisions are respected by the administration.

And yet, associations such as S.O.L.I.D.E. (Support of Lebanese in Detention and Exile) and the CLDH (Lebanese Centre for Human Rights) waited eight and 16 months respectively, before receiving their notifications, even though S.O.L.I.D.E. has been active since 1990 and the CLDH was established in 2005.

In certain cases, the Ministry of Interior sends the notification file to the security services, who investigate founding members of the association. After this, the Ministry of Interior decides the group's fate. No such cases have been reported since the nomination of the new government in early summer.

It must be noted that a non-Lebanese citizen cannot become a member of a Lebanese association.

Part Two
LIFE OF AN ASSOCIATION

Between 1 September 2007 and 1 September 2008, the Lebanese government did not intervene in the activities of associations. The latter enjoy freedoms of assembly and of association.

No association was forbidden from participating in conferences abroad or from joining a regional or international network of associations. Associations can, just as freely, receive funds from abroad.

The Lebanese and international press have recently been interested in the activities of NGOs, and particularly those working on forced disappearance and arbitrary detention issues (S.O.L.I.D.E. and CLDH), which are still not resolved in Lebanon. However, following their mention of mass graves (in particular the Halat one), the above-mentioned organisations were accused by a few media outlets of "politicising" this issue and crusading against certain Lebanese political figures who participated in the war as militia leaders.

With regard to freedom of expression, the families of Lebanese detainees in Syrian prisons - supported by the S.O.L.I.D.E. and CLDH, as well as by some representatives of political parties - demonstrated on the road to the presidential palace on 21 July 2008, during the visit of the Syrian Minister of Foreign Affairs. The Republican Guard hit the demonstrators with their rifle butts to move them away from the route of the Syrian minister. This was widely denounced by humanitarian associations, especially as it was completely unexpected, given Syria's withdrawal in 2005.

Associations such as S.O.L.I.D.E. (Support of Lebanese in Detention and Exile) and the CLDH (Lebanese Centre for Human Rights) have waited eight and 16 months respectively, before receiving their notifications.

RECOMMENDATIONS

The Libyan government is urged to:

1. 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 in which it is mentioned that fundamental individual and collective freedoms are guaranteed only "within the limits of public interest and the Revolution";*
- *The authorities should comply with the concluding observations of the Human Rights Committee, which calls on them to "take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly.*

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

- *Democratically draft a law incorporating international standards on the right to freedom of association;*
- *Put an end to the arbitrary interference by the authorities, in particular the revolutionary committees, in the internal affairs of associations, whether that interference is direct or carried out under the guise of judicial proceedings;*
- *Either free all human rights defenders and members of associations who are arbitrarily detained. In the event that charges are not withdrawn, guarantee the right to a fair trial before an independent and impartial court;*
- *In line with the UN Human Rights Defenders Declaration, put an end to all threats, intimidation and harassment against human rights defenders and bring to justice the perpetrators of such acts.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

Libya has been ruled for over 40 years by the non-elected government of Colonel Gaddafi, who abolished the Constitution (his first act as President) on 1 September 1969. Ever since, the country has taken a totalitarian path that imposes severe constraints on the enjoyment of basic human rights. Libya has no constitution, no parliament and not a single elected institution. There is no separation of powers and there are no judicial guarantees. The country is governed by a "unique" one-party system - the Revolutionary Committee System - that purposely confuses the interests of the Party with those of the State and the Party organs with the institutions of the State. The State is the party and the party is President Gaddafi. The "Jamahiriya" system is structured in such a way as to concentrate power in extremely few hands, with all powers ultimately situated in the person of President Gaddafi. The politico-legal structure is such that all powers (legislative, executive and judiciary) are held by President Gaddafi, who is neither accountable to the public nor to any other institution.

The "Jamahiriya" system rejects the very principle of elections, repudiates the principles of parliamentarian representation, and condemns pluralism. Political parties, independent trade

unions and independent NGOs are banned in Libya (Law No 71 of 1972). The so-called "People's General Congress" (PGC), usually and erroneously assumed to be a legislative body, is not a Parliament at all, as it is neither elected nor does it have the power to make laws. The power to limit or judge the President's actions, inherent to parliaments' control functions, does not exist in Libya, and there is no immunity for anyone except for the President, who has the power to disband the PGC and dismiss some or all of its members, exactly as in the case of totalitarian parties. There is no voting held in the PGC. The "Politburo" of a totalitarian party is purposely confused in Libya with the "Secretariat of the PGC", which enjoys uncontrolled and unlimited powers.[1]

There is no civil society in Libya.

Part One
LEGISLATION

Libya ratified the International Covenant on Civil and Political Rights (ICCPR) on 15 May 1977 and is therefore bound to respect Article 22 of the ICCPR, which guarantees freedom of association.

Despite this, Libya has consistently shown complete disregard for both the letter and the spirit of Article 22. Libya is quite possibly the only country in the world that allows absolutely no margin for freedom of association. Any attempt to exercise this right, which is closely linked to the right to freedom of expression, is severely and violently repressed. In early June 2008, a Tripoli court sentenced 11 Libyans who had declared their intention of organising a protest (sit-in) on 17 February 2007 in Tripoli's Martyr's Square to protest against the ongoing violations of basic human rights. These 11 would-be protesters were arrested before the planned date for the sit-in and jailed on 14 February 2007. They were sentenced on 12 June 2008 to heavy penalties of six to 25 years in prison. The main charge brought against them was an "attempt to organise a political party", the worst possible crime in the eyes of the Libyan government.

There is no civil society in Libya, in the sense that the international community generally considers "civil society" to consist of organisations independent of the government. All organisations in Libya are authorised by the government and under complete state control: from Scout organisations to the Gaddafi Foundation, to the Human Rights Committee established under the Jamahiriya. All organisations are created and financed by the state. In addition to their main tasks, they all have a security role to observe and they regularly report back to the relevant security agencies. In Libya, the security of the regime is the first and foremost prerogative; everything else is secondary. Not only is the right to freedom of association nonexistent, it can also be a source of violent reactions towards those who attempt to exercise it. All those who have endeavored to do so have learned, at their expense, that the government is inflexible when it comes to the exercise of the right of association.

Part Two
RESTRICTIONS TO FREEDOM OF ASSOCIATION

Thousands of Libyan citizens have been killed, imprisoned for long years, or have become political refugees. Their only "crime" has been, as in the above-mentioned case of the 11 Libyans, their attempt to independently exercise their right to freedom of association or expression. Any attempt to form or join an unauthorised political, student or trade union association represents the ultimate crime for the government. It is a crime that cannot be pardoned and which is severely repressed by the security system. This explains the excessive 25-year "criminal reclusion" sentences for the three people who merely declared their intention to protest the government's violating their rights to freedom of expression and association. Some, like the journalist Dhaif Alghazal, were murdered (26 May 2006) for defending the right to freedom of association on the Internet. On 28 June, Mr Al-Mansoury was kidnapped, as was the journalist Alghazal, and was submitted to a whole day's torture and then left on the road. His torturers told him outright that the torture was intended as a warning to all those who, like Mr Al-Mansoury, are struggling to breach the seemingly impermeable wall of totalitarianism.

It is important to point out that Mr Al-Mansoury was heavily involved in the movement which has taken hesitant (but interesting in the Libyan context) initiatives to form, along with other "founders", a human rights organisation - Al Adel

[1] The "Jamahiriya" system has been created so as to ensure that all powers (political, economic and judicial) are fully controlled by Colonel Gaddafi. The System is based on two main principles: non-representation and non-election. Indeed, given that the system refuses representation, it is unavoidable that the usual corollaries of representation, i.e. regular free and fair elections by secret ballot will also be denied. There is no single institution, organisation, trade union or any other public or private entity that is based on the concepts of election, representation and accountability. In Libya, representation and elections are, by principle, considered frauds (attamtheel tadjeel) for democracy, as elections will in all cases produce a majority and a minority. This is unacceptable to the Jamahiriya system, which alleges that the minority will be oppressed by the majority and will therefore have no say in the conduct of the nation's affairs. This is why the Jamahiriya refuses representative democracy as well as free and fair elections and opposes to it the Jamahiriya system that supposedly gives everyone the equal opportunity to exercise power collectively and democratically.

On 28 June, Mr Al-Mansoury was kidnapped, as was the journalist Alghazal, and was submitted to a whole day's torture and then left on the road.

Human Rights Organisations - under the aegis of Colonel Gaddafi's son, Seif Al-Islam, which is semi-independent vis-à-vis the government. Mr Al-Mansoury announced on 5 June that the government had finally recognised the newly-created organisation. Likewise, Mr Al-Mansoury announced that the government had authorised the opening of the Centre for Democracy, an additional attempt to further widen the very narrow margin allowed for freedom of expression and freedom of assembly in Libya. Mr Al-Mansoury played a leading role in both projects, as he was a member of the founding committee of the "Adel" organisation and the Chairman of the founding committee of the Centre for Democracy.

On 5 June 2008, Mr Al-Mansoury held a press conference during which he officially declared that the government had agreed to and authorised the "Adel" organisation and the Centre for Democracy. He even distributed a letter duly signed by the government to that effect. However, a few hours later, a government member declared that nothing had been authorised and that consultations were still ongoing. At the same time, the "Revolutionary Committees", the armed wing of the regime, threatened to "resort to Kalashnikovs" to protect the "Declaration on the establishment of the Authority of the People" and ensure its consolidation. Simply put, this means that no one in the "Jamahiriya" system will be allowed to form or join organisations that are not subject to the complete control of the security apparatus of the "revolutionary committees", a militia-type institution that acts as watchdog of the regime.

Freedom of Association in **Morocco**

by M. Youssef El Bouhairi and M^me^ Awatif Laghrissi

RECOMMENDATIONS

The Moroccan government is urged to:

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

- *Consider the fact that the criminalisation of the expression of views that are deemed to be denigrating to the King and to "the territorial integrity" is incompatible with the spirit of international standards of human rights;*
- *Hold police accountable for abuses through comprehensive and impartial investigations; Conduct an impartial investigation into the alleged human rights violations committed by the Moroccan police forces during demonstrations in Sidi Ifni, and identify and punish the persons responsible.*

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

- *Ensure that the existing laws with regard to respect of freedom of association are strictly applied*
- *Respect the administrative procedure for forming and registering associations; Strictly apply the provisions of the law pertaining to the procedure on declaration: the administrative authorities must issue "on the spot a sealed provisional receipt" (article 5, par. 1);*
- *No associations should be dissolved or blocked unless by final court judgment after exhausting all means of appeal;*
- *Implement the provisions of the 2002 Act, which allows associations that are simply declared to receive donations;*
- *Lift the prohibition that prevents certain categories of civil servants from joining a trade union (decree dated 5/02/1958 modified in 1966) as this contradicts the provisions of the law on associations, which does not provide any sectorial limitation to the right to join an association.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

Morocco is currently undergoing a radical transformation through an institutional and legislative reform process to promote and protect human rights. This positive development resulted in the reform of the family code, the criminal procedure code, the code of deregulation of the audiovisual sector, the code on the criminalisation of torture, and the nationality code. However, public liberties - and particularly freedom of expression, association and assembly - remain subject to certain restrictions that limit their practice.

In Morocco, constitutional provisions proclaim the rights and freedoms of citizens. The preamble of the 1996 Constitution reaffirms Morocco's commitment to universally recognised human rights and Article 9 guarantees freedom of movement in all parts of the country, freedom of opinion and expression, freedom of assembly and freedom of association, and the freedom to join any trade union or political party. Only the law can impose limits on the exercise of these freedoms.

Morocco therefore has put into place several legal provisions regarding freedom of association, which is regulated by Dahir[1] No. 1-58-376 on freedom of association, and two other

[1] King's decree

Dahirs, No. 1-58-377 on public gatherings and No. 1-58-378 establishing the press code, which were published in 1958 under the Code of Public Liberties. The 1958 Dahir on freedom of association was amended in 1973 and then modified and completed in 2002.

- The 1958 Dahir took the principle of the free formation of associations from the 1901 French Act, which subjects the exercise of associations' full legal capacity to the accomplishment of declaration formalities with the prosecution and the local authority under the Ministry of Interior (Articles 1, 2, 3). According to Article 2 of the 1958 Dahir, associations of individuals can be formed freely, without authorisation, provided that the provisions of Article 5 are respected, according to which any association shall be subject to prior declaration.

- The first amendment resulting from Dahir providing Act No. 1-73-283 of 10 April 1973 provides for stricter control of associations. Associations could no longer be established without declaration or prior authorisation, and were subjected to administrative suspension or dissolution by the executive power, as well as to increased penalties provided for by criminal legislation, in case of violation of the obligations prescribed by the Associations Law.[2]

- The 2002 reform, which resulted in Act No. 75-00, provides that the dissolution of an association can only be effective through a judicial process, and simplifies the formalities with regard to the declaration procedure.[3] It also defines the procedures for recognising associations as being in the public interest and grants associations the right to receive foreign funding.

According to the current legislation, an association can be dissolved by the tribunal when its objectives are deemed illicit, illegal, contrary to public morality, discriminatory, or risk undermining the Islamic religion, territorial integrity or the monarchy. But, in practice, the law is not always respected. Although forming an association does not require official authorisation, but rather a simple declaration, the administration at times refuses to issue the receipt for this declaration to certain associations, in spite of the relevant legal provisions. It thus obstructs associations' functioning and the exercise of freedom of association.

Part One:
FORMATION AND DISSOLUTION OF ASSOCIATIONS

While Article 9 of the Moroccan Constitution of 1966 recognises freedom of association, it nevertheless specifies that this freedom can be limited by law. Therefore, the question is whether or not the limitations imposed by Moroccan legislation comply with the International Covenant on Civil and Political Rights, ratified by Morocco on 3 May 1979.

Following political unrest in the country, the amendments made in 1973 required groups to submit a declaration to the local authorities and to the King's Prosecutor to form an association and acquire legal status. In practice, the authorities refused to deliver the receipt to certain groups, therefore transforming the declaration procedure into a system of prior authorisation for the formation of an association.

Several examples show the disproportionate use of force employed in 2008 to break up demonstrations and sit-ins of people who protested for the respect of their rights. They illustrate that achievements in the field of human rights remain "fragile".

The 2002 Act amended the procedure to form an association in order to remedy the practice. Thus the amended text required the administration to issue a provisional receipt, acknowledging submission of the documents required by law, until a final receipt was issued within 60 days from the date of the declaration. If no action was taken within those 60 days, the association would acquire legal status and could carry out its activities as set out in its statutes. Moreover, the 2002 Act authorised the directors of the association to entrust a bailiff with the mission of submitting the declaration of the association's formation.

Yet the administrative practice has not changed. Local authorities continue to refuse to deliver provisional receipts to some associations or to the bailiff, and sometimes they not only ask for the documents stipulated by law (ID, pictures of board members, etc.), but also request the fulfilment of other formalities not required by law.

The administration refuses or delays the issue of receipts to certain associations on the grounds of public security, counter-terrorism or respect for territorial integrity. For example, the National Association of Unemployed Graduates in Morocco, the Justice and Charity Organisation (al adl wa al ihsan), the Movement for the Nation, and the National Authority for the

[2] Indeed, the 1973 amendments introduced the obligation of a prior declaration to form any association. If this obligation was not respected, the association's founders could be punished by a prison sentence of up to 2 years and a fine of 10,000 to 50,000 Dirham (about 900 to 4,500 Euros). The suspension or dissolution of an association could be decided unilaterally by the government by way of a decree.

[3] It provides for a single declaration to the persons in charge within the territorial administration, who then send a copy of the requested documents to the King's Prosecutor. Besides, in accordance with the convention against racial discrimination, ratified by the Moroccan State in 1969, the new Act prohibits any association that is deemed discriminatory (Article 3).

Independence of the Judiciary, have not received a registration receipt. The Amazigh Network for Citizenship, established in 2002, only obtained its receipt on 16 June 2006.

The 2002 Act abolished the government's right to suspend or ban associations and entrusted the judiciary with ordering, as an interim measure, the closing down of groups' premises and the prohibition of any meeting of an association's members before a decision is taken regarding its dissolution. The judicial decision that determines the terms of the dissolution can be appealed. Once the court decides that an association is to be dissolved, a criminal penalty and a fine of 10,000 to 20,000 Dirham (about 900 to 1,800 Euros) are also incurred for any person who illegally tries to re-establish the dissolved or suspended association or who encourages the meeting of its members.

The difficulty rests in the many interpretations and the ambiguousness of what qualifies as "undermining" the Islamic religion, territorial integrity or the monarchy.[4] As the judiciary does not yet enjoy full independence and still has flaws,[5] this provision gives the Moroccan authorities a good opportunity to limit the activities of many associations.

Part Two:
LIFE OF AN ASSOCIATION

Several examples show the disproportionate use of force employed in 2008 to break up demonstrations and sit-ins of people who protested for the respect of their rights. They illustrate that achievements in the field of human rights remain "fragile".

Repression of Peaceful Assembly

In 2008, the Association of Unemployed Graduates organised demonstrations in front of the Moroccan parliament in Rabat, demanding the right to work and, in particular, access to employment in the civil service. These protests were violently repressed. Following demonstrations on 1 May, the president of the association was arrested. He was arrested again on 3 May, together with four other activists, and found guilty of "breaking sacred values". On 22 May they were charged with insulting the monarchy and sentenced to three years' imprisonment and a fine of 10.000 Dirham (about 900 Euros).

On 7 June 2008, 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 caused many injuries.

Judicial Proceedings against Members of Associations

On 7 June 2008, 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 caused many injuries. Witnesses alleged that members of the associations had immediately been arrested and that the protests had been violently repressed. Indeed, the head of a human rights organisation in Sidi Ifni, Ibrahim Sebaa El Layl, was arrested a few hours after a press conference on the violence in Sidi Ifni convened by the Moroccan Center for Human Rights. Sebaa El Layl was also charged on 13 June, along with Al-Jazeera's Morocco bureau chief, Hassan Rachidi, for "disseminating false information and allegations". A parliamentary commission was established to conduct an investigation. It was expected to publish its report in July 2008, but delays were reported in August.

Following demonstrations on 14 May 2008, which had been caused by cases of food poisoning at the restaurant on the Marrakesh University campus, police violently intervened to disperse demonstrators belonging to the UNEM. Several students were incarcerated for disrupting public order, destruction of public property and formation of a criminal gang. They are currently staging a hunger strike while awaiting trial in the Marrakesh prison.[6]

Several court cases have been brought against human rights defenders and trade unionists over the past two years. Police arrested seven members of the AMDH for shouting anti-monarchy slogans during a demonstration on International Workers' Day, 1 May. They were tried and found guilty of "breaking sacred values" and sentenced to between one and three years' imprisonment. The protest demonstrations that followed the arrests were dispersed by the police and resulted in violence, particularly during the demonstration of 26 May 2007 organised by the Democratic Federation of Work and the General Union of Workers in Rabat.

[4] Article 3 of the amended 1958 Dahir provides for the dissolution of an association if it is founded "for an illicit cause or objective, in contradiction with the law or public morals, or whose goal is to harm the Islamic religion, territorial integrity or the monarchy, or to encourage discrimination".

[5] Illustrated, for example, by the fact that the executive power, represented by the Minister of Justice, also presides over the High Judicial Council

[6] The names of the detained students are: Zahra Boudkour, Alae Darbali, Morad Chouini, Othmane Chouini, Youssef Machdoufi, Mohamed Jamili, Mohamed El arbijadi, Khalid Miftah, Jalal al Qotbi, Abdalah Rachdi, Youssef Alaoui, Hafid Hafidi, Mansour Dridou, Redouane Zoubairi, Hicham Idrissi, Mohamed el- Idrissi, Nacer Lahssain.

Prohibition on Forming an Association with Special Linguistic or Religious Activities

The Moroccan authorities refuse to grant legal status to Amazigh associations such as IZ'URAN in Lakhssass and IMAL at Masst (Tiznit region). The government declared the Moroccan Amazigh Democratic Party illegal for breach of Article 4 of the Political Parties Law, which prohibits the formation of any political party "whose mission or objectives are in contradiction with the constitution or that is founded on the basis of language or ethnicity".

The police have interrogated several members of the Al adl Wa al Ihsan organisation over the course of 2008 and charged them with belonging to an illegal organisation. On the occasion of the national information campaign of 2007, entitled "Open Days", several members of the organisation (including women) were arrested and interrogated by the police. They were also charged with belonging to an illegal organisation and participating in unauthorised gatherings. Some were given prison sentences. Administrative and judicial measures have become the norm against members of this organisation, which is presented by the authorities as an unlawful organisation, although it complied with all legal requirements to be granted authorisation and was declared legal in several court cases.

Control over the Freedom of Association of Judges

Under the Law of 11 November 1974 on the Status of the Magistracy, magistrates are expressly prohibited from founding or joining syndicates, regardless of their status. The freedom of association of judges is not formally restricted, but it is only tolerated under the strict supervision of the government. Magistrates are forbidden from joining jurist associations or any association for the defence of the independence of the judiciary. Thus, the only existing judges association is the Hassanian Association of Judges, created in 1995, whose image more closely resembles that of a subordinated civil servant association rather than that of an association of judges managed and directed by the interested individuals themselves.

by Dr. Radwan Ziadeh

RECOMMENDATIONS

The Syrian government is urged to:

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

• End the state of emergency in force since 1963, which is used to arbitrarily restrict enjoyment of the freedoms of association and assembly.

2. With regard to the legislation related to freedom of association:

• Abolish the 1958 Law on Associations and Private Societies (Law No. 93);

• Draft a law incorporating international standards on the right to free association, particularly ensuring that:

- Associations can be established by simple notification without the need for a prior license.

- The requirements of giving prior notice of any meetings and of sending minutes of meetings to the Ministry of Social Affairs and Labour are removed, to allow organisations to work without governmental interference;

- The Ministry of Social Affairs and Labour does not dissolve associations, dismiss boards of directors or temporarily appoint boards;

- No associations can be dissolved or blocked without a final court judgment after all avenues of appeal have been exhausted.

3. With regard to the practice related to freedom of association:

• Put an end to police surveillance and intimidation of association members; the State should guarantee NGO members the right to privacy and outlaw and sanction any inappropriate restrictions on their communications;

• For instance, halt the proceedings before the Damascus Criminal Court against Dr. Ahmad Tohme, Mr. Jaber al-Shoufi, Mr. Akram al Bunni, Dr. Fida al-Hurani, Mr. Ali al-Abdullah, Dr. Walid Bunni, Dr. Yasser Tayser Aleiti, Mr. Fayez Sarah, Mr. Mohammed Haj Darwish, Mr. Riad Seif, Mr. Talal Abu Dan and Mr. Marwan al-Esh, and release them immediately and unconditionally; by signing the Damascus Declaration and taking part in the establishment of the National Council of the Damascus Declaration for Democratic National Change, they have only peacefully exercised their fundamental rights as guaranteed by Syria's Constitution and by international law.

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

The State of Emergency and martial law, which continue to be in effect in Syria today, were proclaimed in 1963 in accordance with Military Order No. 2 of the National Council of the Revolution leadership, dated 8 March. The Order extended the powers of the security services and administrative authorities to areas previously outside their remit. This has led to far-reaching restrictions on individual rights and freedoms, and especially on freedom of association.

The Order led to the emergence of numerous other laws, such as the Act Concerning Opposition to the Aims of the Revolution

(Legislative Decree No. 6 of 7 January 1965), and the Law Regarding the Creation of Military Field Courts (Legislative Decree No. 109 of 17 August 17 1968), which is an exceptional law. In addition, the Law to Establish the State Security Department (Legislative Decree No. 14 of 15 January 1969) established overlapping security-intelligence agencies.

The 1958 Law on Associations and Private Societies (Law No. 93) continues to be in effect. The Ministry of Social Affairs and Labour retains the right to reject decisions taken by associations' general assemblies and to replace board members. It also imposes many restrictions on associations' activities. In spite of promises made by the Ministry of Social Affairs and Labour in 2007 and 2008, the government still has not amended the Law, and has revoked neither the state of emergency nor martial law.

All throughout the last year, reports have documented government harassment of domestic human rights activists

It is because of these legal and political obstacles, which effectively prevent the establishment of associations and civic organisations, that the number of non-governmental organisations in Syria is among the lowest in the Middle East. In 1990, the total number of officially authorised social, cultural, scientific, educational, religious and charitable organisations did not exceed 504. The number of NGOs registered with the Ministry of Social Affairs and Labour increased by 40 percent to 1300 in 2001, and 217 of these organisations were based in Damascus.

Part One
FORMATION OF ASSOCIATIONS

The constitution allows for the establishment of private associations, but also grants the government the right to limit their activities, and, in practice, the government restricts freedom of association. Private associations are required to register with the authorities, but requests for registration are usually denied on political grounds. The government granted registration only to some groups not engaged in activities of a political or otherwise sensitive nature.

Over the past seven years, the Ministry of Social Affairs and Labour has systematically refused to grant licences to human rights organisations. The nine best-known local human rights organisations have thus been forced to operate illegally, without a licence, and under the constant threat of being prosecuted and jailed pursuant to Article 71 of Law No. 93 on associations, under which all activity by an unreported association is punishable by three months' imprisonment and a fine. In addition, Article 288 of the Syrian criminal code provides for a sentence of up to three years' imprisonment for any person who, "without governmental authorisation, joins a political or social organisation of an international character." The National Organisation for Human Rights in Syria (NOHR-S), for example, submitted an application for registration to the Ministry of Social Affairs and Labour on 4 April 2006 and was notified by Decree of the Ministry's rejection of the application (with no reason provided) on 30 August 2006. The organisation filed an appeal against the Decree on 27 December 2006. However, the case still had not been resolved by 2007, as the Ministry requested that five consecutive reports be submitted to the court to reach a conclusion. On 29 July 2008, the administrative tribunal postponed the hearing until 28 October 2008, while waiting for an answer from the Ministry of Social Affairs and Labour.

On 17 June 2007, the Security State Court (SSC) sentenced Omar Ali Abdullah, son of activist and writer Ali Abdullah, to five years in prison for his connection to a prodemocracy student group. The SSC also sentenced Tarek Ghorani and Maher Ibrahim to seven years, and Ayham Saqr, Alam Fakhour and Diab Sirieyeh to five years for their involvement.

These laws and practices have left Syria's human rights community extremely vulnerable and isolated. Compared to other human rights groups in the Middle East, activists have few links to international groups or networks.

Parts Two
LIFE OF ASSOCIATIONS

Violations of Freedom of Assembly

The constitution provides for the right to assembly. Emergency Law provisions supersede this right, however, and it thus cannot be exercised in practice. Permission from the Ministry of Interior is required for demonstrations or any gathering of more than three persons. In the past year, the government routinely prohibited or interrupted meetings of human rights and civil society activists.

The government requires political forums and discussion groups that wish to hold lectures and seminars to obtain prior approval and to submit lists of all participants. Despite these restrictions, several domestic human rights and civil society groups held meetings without registering with the government or obtaining prior approval. In many instances, the government took steps to disrupt such gatherings or to prevent them from occurring at all.

Thus, on 2 June 2007, for example, security services prevented the Human Rights Association of Syria from holding a meeting, which was to take place in the offices of the well-known human rights lawyer Haithem al-Maleh.

On 10 March 2007, a group of civil society activists, which included Riad Seif, Hind Labwani, Suheir Atassi and 34 others, attempted to stage a protest in Damascus against 44 years of Emergency Law. Before the protest could be organised, however, security services arrested all of the activists and drove them outside the city, where they were left on the highway. The government did not charge them.

On 2 November 2007, security forces fired bullets and teargas to disperse thousands of protestors in Qamishli, who had been demonstrating against a possible Turkish incursion into northern Iraq. According to human rights organisations, there was one reported death, four protestors were wounded and dozens were detained by the security forces.

On 17 December 2007, three Kurdish opposition parties (Yekiti, Azadi and Future) organised a demonstration of approximately 200 people in front of the Security State Court to mark International Human Rights Day and to protest the detention of five Yekiti party members. Security services arrested all of the protesters, drove them outside of town, and left them on the highway.

On 17 May 2008, some 20 Syrian citizens were arrested by the security services in Der Elzor city during a protest against the high cost of living in "Sugaer Jazera," a village about 20 km from Der Elzor.

On 9 December 2007, the Syrian State Security Services launched a campaign of arrests, rounding up more than 40 activists across Syria as a reaction to a meeting organised by the Damascus Declaration for Democratic and National Change Initiative on 1 December 2007. This Initiative brought together 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 association. These arrests were a direct violation of the right to freedom of assembly and association.

The meeting, which brought together 163 persons in Damascus, resulted in the creation of the National Council of the Damascus Declaration, a collective movement of opposition and pro-democracy groups in Syria, whose members include political activists as well as human rights defenders. The arrests targeted all participants of the meeting. Those who had been elected to the Council of the Damascus Declaration, however, were kept in detention, and, on 28 January 2008, were charged with breaching provisions of the Syrian Criminal Code, namely 285 ("weakening national sentiments"), 286 ("spreading information known to be false or weakening national sentiment") and 307 ("any action, speech, or writing aimed at sectarian incitement or encouraging conflict among sects"). Some of these provisions stipulate prison sentences of at least seven years. The detained activists were all transferred to Adra central prison, and Ms al-Hurani was sent to Duma women's prison.[1] According to their lawyers, they have been subjected to torture. Writer and activist Ali Abdullah was beaten so severely that he now has a hole in his windpipe.[2] On 29 October 2008, the activists were sentenced to two and a half years in prison.

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Freedom of Movement: Travel Bans Preventing Human Rights Defenders from Participating in International Meetings

All throughout the last year, reports have documented government harassment of domestic human rights activists, including regular and close surveillance and the imposition of travel bans if human rights defenders sought to attend workshops and conferences outside the country. All human rights activists are now banned from leaving Syria and the government prevents their attendance at regional and international workshops.

On 24 November 2007, for example, the Syrian government prevented several human rights activists from travelling abroad for various trainings and meetings. Among those prevented from leaving were Mustafa Oso, Head of the Kurdish Organization for the Defense of Human Rights in Syria, and Rasem Suleiman, Chairman of the Arab Organization for Human Rights. In May 2008, Syrian authorities prevented seven human rights activists from leaving the country. Among them were Radif Mostafa, President of the Kurdish Committee for Human Rights, and Mohanad Al Hosainey, Head of the Syrian Organisation for Human Rights (*Sawasiah*). On 9 October, Mr Bayassi was prevented from attending the EMHRN meeting in Morocco on migration, refugees and asylum seekers.

[1] The activists kept in detention are: Dr Ahmad Tohme, a political activist, Mr Jaber al-Shoufi, member of the executive board of the Committees for the Defence of Freedoms and Human Rights in Syria, Mr Akram al Bunni, member and founder of the Committee for the Revitalisation of Civil Society in Syria, Dr Fida al-Hurani, political activist, Mr Ali al-Abdullah, member of the Committee for the Revitalisation of Civil Society in Syria, Dr Walid Bunni, political activist, Dr Yasser Tayser Aleiti, an intellectual, Mr Fayez Sarah, journalist and founding member of the Committees for Revitalising Civil Society in Syria, Mr Mohammed Haj Darwish, member of the Human Rights Association in Syria and a founding member of the Committees for Revitalising Civil Society in Syria, Mr Riad Seif, former member of the Syrian parliament and 'Damascus Spring' figurehead, Mr Talal Abu Dan, artist, and Mr Marwan al-Esh.

[2] For more information, see *http://www.euromedrights.net/pages/511/news/focus/57878*

Freedom of Association in the **Palestinian Territories**

by Nasser Rayes

RECOMMENDATIONS

The Palestinian authorities are urged to:

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

- *Protect civil society from the conflict between the Fatah and Hamas movements, and stress the independence of civil society and the vital role played by NGOs in providing social, economic, developmental and cultural services;*
- *Call upon both Fatah and Hamas to stop the campaign against civil society organisations and to rescind 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;*
- *Immediately lift the ban and restriction on the freedom of movement imposed on human rights defenders, which prevents them from implementing their legitimate activities and promoting and protecting human rights.*

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

- *Ensure that the registration procedure for associations is limited to ascertaining that the requirements of the law have been met;*
- *Put an end to the interference of the security services in the activities of associations (e.g. authorities' attendance of meetings);*
- *Ensure associations' right to open a bank account without prior license from the Ministry of Interior;*
- *Ensure the right of members of associations to travel and to participate in international meetings.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

On 12 June 2007, Izz Eddine Al-Qassam Units, the military wing of the Islamic resistance group Hamas, launched a sweeping attack on the premises and institutions of the Palestinian Authority in the Gaza Strip. Hamas forcefully took control over the Gaza Strip, which has remained under its administration since then.

Perhaps the most important outcome of this attack on the political, social and legal situation in Palestine was the creation of two parallel power systems, where Palestine is governed and controlled by two separate authorities: the de facto authority, which was formed in the Gaza Strip under the leadership of Mr Ismaeel Haniyyeh[1] after Hamas took control; and the Palestinian National Authority, i.e. the elected authority established in the West Bank under the leadership of Mr Mahmoud Abbas. Both systems exercise judicial, legislative, as well as executive powers.

Hamas' forceful take-over of government control in the Gaza Strip not only affected the political system, however, but the political, legal and institutional changes in the Palestinian lands also undermined human rights and freedoms and disrupted the judicial system and its various components. The situation deteriorated alarmingly with regard to civil, political, economic, social and cultural rights and freedoms:

[1] The Prime Minister who was dismissed by the Palestinian President by a Presidential Decree issued on 14 June 2007.

1. The practice of arrests and detentions on the grounds of political affiliation was revived. Palestinian security forces in the West Bank began arresting and detaining hundreds of people who allegedly were members of Hamas. In Gaza, Hamas launched a wide-scale campaign of arrests against members of Fatah and all opposition movements.
2. Torture spread within detention and arrest centers. Dozens of prisoners were exposed to torture, maltreatment and humiliation, which led to the death of two detainees in the West Bank and Gaza Strip.
3. Dozens of registered societies in the West Bank and Gaza Strip were dissolved due to the political affiliations of their members. Dozens of societies within the West Bank, whose board members or founders were members of Hamas, were dissolved. In the Gaza Strip, associations whose members or founders were members of Fatah or any other opposition movement were prevented from working. Offices were ransacked and documents belonging to several associations within the West Bank and the Gaza Strip were confiscated.
4. Thousands of employees who were members of the security forces in the West Bank and Gaza Strip were dismissed due to their political affiliations.
5. On several occasions, Palestinians were prevented from practicing their right to peaceful assembly, which is guaranteed by the Basic Law and the 1998 Law of Public Assemblies No. 12. Palestinian Security Forces in the West Bank interfered, using force, and dispersed peaceful assemblies. On 27 November 2007, Palestinian police and Security Forces dispersed a peaceful assembly that was held in Ramallah to protest the Annapolis Conference in the United States. The same day, Palestinian Security Forces attacked participants in a march in Hebron who were protesting against the same conference. The forces fired at the demonstrators and severely beat citizens. Hisham Na'im Yousef Al-Barad'i was shot and killed, 22 participants were wounded as a result of the beatings, and 22 others were arrested. The situation was similar in the Gaza Strip, where Hamas Executive Forces and the Qassam Units intervened on several occasions and used excessive force to prevent Palestinians from exercising their right to peaceful assembly or to express their views via a demonstration. Further examples are provided by the march organised in November 2007 in memory of the late Palestinian leader Yasser Arafat, and the celebration of the anniversary of the establishment of the Palestinian liberation movement, Fatah.
6. A Higher Justice Council was formed in the Gaza Strip as an alternative to the Higher Judicial Council. The Higher Justice Council is responsible for administering and steering the judicial system, supervising appointments, promotions, and other work pertaining to the administration and steering of the Judicial Authority in the Gaza Strip.
7. The military and security institutions of the Palestinian Authority were prevented from conducting their activities in Gaza, and from granting their authorities to the military affiliated to Hamas and its Executive Forces. The de facto authority in the Gaza Strip formed a new leadership for the Palestinian police and cut off its existing connections with the official leadership. This was to prevent the official leadership from taking control of all the security and military headquarters of the Palestinian Authority and using them as headquarters for Al-Qassam Units and the Executive Power. In addition, senior employees were dismissed and replaced by members of Hamas.
8. Hamas television stations and newspapers were closed in the West Bank, while Hamas took over the headquarters of Palestine Television and prevented Fatah newspapers from being published in Gaza.

It is important to note that the human rights situation in the Palestinian territories is dependent on the political dialogue between Fatah and Hamas. Indeed, human rights violations decrease during times of mediation or renewed political and diplomatic activities between the two movements, and increase when there are no initiatives towards finding a solution and achieving reconciliation.

The human rights situation in the Palestinian territories is dependent on the political dialogue between Fatah and Hamas.

Part One
FORMATION OF ASSOCIATIONS

The establishment of an association in the Palestinian territories is subject to a registration system which differs from the licensing and declaration systems. According to the Palestinian Law of Charitable Associations and Community Organisations, the founders of a society or association must provide a written application, fulfilling all the necessary conditions, to the relevant department at the Ministry of Interior. The application must be signed by at least three of the founders, duly authorised to register and sign on behalf of the association or society, and accompanied by three copies of the statutes, signed by members of the founding committee. The Minister of Interior then issues his decision about the application form's compliance with the registration conditions within a period not exceeding two months from the date of submission. If the appointed period passes and no decision is taken, the society or association should be considered registered in accordance with the law.

According to Article 7 of the Palestinian Law of Charitable Associations and Community Organisations (law No.1, year 2000), "The Associations and Organizations are independent judicial persons, enjoying an independent financial status,

upon registration in accordance with the provisions of this Law. They may not practice any of their activities before completing registration procedures."

In practice, it is rare for an association to obtain approval during the period stipulated by law; in fact, it usually takes between four to six months. In some cases, approval for registering an association is granted only after eight months. Before approving an association's application for registration, the Ministry of Interior consults the Palestinian Security Forces, despite the fact that this procedure is not stipulated in Palestinian law. As soon as the founders of the association submit the application for registration, the associations department at the Ministry of Interior addresses the Preventative Security System and the General Intelligence to obtain security clearance for the names of the founders. It usually takes several months for the Security Forces to issue a response. If the response is delayed, or if approval is not granted for any reason, the registration process is stopped. The prerogatives of the Preventative Security Force now go beyond mere licensing; it may also summon the founders and meet with them prior to granting them approval. Closer examination of this issue revealed that several Palestinian groups had not yet received a response from the Preventative Security Forces and have thus far been unable to operate as associations.

Palestinian law, and the Palestinian Basic Law in particular, stipulates that any administrative decision can be appealed. An individual whose application for registration is rejected may turn to the Palestinian judiciary, within the period stipulated by law, to appeal any decision pertaining to dissolution or the rejection of a registration application.

Part Two
LIFE OF ASSOCIATIONS

The Palestinian Associations Law and its Executive List, issued by decree No. 9 of the Council of Ministers for the year 2003, prohibit official and unofficial bodies from interfering in the meetings of associations, in their elections, and in their appointment of representatives to sign on behalf of associations. In spite of this, the directorates of the Ministry of Interior interfere in meetings and insist on attending 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 concerned ministry.

The Preventative Security Forces shut down Suna' Al-Haya association in Ramallah in August 2007, entered Al-Wurood association in December 2007 and the Islamic Charitable Society in March 2008, and arrested a number of employees in the school affiliated with the latter. They also entered Al-Khansa'a association in the city of Ramallah. Members of associations belonging to Hamas were interrogated and arrested, as was the case with the Islamic Charitable Society, whose employees were detained by the Preventative Security Forces. It was noted that the Palestinian Security Forces did not respect the standards and conditions of arrest and detention or the legal grace periods for arrests in accordance with Palestinian procedural legislation. The aforementioned persons were arrested without search warrants issued by the Civil Public Prosecution, and were denied judicial review.

As mentioned above, the Security Forces, and in particular the Preventative Security Forces, entered the premises of several associations, such as the Islamic Charitable Society and the Suna' Al-Haya society in Ramallah, and confiscated their computers and certain documents.

In addition, in June 2008, the Security Forces sent special forms to several other associations, requesting them to list the names of their employees and their religion and salaries. They further ordered employees to list the names of their friends, qualifications and other personal information. The Preventative Security Forces also interfered in the selection of board members and forced some associations to change their directors.

It is worth noting that the press generally covers most activities implemented by associations. It also transmits and covers the reports of these organisations, as well as their various activities, even if these involve criticism of the Palestinian Authority.

At the beginning of September 2007, the Palestinian Minister of Interior issued a decision to dissolve 103 associations in the West Bank.

Part Three
DISSOLUTION AND SUSPENSION OF ASSOCIATIONS

At the beginning of September 2007, the Palestinian Minister of Interior issued a decision to dissolve 103 associations in the West Bank. Closer review indicated that most of them were dissolved for political reasons, i.e. on the grounds that their founders belonged to Hamas.

Several lawsuits were filed with the courts against the decisions of the Minister of Interior to dissolve the associations

mentioned above. Lawyers from the Palestinian human rights organisations Al-Haq and Defence for Children International - Palestine section brought four cases against the decision of the Minister of Interior to dissolve the Teachers' Union, the Palestinian Health Association, the Al-Wurood Association and the Association of Al-Aghwar (the Jordan Valley) Refugees. The Palestinian judiciary's initial rulings suspended the decisions to dissolve three of the associations in question. In this respect, the Palestinian judiciary demonstrated high integrity and absolute respect for the law.

by Sihem Bensedrine

RECOMMENDATIONS

The Tunisian government is urged to:

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

- *Modify the provisions of the Law to Fight Terrorism and Money Laundering of 10 December 2003, in order to ensure that peaceful opposition organisations and their activities are not falsely accused of participating in terrorism;*
- *Comply with the recommendations of the UN Human Rights Committee, which calls on the authorities to "take steps to put an end to acts of intimidation and harassment and to respect and protect the peaceful activities of human rights organizations and defenders. Reports of acts of intimidation and harassment should be investigated without delay".*

2. With regard to the legislation related to freedom of association:

- *Reform the Law on Associations and incorporate international standards on the right to free association, particularly ensuring:*
- *The freedom to establish associations simply by notification, without a need for prior license;*
- *That judicial tribunals have exclusive competence to dissolve or suspend an association;*
- *The right of associations to receive the necessary funds for financing their activities without prior license, as long as all foreign exchange and customs laws are satisfied.*

3. With regard to the practice related to freedom of association:

- *Put an end to police surveillance and intimidation of association members;*
- *Guarantee NGO members the right to privacy and outlaw and sanction any inappropriate restrictions on their communications;*
- *Put an end to all restrictions limiting the free movement of members of associations;*
- *Initiate without any delay an independent investigation into all serious human rights abuses, publish the results, and punish those found to be responsible.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

From September 2007 to September 2008, no legal or regulatory measures were taken to improve the situation of freedom of association in Tunisia; no new independent association has been authorised either. Nevertheless, the Tunisian state has twice had to account for its human rights record before two United Nations organs: during the universal periodic review (UPR) of the HR Council (April 2008) and the review of the fifth periodic report of Tunisia before the Human Rights Committee (March 2008). With regard to freedom of association and assembly, the Human Rights Committee recommended in its concluding observations: *"The State party should take steps to put an end to acts of intimidation and harassment and to respect and protect the peaceful activities of human rights organizations and defenders. Reports of acts of intimidation and harassment should be investigated without delay. The state party should ensure that*

any restrictions imposed on the rights to peaceful assembly and demonstration are compatible with the provisions of articles 19, 21 and 22 of the Covenant."

In addition, in the report on the situation of human rights defenders in Tunisia, submitted to the UN Human Rights Council on 3 March 2008, the Special Representative of the Secretary-General, Hina Jilani, remained *"concerned at the restrictions imposed on freedoms of assembly and of association".*

From September 2007 to September 2008, no legal or regulatory measures were taken to improve the situation of freedom of association in Tunisia.

It is, however, worth noting that these two UN statements motivated Tunisia to improve its image by committing itself to three issues: the government ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women; it invited the NGO Human Rights Watch to inspect Tunisian prisons; and, during the plenary UN sessions in New York and Geneva, it invited the UN Special Rapporteurs - including the Special Rapporteur on Torture - to carry out missions in Tunisia according to the terms of their mandates. In November 2007, the Sub-Committee on Human Rights, a body provided for by the ENP[1] within the framework of the EU-Tunisia Association Agreement since 2005, was finally established. However, it has not met since then.

At customs at the port of Tunis, they were locked into an office and beaten by the police officers. She sustained double wrist and elbow sprains and several bruises on her body.

After celebrating its 20th anniversary in power on 7 November 2007, the Ben Ali regime launched an international diplomatic offensive, which was in particular directed towards the European countries, by reviving the spectre of terrorism to justify its democratic deficit and seek increased acceptance by its partners. This approach was crowned with success: Mr Ban Ki Moon, Secretary-General of the United Nations, came to Tunis to sponsor a conference on the fight against terrorism and to deliver a speech in which he congratulated Tunisia for its policies (see IFEX response). Many European heads of state (e.g., those of Spain, Italy, Portugal, France, etc.) came to the Tunisian capital to compliment Ben Ali on his tough stance in the fight against terrorism, while completely ignoring problems related to governance and democracy. The best example illustrating this trend was that of French president Sarkozy who, during his visit in April (his second visit in three months), affirmed that, *"Today, the space for freedoms is developing. These are encouraging signals that I wish to welcome."* Similarly, the Union for the Mediterranean (UfM) launched in July ignores the "human rights" perspective. All of this served as an encouraging signal to the government to further push its policy of repression of human rights defenders. There was a new wave of political (so-called "terrorist") trials and a special chamber was established to judge these cases during the judiciary's summer break.

Part One
FORMATION OF AN ASSOCIATION

Organic Law No. 88-90 of 2 August 1988, amending Act No. 59-154 of 7 November 1959 on associations, replaced a system requiring prior authorisation with a declaratory one, and provided that an association be deemed legally established after three months from the date when the declaration has been officially submitted to the competent authorities. In practice, the authorities have misused this declaratory system and transformed it into a system of prior authorisation. This law grants the Minister of Interior discretionary powers to give or deny the receipt that is essential to the legal establishment of an association, and stipulates that the lack of an authorisation is an offense punishable by a prison sentence of up to five years. The Minister is granted the same powers by the new Act on political parties, which subjects their establishment to his prior authorisation. Similarly, authorisation for foreign NGOs to establish their main or secondary headquarters or delegations in Tunisia is subject to prior authorisation, adopted by decree after consultation of the Minister of Interior (Art. 3 Organic Law No. 93-80 of 26 July 1993).

According to official statistics, 9,205 associations exist in Tunisia today (as of April 2008; IFEDA[2] figures). Less than 10 of these associations are effectively autonomous. Far from providing information about the reality of associations, this figure reveals the government's instrumentalization of associations as another realm for political clientelism. Created at the instigation of the authorities, they act in various economic and social fields and are brandished before international organisations as trophies proving the existence of a free and dynamic community network.

Autonomous associations defending human rights, unemployed graduates, prisoners, writers and journalists were established in opposition to these governmental NGOs. No autonomous association has obtained an authorisation since 1989, after

[1] European Neighborhood Policy
[2] Center for Information, Training, Studies and Documentation on Associations.

the *Association tunisienne des femmes démocrates* (ATFD) and the *Association de la femme tunisienne pour la recherche et le développement* (AFTURD) were authorised. Several associations were not granted the right to act legally, as guaranteed by the Constitution, although they fulfilled the requirements to obtain the legal receipt. The following cases can be mentioned as examples: The National Council for Freedoms (*Conseil National pour les libertés*, CNLT), which started its activities on 10 December 1998, 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. There are many other examples.[3]

The Human Rights Committee of the UN was concerned about reports *"that a very limited number of independent associations have been registered officially by the authorities and that, in practice, several associations for the protection of human rights whose objectives and activities are not in violation of the Covenant have encountered impediments when applying for such registration (articles 21 and 22 of the Covenant)".* It requested that *"the State party should ensure that such organizations are registered, and they should be provided with effective and prompt recourse against any rejection of their applications"*, while the Working Group on the Universal Periodic Review *"encourages Tunisia to facilitate the registration of civil society, unions and political parties"*.

In reality, the Minister of Interior must give grounds for any refusal; in the absence of grounds, he violates the provisions of the law and can be said to be abusing his authority. Civil society actors have developed survival strategies and use legal institutions and guarantees for freedom of association, as well as various forms of practical resistance, to circumvent the restrictions they face. Those who are not afforded a chance to fulfil the requirements and who are prevented from accessing the administration are allowed to file an *ultra vires* appeal with the administrative tribunal. But since the end of 2001, a police roadblock prevents NGOs that are suspected of being independent from accessing the offices of the administration where they have to submit their files. The associations are thus deprived of their right to file an appeal with the administrative tribunal, since they do not even have proof of submitting their statutes.

These non-recognised groups operate in the open; they talk and work in public and are present in the public space. However, lack of a legal status not only prevents an NGO from having an office or from opening a bank account, but it also creates an aura of suspicion that deters many victims of violations from approaching these associations, which remain distanced from the general public and are very much limited in their capacity to act.

Part Two
LIFE OF AN ASSOCIATION

In addition to the problems related to registering an independent association, autonomous associations also face a number of other restrictions in carrying out their work.

Restrictions on the Freedom of Assembly

Independent, recognised NGOs, such as the *Ligue tunisienne des droits de l'Homme* (LTDH) and the ATFD, face interference in their activities and restrictions on their ability to act. This is particularly serious in the case of the LTDH, the oldest human rights NGO, which was forcibly prevented from holding its sixth congress in September 2005. In addition, the LTDH has had to face several trials that aimed to paralyse it. Its sections were not authorised to hold even internal meetings, and its main office is only open to members of the Steering Committee, who are authorised to meet there. Police officers are constantly present in front of the office and systematically prevent anyone else from entering. There was a single exception, when the LTDH was allowed to organise a reception on the occasion of its 31st anniversary in May 2008. Recent examples of restrictions include: On 27 June 2008, the police prevented representatives of the ATFD, CNLT, *Observatoire pour la liberté de la presse, de l'édition et de la création* (OLPEC), the *Association internationale de soutien aux prisonniers politiques* (AISPP) and *Association de lutte contre la torture* (ALT) NGOs from meeting a representative of the African Commission of Human Rights at the LTDH's offices. In addition, on 11 July 2008, the LTDH tried to organise a meeting at its headquarters in solidarity with the victims of the repression of the mine basin of Gafsa; the authorities obstructed this meeting as well.

Arbitrary Restrictions on Associations' Freedom of Communication

Independent associations make heavy use of the Internet, which has become their main space for expression. Daily press releases inform about violations and reports document attacks on human rights. During the course of 2008, the authorities have, for their part, developed even more sophisticated techniques for screening websites and monitoring mailboxes. It has become very common for human rights defenders to see their email message disappear when they click to open them, and attaching documents and downloading attached files have both become impossible. This manipulation of mailboxes has considerably reduced the capacity of NGOs to communicate with the outside world, and especially with human rights networks, leaving them

[3] The Union for an International Development Alternative (*Rassemblement pour une alternative internationale de développement,* RAID), the Observatory for the Freedom of Press, Publishing and Creation (*Observatoire pour la liberté de la presse, de l'édition et de la création,* OLPEC), the National Association of Former Members of the Resistance (*Amicale nationale des anciens résistants,* ANAR), the Centre for the Independence of the Judiciary and Lawyers (*Centre pour l'indépendance de la justice et des avocats,* CIJA), the National Committee against Normalisation (*Comité National contre la Normalisation*, CNN), the Democratic Confederation for Labour (*Confédération démocratique du travail*), the International Association for the Support of Political Prisoners (*Association internationale de soutien aux prisonniers politiques,* AISPP), the Association Against Torture (*Association de lutte contre la torture*, ALT), the Association for the Defense of Political Prisoners (*"Liberté et équité"*), etc.

very isolated. In addition to blocking websites with information on freedoms, the authorities try to control user-driven and social networking websites. For example, the Facebook website, where human rights defenders had created profiles, was blocked for many weeks. It only became accessible again on 2 September, after human rights associations had launched a broad campaign. Moreover, NGOs' faxes are often diverted or arrive as blank documents (in the case of ATFD and the LTDH), and Internet access is blocked without explanation (in the case of CNLT) by the official phone provider, Tunisie Télécom.

Denial of Access to Justice

Human rights organisations have complained about various forms of harassment and interference in their work, but to no avail. In the best case scenario, the prosecutor starts an investigation, which is then suddenly halted without any explanation. The most blatant case is that of human rights defender Ali Ben Salem (President of the ANAR, of the Bizerta section of the LTDH and founding member of the CNLT). On 7 November 2007, the United Nations Committee Against Torture (CAT) replied to his communication No. 268/2005, submitted in May 2005, regarding "torture and ill-treatment" at the police station of El Manar in April 2000. The decision of CAT assumed that he had indeed been subjected to inhuman and degrading treatment and obliged the Tunisian authorities to conduct an impartial investigation and to ensure that the victim be granted just compensation. It invited the Tunisian State to *"conclude the investigation into the incidents in question, with a view to bringing those responsible for the complainant's treatment to justice, and to inform it, within 90 days of this decision being transmitted"*. In response, the authorities imposed a travel ban on Ali Ben Salem and deprived him of his right to receive medical treatment. Nevertheless, in May 2008, the investigating judge ordered a medical examination, the results of which are still pending.

On 17 November 2001, the 5th chamber of the Administrative Tribunal (TA), under reference number 177876, investigated the case of the CNLT, submitted in 1999, and decided that the case should have gone to another chamber for judgment. However, the first president of the TA kept the file and failed to pass it on to the other chamber as provided by the law. On 28 September 2007, after a wait of almost seven years, the CNLT appealed for the second time to the president of the responsible chamber at the TA to schedule a hearing and bring the case to a conclusion. On 17 October 2007, the CNLT appealed for the third time to the first president of the TA through its lawyer. The CNLT was now informed that, after checks with the registry and the president of the chamber, it appeared that the CNLT's case had disappeared from the registry. It was now supposedly in the hands of a government representative. It was therefore impossible to schedule a hearing to reach a judgment in the case. In his appeal, the lawyer requested that the suspension be lifted and that the case be ruled on, in accordance with Article 49 of Act 40 of 1972. To this date, he has not received a response. It is worth noting that judgments have been handed down in all the cases of the 17000 series, with the exception of the CNLT case, and that the TA began a new series for ongoing cases in 2006. There are other examples as well.[4]

Blocking of Funds

In 2008, the LTDH still could not access its funds. At the end of 2006, the second instalment of the EU funds granted to the LTDH within the framework of the European Instrument for Democracy and Human Rights (EIDHR) was blocked. The Tunisian authorities blocked the funds on the grounds of Act 154 (1959) and the decree of 8 May 1922 on charitable associations recognised as being in the "national interest", and argued that the LTDH fell outside this category and thus was not entitled to receive the money.

Obstruction of Freedom of Movement

Numerous human rights defenders have suffered restrictions on their freedom of movement and were banned from travelling abroad or within Tunisia itself. These restrictions were directly linked to the exercise of their mandates as human rights defenders.

The representatives of the legitimate board of the AMT (*"Association des Magistrats Tunisiens"*) have been systematically prevented from leaving Tunisia to participate in various international meetings where they were invited to defend their right to exist as a legitimately-elected association. (AMT also suffered a putsch in December 2004, which had been instigated by the Ministry of Justice). Besides facing disciplinary sanctions, the magistrates were deprived of the right to travel, a right that every citizen should normally enjoy. Thus, on 16 February 2008, they were prevented from participating in the meeting of the International Union of Magistrates (*Union Internationale des Magistrats*, UIM) in Rome, which was to examine the question of double representation through a legitimate board and a board imposed by the authorities. It is worth recalling that Article 39 of Act No. 67-29 of 14 July 1967 on the judicial organisation and the status of the judiciary requires magistrates to obtain prior authorisation from the Ministry of Justice to leave the country. Similarly, on 23 October 2007, border police prevented the lawyer Abbou, a former prisoner of conscience and member of the CNLT, from travelling to Cairo to observe

[4] On 31 August 2007, there was a fire at the office of lawyer Ayachi Hammami and the lawyer for the defense accused the special police services of arson. He lodged a formal complaint, but the investigation is still "ongoing". Over the course of more than four years, lawyer Raouf Ayadi has lodged several complaints with the district prosecutor about police violence and restrictions he has faced in his work as a lawyer. There never was a follow-up on the complaints. Most recently, Mr Ayadi was assaulted by the director of the Mornaguia prison while he was visiting one of his clients.

the trial of a journalist. He was also prevented from travelling to Washington to participate in a conference on human rights. The police reportedly justified this decision by arguing that Mr Abbou was on parole and therefore could not circulate freely. Yet in accordance with Article 357 of the criminal procedure code, freedom of movement of a person on parole can only be restricted at the time of his/her release, either by putting him/her under house arrest (Art. 357(a)), or by automatically placing him/her in a public service or a private business (Art. 357(b)). Yet, at no point had Mr Abbou been notified of one or another of these restrictions. Many other human rights defenders were also restricted in their freedom of movement during the year.[5]

Imprisonment

Following his arrest by a traffic patrol, Mohamed Ben Said was imprisoned and, on 6 August, sentenced to two months' imprisonment by the Ariana cantonal court for "refusal to comply with police orders".

On 25 July, on the occasion of the Day of the Republic, human rights defenders and political activists took part in a peaceful gathering in front of the town hall, shouted slogans protesting the absence of term limits for the presidency and called for public liberties. Four activists were arrested in the afternoon of 25 July while they were in a coffee house. On 5 August, the Bizerta cantonal court sentenced them to six months' imprisonment (Othman Jemli and Ali Neffati, members of the AISPP) and six-month suspended prison sentences (Faouzi Sadkaoui and Khaled Boujemaa, members of the association *"Equité et Liberté"*), respectively, for taking part in a gathering in a public place and for breaching public morality.

On 27 July 2008, Zakia Dhifaoui, member of the Kairouan section of the LTDH and of the Democratic Forum for Labour and Freedom (*Forum démocratique pour le travail et la liberté*, FDTL), was arrested in Redeyef at the home of Adnen Hajji, the spokesperson of the mine basin movement. This was after a peaceful gathering in solidarity with the prisoners in Redeyef, where Zakia Dhifaoui had spoken earlier in the morning. She was brought before the criminal court of Gafsa on 31 July and sentenced to eight months in prison on 14 August 2008.

Physical Assaults

On 18 February 2008, Mrs Fatma Ksila and Samia Abbou, Secretary General of the Committee for the Respect of Liberties and Human Rights in Tunisia (*Comité pour le respect des libertés et des droits de l'Homme en Tunisie*, CRLDHT) and member of the ALTT, respectively, were violently assaulted, dragged onto the floor and beaten by numerous plainclothes police officers, who also hurled obscenities at them. This occurred after they had visited the parents of Mr Imed ben Amer, who is serving a life sentence in prison.

On 3 March 2008, Mr Omar Mestiri, editor in chief of the Kalima newspaper, and Mrs Sihem Bensedrine, spokesperson of the CNLT, were arrested at customs at the port of Tunis upon their return from a stay in Europe. Their luggage, books and personal documents were thoroughly searched and scrutinised. When they refused to authorise the agents to examine the content of their laptops, they were locked into an office and beaten by the police officers. Bensedrine sustained double wrist and elbow sprains and several bruises on her body. After being detained for six hours, they were authorised to leave the customs area after the content of their laptops and USB keys had been copied onto an external hard drive. The police officers also confiscated about sixty digital documents (DVDs, CD-ROM, music cassettes, etc.), including some rough copies of the CNLT documentary on torture in Tunisia. Sihem Bensedrine received the same treatment at the Tunis Carthage airport on 19 August, where she was assaulted. She was prevented from leaving Tunisia on two occasions, on 19 and 24 August 2008.

On 29 August, when lawyer Abdelwahab Maatar, a member of the AISPP, was about to defend the Bizerta group before the cantonal court, he was violently assaulted and his glasses were broken. His daughter, lawyer Fadwa Maatar, was subjected to foul language in the presence of the judge.

Refoulement of Human Rights Investigation Missions

On two separate occasions within a period of six months, the Tunisian authorities barred the FIDH from carrying out missions in Tunisia. Amina Bouayach, Vice President of the FIDH, and Michel Tubiana, Honorary President of the Ligue française des droits de l'Homme, were planning to travel to Tunis for an investigation mission on 20 April 2008. However, on 16 April, the Tunisian Ministry of Interior informed the FIDH that *"the FIDH mission was undesirable"* and that its representatives would be turned back upon their arrival at Tunis airport.

[5] On 3 April 2008, Khémaïs Chammari, former vice president of the FIDH was subjected to harassment from customs agents at the Tunis Carthage airport. On 29 June 2008, lawyers Anouar Kousri and Samir Dilou were victims of intimidation when they returned to Tunisia after having participated in a tour of Europe. On 28 July, Ali Ben Salem was arrested by the traffic police at a highway exit while en route from Bizerta to Tunis and was held for more than an hour for no apparent reason.

by Feray Salman

RECOMMENDATIONS

The Turkish government is urged to:

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

- *Ensure that any legislation aiming at fighting terrorism respects human rights standards. Such legislation should not prescribe any restrictions on peaceful activities;*
- *Remove Article 301 of the Turkish Penal Code as it still limits freedom of expression since "insulting" state institutions, such as the judiciary, the military and even individual officials, can still be penalised with prison terms of up to two years;*
- *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;*
- *Establish an effective and independent complaint mechanism based on UN Paris Principles in the context of the fight against discrimination.*

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

- *Ensure that the existing laws with regard to respect of freedom of association are strictly applied;*
- *Remove heavy penalties in the existing laws;*
- *Put an end to harassment of all human rights defenders;*
- *Allow the association Lambda Istanbul to pursue its activities;*
- *Ensure, by way of an adequate consultation mechanism, the participation of associations in the decision-making process on policies of public interest.*

Introduction

POLITICAL AND LEGAL FRAMEWORK AND THE HUMAN RIGHTS SITUATION

Following the general elections in July 2007, a new government was established by the Justice and Development Party (AKP), which won 44% of the votes. However, the AKP has not been able to re-launch a reform process in this new period, despite having a majority of seats in the Turkish Grand National Assembly.

Political tensions have continued with the closure case brought against the Democratic Society Party (DTP) in November 2007 and with the indictment prepared by the Chief Prosecutor of the Court of Cassation against the ruling AKP in 2008. The Prosecutor claimed that the AKP had been a focal point for groups opposed to laicism and asked for the dissolution of the party. The closure cases handled by the Constitution Court[1] have also played a role in the continuation of political instability in Turkey.[2]

The most important development related to freedom of association in Turkey in 2008, however, was the investigation launched by a Public Prosecutor against Ergenekon, a group of retired Turkish soldiers and hardliner nationalists. The indictment was presented to the court on 14 July 2008, after a 13-month-long investigation, and included charges against 84 suspects. An upcoming second indictment will include charges against 20 additional suspects detained in July 2008. Retired four-star generals Hursit Tolon and Sener Eruygur (who chairs the Ataturkist Thought Association) are the alleged leaders of this group, which the indictment identifies as an armed terrorist organisation according to the Turkish Anti-Terror Law. The

[1] The Turkish Constitutional Court has closed 24 parties since it was established in 1963.

[2] From the perspective of the European Court of Human Rights, a party should only face legal closure for advocating or engaging in violence. The current cases against the DTP and AKP have thus come under heavy criticism from European countries and do not help Turkey's EU accession efforts.

investigation began last year, when police discovered a house full of ammunition and firearms in Istanbul's Umraniye district. Police first detained a group of low-ranking veterans and members of a criminal organisation, but the operation quickly expanded to include hard-line nationalists, secular politicians, journalists and other suspects.

The indictment accuses Ergenekon of being under the control of retired generals, with links to active troops, and of aiming to establish itself as the dominant power in Turkey. Prosecutors say that Ergenekon has cells throughout the country, with a membership that includes media personalities and assassins, but that those cells have no contact with each other and receive instructions from the top. General Eruygur is accused of plotting several failed military coup attempts during and after his term as the commander of the gendarmerie forces between 2002 and 2004. The general is also charged with plotting violent attacks and assassinations in 2008 to provoke a military overthrow of the AKP government. The higher court has allowed for the indictment to proceed and will begin hearing the case in the autumn of 2008.

Interestingly, the indictment has put back on the public agenda murders and bombings that took place as long as 30 years ago. Some groups within Ergenekon apparently have also been active within associations established under the Law of Associations, and a significant number of defendants (and especially retired high-ranking officers) were either chairs or members of associations at the time of the investigation. Although the military resolutely denies having any links to Ergenekon, a dossier related to Ergenekon allegedly is also under investigation by the Military Prosecutor.

Attempts to Introduce a New Democratic Constitution

Following the opening of the parliamentary session in September 2007, the government initiated a debate on changing the Turkish Constitution. It commissioned a group of experts to prepare a draft for a new constitution, an initiative which was positively received by public opinion. Contrary to all expectations, however, the government only submitted one constitutional amendment to parliament, which was related to the right to education. The amendment, which attempted to lift the headscarf ban on university campuses, was passed by the Turkish Grand National Assembly. However, the opposition Republican People Party (CHP) appealed against this change, and the Constitutional Court agreed that the amendment was, in fact, unconstitutional.

Party Closure Cases

On 30 July 2008, the Constitutional Court rejected a lawsuit brought by the Chief Prosecutor of the State, who had asked the Court to close the AKP for "anti-secular activities" and to ban from party politics more than 70 political figures, including the Chair of the Parliamentary Commission of Human Rights, Zafer Üskül, the Prime Minister, Recep Tayyip Erdogan, and the President of Turkey, Abdullah Gül. Instead of ordering the closure of the party, the Constitutional Court decided with a majority of 10 out of 11 votes to cut in half the party's direct financial support from the Treasury.

Although a Law on Associations is applied by the Ministry of Interior through the Office of Associations established under Governors and Subgovernors Offices, a "memorandum" prepared by the Turkish Armed Forces shows that associations are under surveillance by the military.

On 16 November 2007, a lawsuit was filed by Chief Prosecutor Abdurrahman Yalçınkaya to close the DTP . The Prosecutor claimed that the party was promoting and aiding the Kurdistan Workers' Party (PKK), as well as serving as "a centre of activities aimed at damaging the independence of the state and the indivisible integrity of its territory and nation." The party was to submit its defence to Turkey's Constitutional Court on 26 June, but was able to postpone its official defence hearing to 16 September by claiming that the complexity and extensive nature of the case necessitated more time to prepare.

Legal Amendments and Developments

The government amended Article 301 of the Turkish Penal Code to put an end to criticism, both inside and outside of Turkey, that the article was limiting freedom of expression. The amendment limits the scope of "offences" that can be prosecuted under this law, reduces the maximum penalty for violations, and makes it more difficult to legally prosecute offenders. However, commentary that is considered "insulting" to state institutions, such as the judiciary, the military and even individual officials, can still be penalised with prison terms of up to two years. This was a very pragmatic solution to the problem created by Article 301 of the Turkish Penal Code. According to a parliamentary question addressed to the Ministry of Justice in March 2008, judgments were handed down in a total of 103 cases in the first three months of 2008, and 74 individuals were acquitted.

Part One
FORMATION AND DISSOLUTION OF ASSOCIATIONS

Registration procedures have not changed in the past year. Associations are established through simple declaration, have

to obtain approval of their status by the administration (Office of Provincial Associations established under Governor's Offices), and have to elect a new board through the general assembly (consisting of at least five principal and five substitute members of the board and an auditing committee formed by at least three members) within six months after the date of their establishment. This means that, within a six-month period, an association is expected to recruit enough new members to form the obligatory committees.

In practice, associations will not be given a registration number before their statutes are approved by the relevant administration. After notification, associations have one month to submit their statutes for approval and the administration has to respond within 60 days after receipt. The administration examines the statutes' compliance with Turkish legislation (Associations Law, regulations issued by the Department of Associations of the Ministry of Interior, Turkish Penal Code, and other legislation relevant to the goals and activities of the association). Amendments requested by the administration should be made by the association within a month. If there is no agreement between the administration and the association, the administration has the right to apply to the court for the dissolution of the association. If there is agreement on the amendments, the association can safely start its activities.

The NGO Lambda Istanbul was recently closed by a court decision following a complaint by the Istanbul Governor's Office. The Governor's Office had sent a letter to the group, specifying that the words "lesbian, gay, bisexual, transvestite and transsexual" in Lambda Istanbul's name and objectives were "against the law and morality", and in breach of Article 56 of the Turkish Civil Code and Article 41 of the Constitution. The Beyoglu District Prosecutor rejected the complaint and found no grounds for opening a legal case against Lambda Istanbul, citing Articles 20 and 22 of the Universal Declaration of Human Rights and Article 33 of the Constitution. The Governor's Office then took the case to a higher court, the Beyoglu Sütlüce Court of First Instance No. 5, which accepted the appeal and decided to repeal the Prosecutor's decision. In its decision, the court said that: *"Although fundamental freedoms are guaranteed in Turkey, no freedom is without limits. On the grounds of public order, general moral understandings, protection of families and children, and particularly protection of freedoms of others, freedoms have to be limited. Social values vary from one country to the next, and one cannot argue that what is accepted in one country should necessarily be allowed in our society. Therefore, it should be decided by a judge whether any intervention made for concrete events complies with national and international standards and conventions."* The court case began on 19 July 2007 and continued until 29 May 2008. On 29 May 2008, the Third Civil Court of First Instance in the Beyoðlu district of Istanbul ruled in favour of a complaint brought by the Istanbul Governor's Office, and ordered the closure of Lambda Istanbul.[3]

The NGO Lambda Istanbul was recently closed by a court decision following a complaint by the Istanbul Governor's Office. Specifying that the words "lesbian, gay, bisexual, transvestite and transsexual" in Lambda Istanbul's name and objectives were "against the law and morality".

Part Two
LIFE OF ASSOCIATIONS

Although a Law on Associations is applied by the Ministry of Interior through the Office of Associations established under Governors and Subgovernors Offices, a "memorandum" prepared by the Turkish Armed Forces shows that associations are under surveillance by the military.

A Turkish daily newspaper published a memorandum prepared by the Information Support Department of the Chief Office of the General Staff in 2006. In the memorandum, activities of several civil society organisations in Turkey were detailed and recorded. Individuals and civil society organisations included in the memorandum were accused of receiving foreign funds to implement US and EU projects aimed at dividing Turkey. The purpose of the memorandum was explained as follows: "This memorandum was prepared to provide information about activities of civil society organisations which were manipulated by the USA and the EU in line with their own purposes and to obtain approval to take counter measures in this context." Organisations mentioned in the 73-page memorandum included the National Endowment For Democracy, the Soros Foundation, TUSIAD (Businessman Association), TESEV (Economic and Social Researches Foundation), KA-MER (Women's Foundation and Association based in Diyarbakır), and several well-known authors, universities and human rights organisations. One section of this confidential memorandum was devoted to planned countermeasures against the activities of civil society organisations. The measures listed suggested that public opinion regarding the Turkish Armed Forces, the integration of the Turkish Armed Forces into civil society, and the monitoring of national media, should favourably be influenced. The action plan proposed in the memorandum also aimed at encouraging and supporting certain civil society organisations, and at strengthening links with organisations whose work focuses on education and family issues, with patriotic associations, and with associations and foundations with economic and management ties to the Turkish Armed Forces. The action plan also included

[3] For detailed information about sexual orientation and gender identity problems, please see the Human Rights Watch report entitled *"'We Need a Law for Liberation': Gender, Sexuality, and Human Rights in a Changing Turkey".*

measures against media agents to prevent their "negative" activities from affecting the goals of Turkey and the Turkish Armed Forces, and to provide information and develop cooperation with some positive media agents. This memorandum and the Ergenekon investigation reveal the indirect harassment to which associations are subjected.

Interference in Associations' Work

The closure case against the Scientific and Cultural Researches Foundation (ILKAV) continued into 2008. Legal proceedings were initiated after a conference organised by ILKAV on 3 December 2006 which was entitled "Education in the Grip of Official Ideology." The Directorate-General for Foundations in 2007 complained about some of the speakers' criticism of the educational system, and the court case continues at Ankara First Instance Court No. 26, where a hearing took place on 9 September 2008. Speakers from the conference (Mehmet Pamak and Yusuf Tanrıverdi) have also been referred to the Court under Article 301 of the Turkish Penal Code by the Ankara First Instance Penal Court No. 3. The case is pending.

In addition, the Mersin Public Prosecutor brought a court case against the Mersin Branch of the Human Rights Association (IHD) on 19 July 2007, with a request for closure. The complaint was brought by the Desk of Associations of the Mersin Governor's Office. The indictment alleged that board members and members of the Mersin Branch of the Human Rights Association were involved in activities which did not comply with the association's goals and activities. It also claimed that some of the association's press statements were not covered by the right to freedom of expression, as they allegedly supported the goals and activities of illegal organisations. The indictment further accused the Branch of participating in the Platform against Privatisation and the Democracy Platform in Mersin without a written Board Decision in its Decision Book. The case is pending.

Harassment of Members of Associations

In addition to the direct harassment experienced especially by associations working in the human rights field, associations have also been subjected to raids by security forces and assaults by unknown attackers. The Basic Rights and Freedoms Association (a legally established left-wing association), Prisoners Associations (representing mainly Kurdish prisoners) and transgender associations have been the main victims of harassment. On 7 April 2008, between 12 and 15 men in civilian clothing entered the Lambda Istanbul Cultural Centre and identified themselves as members of the Financial and Moral Police. They were accompanied by an officer from the City Department of Associations. The police presented a warrant, but refused to answer questions about why they were raiding the Centre. The attorney for Lambda Istanbul subsequently found that the warrant had been issued under Article 227 of the Criminal Code, whereby "[a]ny person who encourages another person to become a prostitute, or facilitates prostitution, or acts as a go-between or provides a place for such purpose is punished with imprisonment from two years up to four years, and also imposed a punitive fine up to three thousand days." The Beyoglu Prosecutor had demanded and received the warrant from the Magistrates' Court of Beyoglu No. 2. The officers seized records of Lambda Istanbul's official decisions, a list of its members, its registers of moveable property, receipts, bills and invoices. The authorities did not make a list of the confiscated material, as mandated by law.

Associations in Turkey are also under intense pressure, and the Turkish Penal Code, Anti-Terror Law and the Law on Demonstrations and Peaceful Meetings are used against associations. Public conferences, demonstrations and statements which contain any element of criticism of existing policies have been subject to judicial harassment. Kevser Mızrak (a presumed DHKP-C member), for example, was killed by police in a raid on her home on 10 December 2007. There have been powerful accusations that this was in fact an arbitrary execution, and an investigation into the case has been conducted in secret. Human rights activists were especially sensitive to this case as it occurred on Human Rights Day. In Adana, the Rights and Freedoms Front (HÖC) organised a press conference, and some of those present were summoned to court on charges of being members of a criminal organisation, although the judiciary had never ruled that HÖC was in fact an illegal organisation. HÖC was accused of being linked to the illegal organisation DHKP-C and of giving this movement a forum for its propaganda through the press conference. Ethem Açıkalın, who was present at the meeting, was arrested and charged under Articles 220/7, 314/3 and 314/2 of the Criminal Code and Articles 5 and 7/2 of the Anti-Terror Law. During the hearing on 23 June 2008, all the defendants in custody were released. Another hearing was held on 8 October 2008.

There is no actual evidence that NGOs' access to foreign funds has been restricted. However, as indicated in the confidential memorandum prepared by the Turkish Armed Forces (see above), NGOs receiving funds from abroad are under close surveillance. In addition, NGOs affiliated with nationalist movements attempt to receive foreign funds in order to preempt rival NGOs which, they allege, would use them against Turkey's national interests.

It is worth noting that only a few media outlets in Turkey portray human rights NGOs in a positive light. This includes mainly BIANET and Media Kronik (Internet publications). Mainstream media only speak positively of NGOs if their activities are not contrary to the policies of the armed forces or the government. However, Hurriyet Daily (a high-circulation broadsheet daily newspaper), which, in the past, had regularly published negative commentary on human rights NGOs' activities, has recently displayed a much more positive attitude towards them.

Freedom of Association in **Europe**

by Jeremy McBride

RECOMMENDATIONS

We call upon the European states to:

1. *Time limits as a matter of law for decision-making on applications for registration or the grant of legal personality for associations should be no more than two or three weeks, with steps being taken to ensure their observance, namely the provision of additional staff and clear consequences for failure to meet them, whether a presumed refusal or positive decision;*

2. *Grounds for refusal of registration or the grant of legal personality for associations should be reformulated where they are insufficiently precise and they should be reviewed and modified to ensure their relevance and substantive compatibility with international standards*

3. *Decisions to prohibit associations, their activities and their funding - whether a national initiative or stemming from EU and UN measures - should be preceded by a fair hearing for those affected and be subject to continued judicial control over their operation;*

4. *State institutions should take effective action to prevent harassment of associations and their members and ensure that their powers are not exploited for this purpose.*

Introduction

Apart from being generally assured in constitutions and instruments of a constitutional character[1], freedom of association in Europe has the benefit of international and regional guarantees in the form of Article 22 of the International Covenant on Civil and Political Rights and Article 11 of the European Convention on Human Rights («the European Convention»).
In addition, this freedom is specifically assured for minorities in Articles 7 and 8 of the Framework Convention for the Protection of National Minorities and, within the European Union, it is also guaranteed by Article 12 of the Charter of Fundamental Rights of the European Union.

Furthermore, 11 European states have accepted the unique obligation at the international level which is to be found in the Council of Europe Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations[2] to grant the legal capacity to act to any association which has been established in another ratifying state.

In the light of these instruments and measures, it is not surprising that the formation and participation in associations is generally at a high level in European countries. Thus there are estimated to be more than 3 million associations within the 27 European

[1] In the United Kingdom, e.g., the courts are required by the Human Rights Act 1998 to give effect to the provisions of the European Convention - including Article 11 - in interpreting and applying the law.
[2] CETS No 124 of 24 April 1986. The states accepting this Convention are: Austria, Belgium, Cyprus, the Former Yugoslav Republic of Macedonia, France, Greece, the Netherlands, Portugal, Slovenia, Switzerland and the United Kingdom.

Union countries alone[3]. Although much of the activity undertaken by associations involves voluntary involvement by their members and supporters, these associations are significant employers in many of these countries; for instance, in the United Kingdom, 600,000 persons - 2.2% of the total workforce - are employed by voluntary organisations.[4] Furthermore, apart from pursuing the cultural, sporting and social interests of their members, associations in many countries make a major contribution to the provision of health and social care. Thus, in Germany, associations manage 40% of hospitals, 55% of old people's homes and 85% of youth clubs.[5]

In the period under review, September 2007-September 2008, some significant enhancements have been made to the standards applicable to freedom of association and there have also been some potentially useful additions to the means available for ensuring that they are respected. Furthermore, although concerns noted in the previous report about the impact on associations of action taken pursuant to the war on terror remain valid, there have been some notable successes in challenging aspects of these measures in courts at both the national[6] and European level. Nevertheless, despite the extensive arrangements for protecting freedom of association and the high level of activity generated by its exercise, there continue to be a number of problems in fully securing its enjoyment. These particularly concern the ability to form and belong to associations, their dissolution and prohibition, and the harassment to which some are subjected for pursuing their legitimate objectives.

ENHANCED PROTECTION

The first enhancement to the body of standards and mechanisms protecting freedom of association came through the adoption by the Council of Europe in 2007 of its Recommendation of the Committee of Ministers to member states on the legal status of non-governmental organisations.[7] This Recommendation proposes that the governments of member states be guided in their legislation, policies and practice by the minimum standards set out in it, take account of these standards in monitoring the commitments they have made, and ensure that this recommendation and the accompanying Explanatory Memorandum are translated and disseminated as widely as possible to NGOs and the public in general, as well as to parliamentarians, relevant public authorities and educational institutions, and used for the training of officials.

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 elsewhere.

Following on from the adoption of this Recommendation, the Conference of International Non-Governmental Organisations of the Council of Europe has established an Expert Council on NGO law.[8] The mandate of the Council is 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 pursues a thematic approach with regard to all European countries but may also prepare reports on problems occurring in a particular country.[9]

A further addition to the efforts being made to protect freedom of association came in 2008 with Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.[10] This Declaration builds on an earlier one adopted by the United Nations General Assembly.[11] 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 a wide range of action. This included: creating an environment conducive to the work of human

[3] See *Guide de la liberté associative dans le monde: 183 législations analysées, under the supervision of Michel Doucin* (*La Documentation Française*, Paris, 2007), p 576.
[4] *Ibid*, p 682.
[5] *Ibid*, p 586.
[6] In Denmark, on 19 November, the high court ruled that the adminstrative detention of one of the suspects of planning an attack on the cartoonist, Kurt Westergaard, done on the ground of his constituting 'danger to national security' was unfounded on the basis of the evidence provided to the court. This ruling runs counter to the rulings by the city court and the national court, see: *http://www.domstol.dk/hojesteret/nyheder/pressemeddelelser/Pages/Tuneser-sagerne.aspx*
[7] CM/Rec(2007)14 of 10 October 2007.
[8] January 2008.
[9] For its first annual report (OING Conf/Exp (2008) 4), see : *http://www.coe.int/T/E/NGO/Public/.*
[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

rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis and consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms, without any restrictions other than those authorised by the European Convention; taking effective measures to protect, promote and respect human rights defenders and ensure respect for their activities; strengthening their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated; and taking effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts, and to hold those responsible accountable through administrative measures and/or criminal proceedings.

In addition, it called upon states to co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the European Convention, as well as with the Commissioner for Human Rights, by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested, and to provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials, and/or, if feasible, the issuing of emergency visas.

Furthermore, Council of Europe bodies and institutions were called upon to pay special attention to issues concerning human rights defenders in their respective work. In particular, they are expected to encourage co-operation and awareness-raising activities with civil society organisations and to encourage the participation of human rights defenders in Council of Europe activities.

Finally, and perhaps most significantly, the Commissioner for Human Rights was invited to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders by: continuing to act upon information received from human rights defenders and other relevant sources, including ombudsmen or national human rights institutions; continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders; intervening, in the manner the Commissioner deems appropriate, with the competent authorities, in order to assist them in looking for solutions, in accordance with their obligations, to the problems which human rights defenders may face, especially in serious situations where there is a need for urgent action; and working in close co-operation with other intergovernmental organisations and institutions, in particular the OSCE/ODHIR focal point for human rights defenders, the European Union, the United Nations Secretary General's Special Representative on Human Rights Defenders and other existing mechanisms. This authorisation for action by the Commissioner has the potential to ensure that threats to the many associations acting as human rights defenders are resisted in a cogent and high profile manner.

FORMATION AND MEMBERSHIP

In most European countries, it is relatively easy to establish an association - in some no formal procedure is required, in others the acquisition of legal personality merely requires the relevant public authority to be notified of the association's formation, and in yet others there is a formal registration procedure that is handled expeditiously. However, the first annual report of the Expert Council on NGO Law found that the position was not always straightforward as a matter of law and practice.[12]

Thus it found that there were countries where the operation of informal groupings was effectively inhibited and that the detailed information needed in some instances in order to secure registration or legal personality - where this is either required or desired - did not seem to correspond to any significant fiscal advantages that might provide an appropriate justification for the burden thereby imposed. Furthermore, it found that the disqualification of some persons (notably children, convicted persons and non-nationals) from being eligible to form NGOs in some cases did not seem to be consistent with the right to freedom of association under Article 11 of the European Convention.
In addition, it found that the time-frame for reaching decisions on registration or the grant of legal personality did not always have appropriate safeguards against prevarication and abuse. Moreover, it considered that not all the grounds recognised as the basis for refusing registration or the grant of legal personality seemed to be drawn with sufficient precision or to be applied in a manner consistent with the right to freedom of association or the promotion of civil society. It also found that some countries did not specify any grounds for refusing registration or the grant of legal personality and/or do not require such a decision to be reasoned.

The Expert Council, while recognising that independence might not be an essential quality for the body deciding on registration or the grant of legal personality, found that the scope for improper pressures was evident in some cases. Furthermore, it found

[12] *Op. cit.*, n 5.

that, while many of the problems noted arose from practice rather than the terms of the applicable law, shortcomings in giving effect to the latter did not seem to be corrected through the exercise of judicial control.

The report of the Expert Council thus recommended that legislative restrictions on the establishment of informal groupings be repealed and their legitimacy should be clearly recognised as a matter of law. In addition, it recommended that the requirements for securing registration or acquiring legal personality should be simplified both to lighten the burden on those applying and to facilitate the administrative task of determining applications. It also recommended that restrictions on children, convicted persons and non-nationals from being founders of NGOs should be brought into line with the requirements of international standards and that formal time limits for decision-making should be no more than two or three weeks, with steps being taken to ensure their observance, namely the provision of additional staff and clear consequences for failure to meet them, whether a presumed refusal or positive decision.

Furthermore, the Expert Council recommended that grounds for refusal should be reformulated where they are insufficiently precise, and that they should be reviewed and modified to ensure their relevance and substantive compatibility with international standards. It also recommended that decision-making with respect to the registration of NGOs or granting them legal personality should be immunised from political influence, and that those charged with this role should be appropriately trained for the task. Finally, it recommended that effective and timely judicial control over decisions concerning registration and the grant of legal personality should be assured, with judges and lawyers being trained in the relevant international standards and being confident to rely on them in scrutinising refusals of registration or the grant of legal personality.
These recommendations develop the requirements of international instruments, particularly as elaborated in the case law of the European Court of Human Rights and the United Nations Human Rights Committee.

Unfortunately, in the period under review, the rulings of the European Court of Human Rights have confirmed the difficulties that can be encountered in some European countries in establishing associations. Moreover, although concerned with the position of individual associations, these cases reflect general obstacles to the formation and membership of associations in the countries concerned.

Although the Court has primarily had to address the use of procedural devices to deny registration in the period under review, it has also re-emphasised that the reasons for refusal must always be relevant and sufficient. Thus, in *Zhechev v. Bulgaria*[13], it found a violation of Article 11, where the association "Civil Society for Bulgarian Interests, National Dignity, Union and Integration - for Bulgaria" (whose articles include, in particular, repealing the Bulgarian Constitution of 1991, restoring the monarchy and "opening" the border between the former Yugoslav Republic of Macedonia and Bulgaria) was refused registration on the ground that its aims were political and incompatible with the Constitution. In the Court's view, restoring the monarchy or campaigning for change to legal and constitutional structures were not in themselves incompatible with the principles of democracy, and "opening" a border could not jeopardise a country's integrity or national security. It emphasised in this regard that it had not been suggested either that the association would use violent or undemocratic means to achieve its aims. Moreover, it observed that, as associations were not allowed to participate in national, local or European elections, there was no "pressing social need" to require every association deemed to pursue "political" goals to register as a political party, especially in view of the fact that the exact meaning of that term appeared quite vague under Bulgarian law. As a result, the reasons given by the authorities for refusing registration could not be regarded as relevant or sufficient.

The refusal to grant registration to the "Cultural Association of Turkish Women of the Region of Rodopi" (whose aim, according to its statute, was to create a "meeting place for women of the county of Rodopi" and to work for "social, moral and spiritual exaltation and establish bonds of sisterhood between its members") was also found to be in violation of Article 11 in *Emin and Others v. Greece*[14]. The Court reached its judgment on the basis that, even supposing that the real aim of the association had been to promote the idea that there was an ethnic minority in Greece as the respondent government had suggested, this could not be said to constitute a threat to democratic society. The Court saw nothing in the statute to indicate that its members advocated the use of violence or of undemocratic or unconstitutional means, and it noted further that the Greek courts would have had the power to dissolve the association if in practice it pursued aims that were different from those stated in its statute, or if it operated in a manner contrary to the law.

An important ruling on the extent to which sanctions for membership of an association are acceptable can be seen in the

[13] No. 57045/00, 21 June 2007.
[14] Nos. 34144/05 and 26698/05, 27 March 2008.

ruling by the European Court of Human Rights in *Grande Oriente D`Italia di Palazzo Giustiniani v. Italy* (No. 2),[15] which concerned an obligation to declare one's membership of a Masonic lodge when seeking nomination for public office. This requirement was found to be a violation of Article 14 taken in conjunction with Article 11, because the legislative requirement applied only to membership of secret and Masonic associations but not to membership of any other associations. While accepting that a prohibition on nominating Freemasons to public office, which had been introduced in order to "reassure" the public at a time when there had been controversy surrounding their role in the life of the country, could pursue the legitimate aims of protecting national security and preventing disorder, the Court considered that membership of many other non-secret associations might create a problem for national security and the prevention of disorder where members of those associations held public office. In its view, this might be the case for political parties or groups advocating racist or xenophobic ideas, or for sects or associations with a military-type internal structure, or those that established a rigid and incompressible bond of solidarity between their members or pursued an ideology that ran counter to the rules of democracy, which was a fundamental element of "European public order". However, the violation of the Convention arose in the instant case because no objective and reasonable justification for the difference in treatment between secret and Masonic associations and non-secret associations had been advanced by Italy.

DISSOLUTION AND PROHIBITION

There have been important court rulings in connection with the enforced dissolution of associations or attempts to prohibit them, underlining the value of effective judicial control over such drastic action and pointing to the beginning of a welcome resurgence of a more sceptical view of the supposed necessity for this being taken.

Thus the dissolution of the «Turkish Association of Xanthi» (which had been founded in 1927 under the name «House of the Turkish Youth of Xanthi» with the purpose of preserving and promoting the culture of the «Turks of Western Thrace» and creating bonds of friendship and solidarity between them), on the ground that its statute ran counter to public policy, was held by the European Court of Human Rights in *Tourkiki Enosi Xanthis and Others v. Greece*[16] to be in violation of Article 11. In so doing, the Court referred to the radical nature of the measure dissolving the association and noted that it had pursued its activities unhindered for nearly half a century. Furthermore, it found that the Greek courts had not identified any element in the title or statute of the association that might be contrary to public policy. In its view, even supposing that the real aim of the applicant association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to democratic society. The Court reiterated that the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law.

The Court also considered that it could not be inferred from the factors relied on by a domestic court - namely, that some of the members presented the Muslim minority of Thrace as a "strongly oppressed minority", the president of the association's participation in conferences organised by the Turkish authorities and the publication of a letter in a Turkish daily referring to the "Turks of Western Thrace" - that the applicant association had engaged in activities contrary to its proclaimed objectives. Moreover, there was no evidence that the president or members of the association had ever called for the use of violence, an uprising or any other form of rejection of democratic principles. The Court considered that freedom of association involved the right of everyone to express, in a lawful context, their beliefs about their ethnic identity. However shocking and unacceptable certain views or words used might appear to the authorities, their dissemination should not automatically be regarded as a threat to public policy or to the territorial integrity of a country.

There have also been several measures concerned with the validity of restrictions imposed on associations pursuant to the war on terror.

Firstly, in Case T-229/02, *Osman Ocalan, on behalf of the Kurdistan Workers' Party* (PKK) *v Council of the European Union*[17], the Court of First Instance of the European Communities followed the ruling of the European Court of Justice in Case T 228/02, Organisation des Modjahedines du peuple d'Iran v Council ('OMPI'),[18] when it granted an application for the annulment of Council Decision 2002/460/EC of 17 June 2002, implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. This regulation had been adopted in order to implement the measures set out in Common Position 2001/931, and under it, with very limited

[15] No. 26740/02, 31 May 2007.
[16] Nos. 34144/05 and 26698/05, 27 March 2008.
[17] 3 April 2008.
[18] [2006] ECR II 4665.

exceptions, all funds belonging to a natural or legal person, group, or entity included in the list referred to in Article 2(3) must be frozen. It is also prohibited to make funds or financial services available to those persons, groups or entities. Although the PKK did not appear in the original list, its name had been added to it on 2 May 2002, when the Council adopted Common Position 2002/340/CFSP, updating Common Position 2001/931/CFSP and its consequent Decision 2002/334/EC, and it was maintained in the subsequent updating Decision that was the object of the challenge in the case.

Secondly, on 7 May 2008, the English Court of Appeal upheld a ruling by the Proscribed Organisations Appeal Commission («the POAC») that the government's decision to maintain the ban on the People's Mojahedin Organization 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». 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.

Thirdly, following on from the ruling in England, the Court of First Instance held in Case T 256/07, *People's Mojahedin Organization of Iran v. Council of the European Union*[19], granted an application for the annulment of Council Decision 2007/868/EC of 20 December 2007, implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism insofar as it concerned PMOI, namely, the freezing of funds. By this decision - the second taken following the ruling that had annulled a previous decision, insofar as it concerned PMOI, on the ground that it did not contain a sufficient statement of reasons and that it had been adopted in the course of a procedure during which the applicant's right to a fair hearing was not observed[20] - the Council had continued to include PMOI's name in the list in the Annex to Council Regulation (EC) 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

Although Council Decision 2007/868/EC had been supported by a statement of reasons and been preceded by an opportunity to submit observations on the proposal to include it in the list, the Court considered that - having regard to all the relevant information at the date when it was adopted - this statement of reasons was obviously insufficient to provide legal justification for continuing to freeze PMOI's funds. It found that, in the first place, that statement of reasons did not make it possible to grasp how far the Council actually took into account the POAC's decision concerning PMOI in the United Kingdom, as it was required to do. Furthermore, it found that the statement did not explain the actual specific reasons why the Council took the view, in spite of the findings of fact made by the POAC, against which no appeal lay, and the legal conclusions, particularly severe for the Home Secretary, which had been drawn from those findings, that the continued inclusion of PMOI in the list at issue remained justified in the light of the same body of facts and circumstances on which the POAC had had to rule. Particularly significant in this regard was the conclusion reached by the POAC that the only belief that a reasonable decision-maker could have honestly entertained, as from September 2006, was that PMOI no longer met any of the criteria necessary for the maintenance of its proscription as a terrorist organisation or that, in other words, it had not been involved in terrorism since that period. In the third place, the Court considered that, while it was true that the Council could have had regard to the existence of appeals against the POAC's decision and to the Home Secretary's actual recourse to them, it was not, in this instance, sufficient for the Council to state that the Home Secretary had sought to lodge an appeal in order to be relieved of the need to take into specific consideration the findings of fact made by the POAC against which no appeal lies and the legal conclusions which it drew from those findings. That was all the more the case because, on the one hand, the POAC, the judicial authority competent to review the lawfulness of acts of the Home Secretary, had described the refusal to lift the applicant's proscription as 'unreasonable' and 'perverse' and, on the other, when the decision was adopted, the Council had been informed of the POAC's refusal to grant the Home Secretary leave to introduce such an appeal and of the grounds of that refusal, namely that, according to the POAC, none of the arguments put forward by the Home Secretary stood a reasonable chance of prospering before the Court of Appeal.

The very use of the technique of blacklisting of individuals and associations that was the subject of these three cases was condemned by the Parliamentary Assembly of the Council of Europe as a violation of fundamental rights and completely arbitrary.[21] It was particularly critical of the absence both of any hearing before blacklisting decisions are taken and of any independent review of such decisions.

[19] 23 October 2008.

[20] See para 32.

[21] *United Nations Security Council and European Union blacklists*, Resolution 1597 (2008).

However, not all court rulings have constrained the effect of measures taken pursuant to the war on terror. Thus, overturning an earlier acquittal, six persons were convicted in Denmark for selling T-shirts in order to help fund a radio station for the Revolutionary Armed Forces of Colombia (FARC) and a poster printing shop for 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 States. 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.[22]

HARASSMENT OF HUMAN RIGHTS DEFENDERS

The need for protection against harassment for those associations that are performing the important role of human rights defenders, which was recognised in the already mention Declaration of the Council of Europe's Committee of Ministers[23], has been underlined by action that has been taken against Greek Helsinki Monitor («GHM») and activists who have filed criminal actions against Greece's neo-Nazis, one of whom was convicted for «incitation to racial violence and hatred and for racial insults», although an appeal is pending[24].

The harassment of GHM has included verbal attacks and assaults during the trial in respect of which no action was taken by the court (which suggested that the victim go to the police station and file a complaint), the filing of a criminal complaint for defamation against those who had testified in the preliminary investigation, which was registered by the courts despite containing racist, anti-Semitic and homophobic statements and threats against individuals that have not been investigated, the calling of a 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 authorities.

In addition, a complaint has been filed against GHM claiming it is redundant and 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 Misdemeanors 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.

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.

All this action seeks to undermine genuine action by an association to protect human rights, and the fact that it is being sustained by official institutions could discourage GHM and other human rights defenders in Greece from playing their vital role. Although the criminal law 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 fully understood in Greece.

Conclusion

The general position regarding freedom of association is mainly positive. Furthermore, some improvements can be seen in the protection being extended to this freedom. However, there is no room for complacency, as some significant difficulties do exist in some countries regarding formation and membership of associations and there is still undue acceptance of alleged threats to public security and territorial integrity to justify the dissolution of associations or the prohibition of their activities. However, the voicing of scepticism as to the need for the restrictions in individual cases has been matched, to a certain extent, by the readiness of European courts to uphold some challenges to them as well-founded.

[22] *The Copenhagen Post*, 19 September 2008.

[23] See para 9.

[24] See *Greek Helsinki Monitor* press release, 17 August 2008 and *World Organisation against Torture* (OMCT) press release, 3 September 2008.

The Impact of Counter-Terrorism Policy on Freedom of Association in the Euro-Mediterranean Region

by Susie Alegre

Introduction

Although terrorism is not a new phenomenon in the Euromed region, the events of 11 September 2001 served to unite the "international community"[1] in a common cause against terrorism. This has meant that there has been a shift of focus in the international community from a policy of promoting the development of democracy and respect for human rights in their own right, to a policy driven by the notion of security. This shift of focus has been harnessed by many States as a justification for increasing security measures and for suppressing legitimate opposition or groups that may create political difficulties for the State. In the face of this worrying development, however, States are increasingly reticent about criticising the counter-terrorism efforts of others for fear that they themselves will be criticised, either for being too soft on terrorism or for an excessively draconian response. In addition, the international community has singled out the non-profit sector[2] as a possible conduit for terrorist financing, which has put increased pressure on an already vulnerable civil society across the Euromed region and had a significant impact on freedom of association.[3]

The threat of terrorism is real across the Euromed region, although the sources may differ. In both cases, however, there is a danger of confusing the violence of terrorism with the elements of the ideology behind it. There is an additional problem of associating those who defend the human rights of those suspected of or convicted of terrorism with the crime itself. This has an enormous impact on the ability of human rights defenders to continue their work and affects freedom of association more broadly.

Although terrorism and counter-terrorism activities impact on many human rights in a wide variety of ways, this chapter outlines the specific ways in which freedom of association has been affected by counter-terrorism policy and practice across the Euromed region. The examples given are selected to illustrate the problems posed by counter-terrorism policy and practice across the region, but are not exhaustive. It is important to note that the impact of counter-terrorism on freedom of association and related rights is as notable in the North of the region as it is in the South and East, although the scale of violations may differ.

STATES OF EMERGENCY

The pretext of combating terrorism or the rise of violent extremism is often used as a justification for imposing a state of emergency or for derogating from international human rights obligations. The effective suspension of the rule of law in order to combat terrorism has a very severe impact on the enjoyment of human rights and may well result in creating conditions that are conducive to recruitment for terrorism.[4]

States of emergency have been in force without interruption in Syria since 1963, in Egypt since 1981 and in Algeria since 1992[5] in reaction to the threat of political violence.[6] These states of emergency allow States to resort to extreme measures in the name of security and continue despite the apparent improvement in the security situation in some states.[7]

[1] Groups of states working together through formal or informal international, regional and sub-regional groupings and organisations - e.g. UN, EU, OSCE, CoE, OIC, SCO, G8, G6, etc.

[2] Commission Communication, 'The Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector' COM (2005) 620

[3] See The EU's External Cooperation in Criminal Justice and Counter-terrorism: An Assessment of the Human Rights Implications with a particular focus on Cooperation with Canada - CEPS Special Paper, Susie Alegre, September 2008 section 2.3 - *www.ceps.eu*

[4] See UN Global Counter-Terrorism Strategy - *http://www.un.org/terrorism/strategy-counter-terrorism.shtml*

[5] UN Committee Against Torture, CAT/C/DZA/CO/3, 15 May 2008

[6] See Eminent Jurists Panel Press Release, Cairo 7 June 2007 - *http://ejp.icj.org/IMG/EJP-PREgypt_2-2.pdf*

[7] See para 4 UN CAT report on Algeria supra, and HRW press release supra.

On 26 May 2008, Egypt extended the state of emergency by two years in the face of vociferous objections from the opposition and human rights groups.[8] The government had made repeated promises that the state of emergency law would be replaced by new counterterrorism legislation, including pledges made prior to its being elected to the UN Human Rights Council in May 2007,[9] but the law has been renewed twice since the last election despite the relative stability in Egypt.[10]

Egyptian Emergency Law No. 162 permits the executive to refer civilians to military or exceptional state security courts. The composition of such courts is determined by the President of Egypt and the accused has no right to appeal the rulings of these courts except on procedural issues in violation of international human rights standards of fair trial.[11] It has also had an impact on the right to freedom of association and freedom of assembly. During the last year this law has been used to prosecute and convict senior members of the Muslim Brotherhood in Egypt when criminal charges had been dismissed against them in civilian courts.[12] It has also been used to prohibit strikes, demonstrations and public meetings, to censor or close down media outlets and to monitor correspondence.[13]

The Syrian State of Emergency and Martial Law, introduced in 1963, endowed the security and administrative apparatus with exceptional powers on the grounds of national security. It has formed the basis of many other laws[14] which have bolstered the powers of the national intelligence community and provided immunity from prosecution of security personnel. It has thus undermined the rule of law and created impunity for criminal acts, potentially including acts of torture, contrary to Syria's international human rights obligations.

DEFINITION OF TERRORISM AND CRIMINAL PROSECUTIONS

Although many international instruments refer to terrorism, there is, as yet, no internationally recognised definition. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has, however, expressed support[15] for the approach to the concept of terrorism set down in Security Council Resolution 1566 (2004), which states that terrorism has the following three characteristics irrespective of its motivations:

- Acts committed, including against civilians, with the intent to cause death or serious bodily injury, or taking of hostages; and
- Committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population, or compel a Government or an international organization to do or to abstain from doing any act; and
- Constituting offences with the scope of and as defined in the international conventions and protocols relating to terrorism.

The word «terrorism» is politically and emotionally charged and the international community has never succeeded in developing an accepted comprehensive definition of terrorism. During the 1970s and 1980s, the United Nations attempts to define the term foundered mainly due to differences of opinion between various members about the use of violence in the context of conflicts over national liberation and self-determination.

National and regional definitions of terrorism across the Euromed region have been severely criticised for their excessively broad drafting, which leaves them open to abuse. This kind of legislation is in violation of the non-derogable principle of legality enshrined in Article 9 of the ICCPR,[16] which requires that a criminal offence must be set down in law with sufficient clarity and accessibility to allow a person to adapt their conduct in accordance with the law. The exceptional consequences that stem from the categorisation

[8] Human Rights Watch, Egypt: Extending State of Emergency Violates Rights, Press Release 28/5/2008 - *http://hrw.org/english/docs/2008/05/28/egypt18951.htm*

[9] Human Rights Watch ibid.

[10] Human Rights Watch Ibid - Statement of Egypt's National Council for Human Rights, 20th May 2008 'Nothing any longer justifies the extension of the state of emergency, all the more so as Egypt is experiencing a period of stability.'

[11] Such as Article 14 ICCPR

[12] Human Rights Watch Press Release April 16 2008 - *http://hrw.org/english/docs/2008/04/16/egypt18564.htm* - On April 15, 2008, the military tribunal sentenced Khairat al Shatir, deputy supreme guide of the Muslim Brotherhood and 24 other civilians to prison terms of up to 10 years.

[13] See Human Rights Watch Press Release April 11 2008 http://hrw.org/english/docs/2008/04/11/egypt18517.htm 'On April 6 and 7 2008, security forces prevented textile workers from striking in the Nile delta city of Mahalla, violently dispersed protests against rising costs of food and basic goods, and detained scores, including many online activists who had promoted the strike. When Egypt's prosecutor-general ordered the release of 20 detainees a week later, the Interior Ministry invoked the emergency law to re-arrest them, according to news reports.

[14] Including the Act of Resisting the Goals of the Revolution, issued by Legislative Decree No./6/January 7, 1965, the Law Creating Military Field Courts issued by Legislative Decree No./109/August 17, 1968, and the State Security Department Act issued by Legislative Decree No.14/ January 15, 1969, which bolstered the national intelligence community by facilitating overlapping and intertwining jurisdiction between the various agencies. Article 16 of this Act protects security personnel from prosecution even in cases where they have committed acts legally designated as crimes: «Any employee of the State Security Department may not be prosecuted for crimes committed during the implementation of specific tasks assigned to them, or in the course of carrying out their duty, except by an order issued by the Directorate."

[15] See E/CN.4/2006/98, para 42

[16] For analysis of the principle of legality and the definition of terrorism see Office of the United Nations High Commissioner for Human Rights, Human Rights, Terrorism and Counter-Terrorism, Fact Sheet No 32, 2008, pp 26-27

of a person or group as "terrorist" on a national or international level can include the use of "special tribunals" and military courts, incommunicado detention, freezing of assets, proscription, deportation and limitations on freedom of movement, amongst others, all of which have severe detrimental effects on the enjoyment of a number of human rights including freedom of association. The question of how terrorism is defined is, therefore, of enormous importance for human rights groups.

On a regional level, the EU has agreed a definition of terrorism in its Council Framework Decision on combating terrorism.[17] This definition has been the subject of criticisms from human rights groups, as it is feared that it could be used to target protestors who may damage property during an initially peaceful demonstration therefore disproportionately impacting on the right to protest.[18] The EU Council recently agreed an amendment making public provocation to commit a terrorist offence, recruitment and training for terrorism punishable behaviour, also when committed through the Internet.[19] The European Parliament, however, has criticised the breadth of the amendment.[20] While this definition will be binding on EU Member States and some have introduced legislation specifically to implement it, the definition is a basic minimum and EU Member States may apply much broader definitions in their national legislation. The Council of Europe Convention on the Prevention of Terrorism 2005 does not define terrorism[21] as such, but contains a definition of offences amounting to "provocation to terrorism". The human rights compatibility of such criminalisation will depend on the national implementation of such offences.[22]

In relation to MENA States, the definition contained in Article 1 of the 1999 Organisation of the Islamic Conference[23] Convention on Combating International Terrorism has also been criticised as being overly broad[24] and drafted in vague terms which go far beyond the generally accepted concept of terrorism, including amongst its aims imperilling people's honour or occupying or seizing public or private property.

The UN Committee Against Torture has criticised the definition of terrorism contained in article 87 bis of the Algerian Penal Code for being overly broad and possibly extending to actions which are not necessarily of a terrorist nature, and for exposing those arrested under it to treatment which would be in contravention of the UN Convention against Torture, Inhuman and Degrading Treatment and Punishment (UNCAT).[25]

Amnesty International has criticised Jordan's Anti-Terrorism Law 2006[26] as not being sufficiently tightly drafted and potentially permitting criminalisation of peaceful critics and opponents of the government for activities such as holding public meetings which may result in damage to property, however minor.[27] The Anti-Terrorism Law includes "damage to infrastructure", with the intention to "disrupt public order" or "endanger public safety" or "affect the policy of the country or government", within the definition of terrorist acts, all of which may be broadly interpreted and open to abuse.[28]

The Tunisian definition of terrorism[29] is very widely drawn. It includes acts against persons or property but does not require an element of serious violence. It also covers the vague notion of "incitement to... fanaticism regardless of the means employed." This definition is so broad as to criminalise mere opinion without the need for violence.[30] It has been used to prosecute people who neither committed nor incited acts of violence and has had an impact on freedom of association through its use against members of the banned opposition party *Ennahdha* who were convicted of "support of a terrorist organisation" and condemned to heavy prison sentences.[31]

[17] Council Framework Decision 2002/475/JHA on combating terrorism

[18] Although a statement was attached to the FD clarifying the position, this has no legal value - see Amnesty International Report - Human Rights Dissolving at the Borders - Counter-terrorism and criminal law in the EU, May 2005 - *http://www.amnesty.org/en/library/asset/IOR61/013/2005/en/dom-IOR610132005en.html*.

[19] *18 April 2008 http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/255*

[20] *http://www.euractiv.com/en/justice/eu-headway-anti-terror-law/article-175643*

[21] rather it links back to the universal conventions on terrorism - *http://conventions.coe.int/Treaty/en/Treaties/Html/196.htm#ANX*

[22] The UK Parliamentary Joint Committee on human rights has criticised UK implementation as not being human rights compliant see: JCHR, The Council of Europe Convention on the Prevention of Terrorism (22 January 2001: HL 26/HC 247)

[23] An Organisation comprising 56 Member States including many from the MENA region: *http://www.oic-oci.org/oicnew/member_states.asp*

[24] See HRW letter to the Secretary General of the OIC, 11th March 2008

[25] UN CAT supra, para 4.

[26] Anti-terrorism law No 55 of 2006

[27] Amnesty International Public Statement, 'Jordan's anti-terrorism law opens door to new human rights violations,' 7 November 2006, AI Index MDE 16/012/2006

[28] Anti-terrorism law No 55 of 2006, Article 2.

[29] Article 52bis of the Criminal Code introduced in 1993: "The perpetrator of an offence qualified as terrorist offence incurs the punishment stipulated for the same offence. The punishment cannot be reduced to less than the half. Is qualified as terrorist any infraction in relation to an individual or a collective enterprise whose purpose is to cause harm to persons or property, by intimidation or terror. Are treated in the same way the acts of incitement to racial or religious hatred or fanaticism regardless of the means employed."

[30] Conseil National pour les Libertes en Tunisie, 'Preventive Justice and Political Instrumentalisation: Trials under the Anti-Terrorism Law in Tunisia', Tunis June 2005-March 2007, p. 12 *www.cnltunisie.org*

[31] Ibid p. 12

In 2003, a further "Law in support of international efforts to combat terrorism and fight money-laundering"[32] was introduced. This new law, consisting of 103 articles has been characterised as an "alternative criminal code" and introduces an even more elastic definition of terrorism.[33] This new law establishes an emergency justice system, allowing trials *in camera*, extending the prescribed sentences stipulated by the Code of Criminal Procedure (from 10 years to 20 years for crimes and from three years to 10 years for offences (art.61)) and punishing the refusal to act as a witness. It also removes any possibility to object to the judges (protected by anonymity), authorises the attachment of properties under mere suspicion, restricts the number of appeals, trims the guarantees offered to suspects and adopts the principle of preventive justice.[34]

The Tunisian laws not only apply within the country, but are applied to Tunisians living abroad as well. Many have been convicted *"in absentia"* for terrorism offences committed outside Tunisia and there is no requirement for the facts on which a prosecution is based to have amounted to a criminal offence in the country where the actions took place. This spreads these laws' impact on freedom of association and expression beyond the borders of Tunisia.[35]

The French criminal code defines *association de malfaiteurs* as "the participation in any group formed or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided for under the previous articles."[36] This definition is unduly broad, and lack of legal certainty in the law has been exacerbated by jurisprudence, giving rise to concerns that there is not sufficient legal precision to allow a person to regulate his/her conduct accordingly, which may lead to arbitrary interferences with the rights of freedom of association, expression, religious freedom and personal life.[37] Human Rights Watch has pointed out that the use of this offence in relation to alleged Islamist terrorist activity (as opposed to Basque separatist activity linked to ETA which is a clearly structured organisation) has led to the arrest and indictment of "family members, friends, neighbours, members of the same mosque, co-workers, or those who frequent a particular restaurant" based on investigations that map a network of contacts.[38] It can also be used to take action against people who may have extremist views but have not taken any steps towards engaging in terrorist violence, effectively criminalising unpalatable views and disproportionately interfering with the right to freedom of expression.[39]

In the United Kingdom, the definition of terrorism and related offences which has evolved over the past eight years has been the subject of heated debate[40] due to its potential for abuse. The UK definition of terrorism in the Terrorism Act 2000 is "the use or threat [of action] designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purposes of advancing a political, religious or ideological cause."[41] This applies to actions designed to "influence" the UK government or any other government, and to actions which occur both inside and outside the UK. There is no distinction between violence against persons and that which damages property or disrupts an electronic system. Nor is there a distinction between violence used against civilians and the use of violence by non-state actors to remove a non-democratic regime. The potential for abuse of such broad powers and its potential impact on the activities of campaigning organisations both within and outside the UK has been the subject of heavy criticism from human rights groups,[42] as well as from the UK Independent Reviewer of Terrorism Legislation.[43]

This definition provides the basis for extensive stop and search powers under the Terrorism Act 2000.[44] This provision allows a senior police officer to authorise a particular area[45] within which police may stop and search a person or a vehicle with no requirement to show "reasonable grounds for suspicion" that the person stopped may be involved in unlawful conduct. These stop and search

[32] No 2003-75 of 10 December 2003
[33] CNLT report supra note 22 at p. 13, Articles 4 and 6 of the law.
[34] Ibid p. 14
[35] Ibid p. 13
[36] French Criminal Code art. 421-2-1 (translation from HRW report: Preempting Justice: Counterterrorism Laws and Procedures in France, 2nd July 2008 p. 19)
[37] See HRW report supra note 20 and FIDH report: 'France: paving the way for arbitrary justice' no 271-2, March 1999.
[38] See HRW report supra note 20 p. 22
[39] Ibid.
[40] See e.g. *http://www.liberty-human-rights.org.uk/issues/2-terrorism/index.shtml*
[41] Terrorism Act 2000, Section 1
[42] See for example submissions to the Human Rights Council on the Universal Periodic Review of the United Kingdom from Human Rights Watch, 7th April 2008 and from Liberty and Justice, October 2007 as well as the Parliamentary Joint Committee on Human Rights, 'Counter-terrorism policy and human rights: Terrorism Bill and related matters', December 2005: HL 75/HC 561, para 13
[43] Lord Carlile of Berriew QC, Definition of Terrorism (March 2007), para 60
[44] Terrorism Act 2000, section 44
[45] Including currently the whole of Greater London.

powers have been used controversially in relation to protesters outside an arms fair[46] and to protests against Heathrow airport expansion.[47] The extension of the notion of terrorism to criminalise vague notions such as "glorification" of terrorism or "justification" of terrorism can have an even more severe impact on freedom of expression, stifling the possibility of debate around the issue of terrorism and counter-terrorism for fear of prosecution.[48]

Those who share the desire for independence with a nationalist terrorist group or the desire to establish an Islamic caliphate should not be categorised as "terrorist" if they do not support the use of violence to that end. In a number of judgments the European Court of Human Rights has stressed the requirement for proportionality in any interference with freedom of expression. It found a violation of the right to freedom of expression in France in relation to the ban on a book containing a political article by the Basque national liberation movement, as the content of the book did not pose such a danger to public safety and public order as to merit a ban.[49] The conviction of a leader of an Islamist sect for statements made during the course of a television discussion, in which he denounced the political system of Turkey as aiming to destroy Islam and stated that religion and democracy were contradictory concepts, was also a violation of freedom of expression, as it was not "necessary", particularly in the light of the fact that the statements were made in the context of a discussion where other viewpoints were put forward.[50] Despite this jurisprudence, there has been a trend in Europe towards criminalisation of vague offences such as "glorification" or "justification" of terrorism which are open to abuse.

The UK Terrorism Act 2006 has been heavily criticised for its broad definition of "encouragement of terrorism"[51] which criminalises statements where the person making the statement either intends or "is reckless" to the possibility of members of the public being "directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences". This has recently been criticised by the UN Human Rights Committee.[52]

Such statements include any which "glorify the commission or preparation (whether in the past, in the future or generally) of such acts or offences". Given the already broad definition of terrorist offences in the Terrorism Act 2000 this is of grave concern.[53] The Joint Committee on Human Rights commented that "[i]t is likely that the creation of the offence of encouragement of terrorism in its current form will have an inhibiting effect on legitimate freedom of expression and will therefore lead to disproportionate interferences with free speech."[54]

The Spanish penal code criminalises *"apologia"*[55] (justification) of terrorism and *"enaltecimiento"*[56] (glorification) of terrorism, as well as acts which discredit or humiliate the victims of terrorism.[57] The Supreme Court, in a case brought by the Association of Victims of Terrorism seeking to overturn the acquittal of a group of musicians who had been accused of an offence under these provisions for a song which highlighted the Guardia Civil as ETA targets, found that these provisions require a narrow reading in order to comply with the right to freedom of expression and that, therefore, on the facts of that case the accused had been properly acquitted.[58] The UN Special Rapporteur on human rights and counter-terrorism, Martin Schienin, has criticised these provisions of the Spanish criminal code, highlighting the fact that they "carry the risk of a 'slippery slope', i.e. the gradual broadening of the notion of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence against members of the general population."[59] He was particularly concerned about this "slippery slope" as the classification of crimes as "terrorist" triggers incommunicado detention, the jurisdiction of the *Audiencia Nacional* instead of the territorial criminal court, and differences in the levels of sentences and the rules governing the serving of sentences.

[46] See pending case before the ECHR - Gillan and Quinton v UK, Application No 4158/05 where applicants are seeking to overturn a House of Lords judgment which found that the stop and search powers were a proportionate interference with human rights in response to the terrorist threat - R (on the application of Gillan and Anor v Commissioner of Police for the Metropolis and Anor, [2006] UKHL 12.

[47] August 2007. See HRW submission supra fn 20

[48] See European Parliament Briefing PE 393.283, 'Human Rights Concerns Relevant to Legislating on Provocation or Incitement to Terrorism and Related Offences', Susie Alegre, March 2008

[49] Ekin Association v France, ECHR Application number 39288/98; Judgment 17/07/2001

[50] Muslum Gunduz v Turkey (No 1), ECHR Application number 35071/97; Judgment 04/12/2003

[51] Terrorism Act 2006, section 1

[52] CCPR/C/GBR/CO/6 at para 26

[53] This issue was raised to the UK government by the UN High Commissioner for Human Rights, Louise Arbour - Letter to the UK's Permanent Representative to the UN Office and other international organisations in Geneva, 28 November 2005.

[54] JCHR, The Council of Europe Convention on the Prevention of Terrorism (22 January 2001: HL 26/HC 247, para 47.

[55] Article 577 Penal Code

[56] Article 578 Penal Code introduced by the Ley Organica 7/2000 of 22nd December 2000

[57] Ibid.

[58] Judgment of 17 July 2007, Number 656/2007

[59] UN Special Rapporteur on Human Rights and Counter-Terrorism concludes visit to Spain, Press Release 14 May 2008.

Prosecutions for terrorism-related offences which impact on freedom of association and freedom of expression can have a severe chilling effect on civil society and the protection and promotion of human rights. In a number of countries across the region, newspaper editors and members of civil society organisations have been prosecuted for offences related to terrorism.[60]

In Spain, there have been a number of prosecutions before the *Audiencia Nacional* for crimes of association with terrorist groups, which give rise to concerns over the disproportionate interference with freedom of association and freedom of expression.[61] In particular, cases relating to the media and civil society organisations working in the Basque country are of concern. The prosecution of the editors and board members of the Basque language newspaper, *Egunkaria*,[62] who are charged with membership of an illegal organisation and collaboration with an armed group, is a particularly worrying example. The prosecution, which is being taken forward as a private prosecution, is continuing despite a recommendation from the prosecutor that it should be dropped due to lack of evidence.[63] The circumstances around this case are exacerbated by the fact that a number of the accused allege that they were tortured during incommunicado detention, which is permitted under Spanish terrorist legislation.[64] A complaint has been made to the European Court of Human Rights for the failure to investigate the allegations of torture.[65]

In Turkey, a number of politicians and human rights activists have been prosecuted under anti-terrorism legislation which criminalises "propaganda for a terrorist organisation".[66] The facts on which these prosecutions have been based have included giving a speech in a hall where a photo of Abdullah Ocalan (the leader of the PKK) was displayed,[67] visiting the family of a person who was an armed militant after he had died,[68] and attending a joint press conference with NGOs and political parties on ill treatment in prisons in Turkey.[69] The risk of prosecution for terrorist offences in these circumstances has a severely restrictive effect on freedom of association in Turkey.

PROSCRIPTION AND LISTING MECHANISMS

The practice of proscribing organisations deemed to be "terrorist" occurs on an international basis through the UN sanctions system,[70] on a regional basis through the EU listing mechanism,[71] and on a national level in many countries in the Euromed region. While there is clearly a justification and indeed an obligation under human rights law[72] for prohibiting or controlling organisations involved in violent activities, particularly those affecting civilians, the lack of clear procedures to challenge the inclusion of organisations on international lists creates a risk that non-terrorist organisations may be adversely affected and that purely political motives for putting forward an organisation for inclusion on a list may go unchallenged. This has a disproportionate impact on freedom of association at the international level as well as at the national level.

The Special Representative of the Secretary-General on human rights defenders has made it clear that the legality of an organisation's purposes and its conformity with the law may only be reviewed once a complaint has been lodged against it.[73] Such a review must be carried out by an independent judicial body capable of deciding whether or not the organisation is in breach of existing law. On an international level, there has been criticism of the opacity of listing mechanisms and the difficulty for organisations or people

[60] See HRW World Report 2008 on Germany, p. 388 where two academics were arrested for being intellectual supporters of a militant left-wing faction allegedly responsible for a series of arson attacks.

[61] See ICJ Submission on list of issues to the Human Rights Committee Consideration of the 5th Periodic Report of Spain. - e.g. case 18/98; case 33/01; case 44/04

[62] Case 44/04 - check current status of case

[63] Statement of the prosecutor, Miguel Angel Carballo-Cuevo, 4 December 2006, Court Record No 21/05 - see ICJ Submission supra.

[64] Code of Criminal Procedure (CCP) Article 520 bis in conjunction with Article 55 (2). Also Ley de Enjuiciamiento Criminal (LEC) Ley 53/1978 as amended by Ley Organica 4/1988 and Ley Organica 13/2003. See also Spain, Fifth periodic report, CCPR/C/ESP/5, 5 February 2008, paras 92-94

[65] *http://www.diariovasco.com/20080915/politica/otamendi-denuncia-estado-europa-20080915.html*

[66] Anti-Terror law 7/2

[67] Case of Osman Baydemir, file nuber 2007/

[68] Case of Osman Keser (Mayor of Kakapinar Municipality), Fadile Bayram (Former provincial administrator of the Democratic Society Party), Mehment Bayram, Abdullah Temel, Sabahattin Aslan check current status

[69] Case against 21 people including the Chair and board members of the Human Rights Association (IHD) of Vetha Aydin, Hasan Ceyhan, Pakizer Uksul, Saniye Turhan, Hanim Adiguzel, Eyyuphan Aksu, Resit Batur, Esref Tekin, Suleyman Yilmaz, Abdullah Gurgen, Sukru Oguz, Emine Oguz, Adil Ceyhan, ADnan Aslanci, Ismail Ekinci, Fehmi Elci, Fahrettin Akcan and Abdulbaki Tasci.

[70] E.g. UN 1267 committee - *http://www.un.org/sc/committees/1267/index.shtml*

[71] E.g. Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, Council Decision 2001/927/EC establishing the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001, Council Common Position 2001/930/CFSP on combating terrorism, Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism.

[72] Human rights law imposes a positive obligation on states to protect life, as well as to refrain from taking life. See Council of Europe Guidelines on human rights and the fight against terrorism 2002- I. States' obligation to protect everyone against terrorism - States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts, especially the right to life. This positive obligation fully justifies States' fight against terrorism in accordance with the present guidelines. (see also Osman v UK, (28 October 1998) [Grand Chamber] (2000) 29 EHRR 245)

[73] See reports of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani (A/59/401 and E/CN.4/2006/95)

to have their names removed from the lists.[74] Recent cases in the European Court of Justice[75] have confirmed the problem of inadequate access to justice in challenging inclusion on EU lists and one case is now pending before the European Court of Human Rights.[76]

In the European Union, lists of terrorist organisations and individuals are published in the Official journal. The effect of listing on the reputation of an organisation and its ability to continue its work is clear. However the legal effect of inclusion on the lists varies according to whether or not an organisation or individual is EU based or an EU national. The process and consequences of listing are not strictly criminal in nature and therefore are lacking in the safeguards that would stem from criminal proceedings, although the impact on human rights of a listing decision may be severe, leaving a person effectively destitute with no access to funds for long periods of time.

Non-EU organisations and individuals are targeted through freezing of assets which affects funding streams and the ability to continue work, which is a very serious consequence for those who are incorrectly listed. In the case of the People's Mojahedin Organisation of Iran (PMOI),[77] the Court of First Instance condemned the absence of procedural safeguards and human rights guarantees in the listing mechanism, which had resulted in the organisation being included on the EU list of terrorist organisations, resulting in the freezing of their assets. Following on from that judgment, the Court of Appeal in the United Kingdom upheld a ruling from the UK Proscribed Organisations Appeals Commission to remove the PMOI from the national list of proscribed organisations.[78]

EU organisations listed on the EU terrorist lists are not subject to asset freezing and therefore are effectively deprived of access to any court to challenge their inclusion on the lists, as the European Court of Justice has limited jurisdiction over matters that do not derive from Community competences. The Basque organisations *Segi* and *Gestoras* sought to challenge their inclusion on the lists under the umbrella of the terrorist organisation *ETA*, but the European Court of Justice found that it did not have jurisdiction to rule on their inclusion on the list, recognising that this effectively excluded them from an effective remedy to interferences with their rights, including the right to freedom of association.[79] They are now returning to the European Court of Human Rights to challenge the decision to include them on the list.

While inclusion on the EU list requires unanimity from all Member States, the consequence of inclusion on the list is not that an organisation will be proscribed in all EU Member States. In a case concerning a European arrest warrant from Spain to France in relation to a French national accused of membership of Segi, an organisation classified as criminal in Spain and included in the EU list, the French courts refused the return on the grounds that part of the activities had occurred in France and that Segi was not an illegal organisation in France.[80] Such discrepancies call into question the legitimacy of the EU listing mechanism and its potentially arbitrary impact on the right to freedom of association in the EU.

FUNDING

The shift of focus of the international community from the promotion of human rights and democracy in the Middle East and North Africa to a security priority has had an adverse impact on international funding streams for NGOs in the region.[81] Discourse which links NGOs to terrorist financing and/or money laundering can have a dramatic effect on funding for NGOs. In addition, the Islamist nature of the threat posed by international terrorism could have a particularly detrimental effect on funding for legitimate Islamic NGOs operating in the region.

The European Commission produced a Communication in 2005 addressing the "vulnerabilities of the non-profit sector to the financing of terrorism and other criminal abuse".[82] It identified non-profit organisations as one of the conduits for terrorist financing and sought to establish a code of conduct that would improve transparency and accountability of non-profit organisations to combat criminal abuse. While the aim to reduce criminal abuse of non-profit organisations is clearly laudable, the importance given to non-profit organisations as a vehicle for terrorist financing is of concern.[83]

[74] See OSCE Workshop on Human Rights and International Cooperation in Counter-Terrorism Report - *http://www.osce.org/documents/odihr/2007/02/23424_en.pdf*
[75] E.g. Kadi v Council of the European Union, Judgment of 3 September 2008 and Case C- 355/04 P Segi v Council of the European Union, Judgment of 27 February 2007
[76] Segi and Galarraga v 27 EU Member States Application number 3750/08
[77] Case T-228/02, Organisation des Modjahedines du peuple d'iran v Council of the European Union, Judgment of the Court of First Instance, 12 December 2006
[78] Alton and others v Secretary of State for Home Department, Times Law Reports, 13 May 2008
[79] Segi supra
[80] See Amnesty International Report supra fn 15
[81] Interviews conducted in Amman, August 2008.
[82] COM (2005) 620
[83] See The EU's External Cooperation in Criminal Justice and Counter-terrorism: An Assessment of the Human Rights Implications with a particular focus on Cooperation with Canada - CEPS Special Paper, Susie Alegre, September 2008 section 2.3 - *www.ceps.eu*

In many of the regions that the EU is cooperating with in the fight against terrorism, civil society is an extremely fragile but necessary partner in improving human rights and the rule of law. Care must be taken on the part of the EU not to provide fuel for the fire of those who would use counter-terrorism as a justification for quashing opposition and closing down civil society.[84] Terrorist financing legislation in particular can be abused to restrict funding, particularly foreign funding to human rights and other organisations using the justification of the international fight against terrorist financing.
The Jordanian Law on NGOs is an example of the type of national legislation which can be used to restrict NGOs and their funding streams under the general justification of security and the need for transparency. National and international human rights organisations have voiced serious concerns about this new law and its impact on freedom of association. In particular, it should be noted that it severely restricts the use of foreign funding for NGOs.

In Tunisia, the law on terrorist financing[85] established an absolute control over the funding of independent NGOs, preventing them from receiving an amount of subsidies higher than that limited by the administration. NGOs are forbidden from receiving donations of any kind or foreign financing. The "Committee of Financial Analysis", supervised by the Central Bank of Tunisia, can authorise an institution which provides information about a suspicious transfer to freeze funds without informing the concerned organisation (art 87). Where funds are frozen in error there is no right of compensation for affected organisations.[86]

One example of implementation of this law on the financing of terrorism was that related to the Arab Institute for Human Rights (AIHR), a regional NGO based in Tunis. The Tunisian authorities had tried to push for the AIHR to remove the Secretary General of the Tunisian Human Rights League, Khemaies K'sila, from its board of directors, also AIHR board member. Early in 2005, using this law, the authorities froze $250,000 belonging to the AIHR, which came from UN funding (The Office of the High Commissioner for Human Rights (OHCHR), UNICEF, UNESCO and UNPD). The funds were unfrozen only in August 2005, following international pressure.[87]

Legislation criminalising the financing of terrorism, particularly where it is linked to a very broad definition and territorial scope of the offence of "terrorism", can also have adverse consequences on the activities of NGOs working in areas of conflict, where organisations deemed as "terrorist" in some countries may have de facto control of territories where NGOs are working. An example of this is NGOs working on development and social projects in Gaza or the West Bank, where Hamas has control of many schools and hospitals. Hamas is designated as a terrorist organisation according to the European Union terrorist list. The possibility that funding for development activities may benefit social projects, hospitals or schools run by Hamas since they forcefully took over control of the Gaza Strip could leave NGOs open to the risk of prosecution for financing of terrorism. This could severely curtail their ability to work in the region.[88] In Israel, the Law on the Prohibition of Terror Funding - 2005 and the Prevention of Terrorism Ordinance - 1948, and the Defense (Emergency) Regulations - 1945 which aim to prevent the establishment or activity of "illegal associations" (namely those groups deemed to be a security risk or to constitute a terrorist organisation) have an adverse impact on freedom of association.

INTERNATIONAL COOPERATION

International cooperation on counter-terrorism amid statements such as that of the then UK Prime Minister Tony Blair that "the rules of the game have changed" has served to undermine the respect for human rights, including freedom of association, in the context of terrorism across the region. EU Member States and others with great influence, such as the United States, have forged alliances in the fight against terrorism in North Africa and the Middle East while turning a blind eye to human rights abuses. This climate has led to a situation where a claim of national security or the threat of terrorism is sufficient to justify any excess with little criticism from other states in the international community.

Over the past few years, a number of EU countries, including Denmark,[89] Italy,[90] Spain[91] and the UK[92] have been seeking to deport suspected terrorists or people who have been convicted *in absentia* in their home countries for terrorist offences to a number of countries in North Africa and the Middle East, where there is a risk of torture or ill treatment on their return. In the light of the principle of *non-refoulement* and the absolute prohibition on torture, which prevent return in such circumstances, some states have sought

[84] Ibid
[85] supra note
[86] CNLT supra note pp 14-15
[87] CNLT supra p. 15
[88] See for example *http://www.interpal.org/news/latest/news_Lawyers_Working_for_Justice_Jan08.html*
[89] HRW Letter 18 June 2008 *http://hrw.org/english/docs/2008/06/18/denmar19151.htm*
[90] HRW Letter 9 June 2008 *http://hrw.org/english/docs/2008/06/09/italy19080.htm*
[91] HRW Letter 8 May 2008 *http://www.hrw.org/backgrounder/2008/spainletter0508/*
[92] HRW Submission to the Human Rights Council 7 April 2008 *http://hrw.org/english/docs/2008/04/07/global18627.htm*

diplomatic assurances that the returnees will not be tortured on their return to their home country as a means of circumventing this problem.

In this context the UK has sought memoranda of understanding (MOUs) with a number of countries, claiming that the terms of such memoranda, including diplomatic assurances that the person would not be tortured upon their return and the involvement of organisations prepared to monitor the situation of those returned, would remove the risk of ill treatment. The UK has so far concluded MOUs with Libya, Jordan and Tunisia. The practice of using diplomatic assurances in cases involving a risk of torture is highly criticised amongst human rights organisations on both practical and philosophical bases, as it undermines the absolute prohibition on torture and exposes the person to an unacceptable risk.[93] In the absence of any international organisation willing or able to conduct monitoring of returnees in country, the UK has sought to cooperate with national organisations. The MOU with Libya identifies the Qadhafi Development Foundation as the body appointed for monitoring of the implementation of the assurances, but that has been rejected by the UK courts as not being sufficiently independent of the regime so as to be effective when most needed.[94] In Jordan, the organisation Adaleh has been appointed to monitor the implementation of MOUs. While the UK courts have not questioned the independence of Adaleh, there have been criticisms of their ability to effectively monitor returnees or to take action should they uncover evidence of torture or be incapable of effectively carrying out monitoring. The extremely controversial nature of the use of diplomatic assurances leaves those organisations prepared to engage with the process at odds with the accepted parameters of the absolute prohibition on torture of international human rights bodies such as the UN Special Rapporteur on torture.[95] Although those organisations have been provided with training in relation to monitoring, there is no indication that they have the financial or political capacity to monitor places of detention in those countries more generally. Therefore such cooperation does little to practically improve NGO capacity to monitor human rights abuses.

The surrender of suspects and convicted criminals within the EU on the basis of the European arrest warrant no longer requires that the offence for which a person has been requested need be a criminal offence in both countries if it is a "terrorism" type offence.[96] This means that broad definitions of terrorism that exist in countries such as the UK, France or Spain can be effectively extended to pursue people across the EU territory even where such definitions would not fall within the EU definition of terrorism. Likewise members of groups that have been classified as "terrorist" in one country, but not in others, may be pursued across the EU by way of a European arrest warrant.

RELATED HUMAN RIGHTS ISSUES

Laws which criminalise failure to act as a witness or to report any activity which may be of a "terrorist" nature can put an unbearable burden on NGOs, restricting their ability to carry out their work, undermining their credibility, and exposing them to an unjustifiable risk of prosecution. This is exacerbated by the problem of excessively broad definitions of "terrorist acts", so that it is difficult for a person to know whether actions or statements that they are a party to might be categorised as "terrorist" in nature. Examples of such laws can be found in Tunisia[97] and Jordan.[98]

In Tunisia the law grants effective impunity to the security services by establishing blanket anonymity and criminalising the naming of security service personnel accused of torture.[99] This has prevented human rights organisations from publishing a list of accused torturers or working effectively on systematic violations of the prohibition on torture. Such a law is clearly in violation of international obligations arising out of the absolute prohibition on torture that seek to exclude impunity for torturers on an international and national basis.[100] It also has a knock on effect on freedom of association. Systematic and unchecked use of torture in a country, including against human rights activists and those engaged in peaceful protest and opposition, will clearly have a severe impact on freedom of association and freedom of expression.

Security concerns can be used as an excuse for excessive surveillance and interception of communications on the part of authorities, which can inhibit organisations' ability to communicate, interfere with the right to private life and have a chilling effect on civil society. In a recent European Court of Human Rights case,[101] brought by a number of NGOs against the UK, the court found

[93] e.g. Human Rights Watch - *http://hrw.org/doc/?t=da and Amnesty International - http://www.amnesty.org/en/campaigns/counter-terror-with-justice/issues/no-deals-on-torture*
[94] AS and DD (Libya) v Secretary of State for the Home Department [2008] EWCA Civ 289 at para 79.
[95] E/CN .4/2006/6
[96] Council Framework Decision of 13 June 2002 on the European Arrest warrant and the surrender procedures between Member States (2002/584/JHA)
[97] See CNLT supra p. 15
[98] Some said that the law requiring reporting of any crime has put pressure on their ability to advise or take on cases of domestic violence
[99] CNLT supra p. 14
[100] Including Article 7 ICCPR
[101] Liberty and Others v UK - ECtHR Judgment of 1st July 2008 - Application no. 58243/00

that UK interception of communications between the UK and Ireland based on a perceived security threat was a disproportionate interference with the right to private life. The Court went on to point out that the deficiencies in the English system were highlighted in an earlier decision, which noted that "the German legislation set out on its face detailed provisions regulating, *inter alia*, the way in which individual communications were to be selected from the pool of material derived from 'strategic interception'; disclosure of selected material amongst the various agencies of the German State and the use that each could properly make of the material; and the retention or destruction of the material. The authorities' discretion was further regulated and constrained by the public rulings of the Federal Constitutional Court on the compatibility of the provisions with the Constitution."[102] Despite this ruling, Sweden has recently introduced a law[103] permitting the Swedish National Defence Radio Establishment to monitor all outgoing and incoming communications across the Swedish border without a court order. A complaint against this legislation has been lodged with the European Court of Human Rights.

In Palestine, since the forceful takeover of the Gaza Strip by Hamas, the practice of arrests and detentions on the grounds of political affiliation was revived. Palestinian security forces in the West Bank began arresting and detaining hundreds of people who allegedly were members of Hamas. In Gaza, Hamas launched a wide-scale campaign of arrests against members of Fatah and all opposition movements. Incidences of torture increased in detention centres and two detainees died in the West Bank and Gaza Strip. A number of associations were dissolved because of the political affiliations of their members and/or founders.

Conclusion

Counter-terrorism efforts and the general climate of security have had a serious impact on the enjoyment of the right to freedom of association and related rights in a number of ways. Overly broad and vague definitions of terrorism can lead to the criminalisation of legitimate groups whose aims are peaceful, including those who seek to protect human rights and minority groups. Opaque national and international terrorist listing mechanisms can destroy the reputation, financing and ability to work of organisations in the absence of clear paths for legitimate and peaceful organisations to challenge their categorisation as terrorist organisations. Legislation aimed at combating the financing of terrorism can have adverse consequences for the funding of NGOs. The international effort to combat terrorism can add to the risk of human rights abuses with countries cooperating with each other and tacitly accepting human rights abuses that occur in the name of countering terrorism. A climate in which torturers act with impunity and surveillance and obligations to report on activities are disproportionately applied is one in which human rights defenders will find it increasingly difficult to work.

RECOMMENDATIONS

- *States should review their definitions of terrorism, terrorist acts and terrorist organisations to ensure that they are sufficiently clearly drawn as to avoid excessive interference with the right to freedom of association of legitimate, non-violent groups and organisations.*
- *The procedure for listing and de-listing of organisations at a national, regional and international level should be reviewed to ensure that organisations can know the reasons for and effectively challenge their inclusion on such lists.*
- *States should review legislation on financing of terrorism to ensure that it targets only genuine terrorist organisations and cannot be abused to cut funding to legitimate groups and organisations.*
- *The promotion and protection of human rights should be at the heart of all international cooperation to combat terrorism. Turning a blind eye to other countries' abuses of human rights is likely to undermine international security rather than enhance it.*
- *The fight against terrorism should not give rise to impunity for torture.*
- *States should not use the fight against terrorism to justify increased controls and surveillance on the public in general and human rights organisations in particular.*

[102] Liberty and Others v UK supra at para 45

[103] According to ICJ Newsletter on Human Rights and Counter-Terrorism, August 25th 2008, this law was introduced on June 18th

Discussion Paper on Gender and Freedom of Association in the South and East Mediterranean

by Aicha Ait Mhand

Introduction

The Euro-Mediterranean Human Rights Network, whose members include feminist associations, attaches great importance to gender equality in its efforts to defend and promote human rights, and is concerned about women's situation in the Euro-Mediterranean region. The Network plans to develop an integrated approach to male-female equality in the region, and for this purpose has created a working group to promote equality between men and women.

The Network has also encouraged its other working groups to integrate the gender issue into their projects in an inter-disciplinary way. It is in this context, that the Working Group on Freedom of Association for the first time devotes a chapter to gender issues in this report on freedom of association in the Euro-Mediterranean region.
The equal participation of men and women in public life, political and public decision-making, and in associations, is an integral part of human rights. It is an element of social justice and is a necessary condition for the better functioning of a democratic society, in the sense that freedom of association, along with the freedoms of assembly and expression, is a cornerstone of democracy.

However, freedom of association is very much curtailed in much of the South and East Mediterranean, and women's involvement in civil society is even more limited, given that men dominate in (both governmental and non-governmental) public structures in these countries. The disparity between men and women in all fields, in terms of their degree of involvement, access, rights, remuneration and advantages, is significant, and this is reflected in women's involvement in associative bodies. Indeed, the work of civil society associations, which is based primarily on voluntary work and which seeks to meet community rather than individual needs, does not attract women from all sectors of society, and especially not from traditional sectors, where public space is deemed to be a masculine arena to which women should only gain access for issues that directly concern them or their families.
Thus the question is how to encourage the equal participation of men and women in civil society, when their social realities are so different.

The equal involvement of men and women in political and public decision-making, particularly through participation in associative life, is vital for the establishment and construction of a Euro-Mediterranean region based on equality, social cohesion, solidarity and respect for human rights. To achieve these objectives, it is necessary to act on all fronts. Many different activities will need to be implemented, and these have to complement one another. This report could serve as a basis for a debate on the work needed to bring about the equal participation of men and women in associative life.

This report does not claim to be exhaustive, as it does not present a country-by-country analysis. Instead, it highlights the major trends in relation to gender and freedom of association in the South and East Mediterranean, and specifically in the following countries: Morocco, Algeria, Tunisia, Libya, Egypt, the Palestinian Territories, Israel, Lebanon, Jordan, Syria and Turkey. While it is already difficult to assess freedom of association in the same way for all these different countries and territories, it is even more complicated to conduct the same analysis with a focus on gender, since the legal, economic, cultural and social environments often significantly differ from one country to the next.

As for the methodology used to produce this report, the idea was to respond to questions formulated in the terms of reference for this research project, namely:

Do women face particular problems compared to men? What gender-related difficulties do women who wish to be involved in associations experience? Are there any (legal or de facto) restrictions on promoting, limiting or prohibiting women's involvement in associative work? What are the implications for men and women of the policies and programmes linked to associations? Are these implications the same for both sexes? Are the concerns and experiences of men and women taken into account when legislation, programmes and policies are formulated, implemented and monitored? Does any psychological or physical harassment take place when it comes to freedom of association? Do women have the right to gather freely and openly communicate their ideas in the media (in law and in practice)? Do the authorities consult feminist groups on questions of public interest? What contribution could be made by a law respecting and encouraging women's involvement in associative life? Should women become members of associations in order to be able to influence political life? Do civil society projects respect the free participation of women and do they consider the conditions they live in, their concerns, problems and responsibilities? Should pro-women policies be established relating to their activism in associations? Can quotas for women be used in democratic and development associations? Do women need women's associations? Should there be demands for a law on associations that would be sensitive to gender issues? What are the difficulties that women come up against in establishing women's groups? Women usually get involved in charity work; when they get involved in associations and political organisations, they are assaulted, their privacy is severely infringed on, their morals are questioned; why does none of this affect men? How can gender be institutionalised in the structure of associations?

These and other questions were included in a semi-directive questionnaire addressed to activists working for various associations in the fields of human rights, women's rights and development in the eleven countries examined in this study. The questionnaire was completed through individual interviews with activists and experts on gender equality who live in the region. Documentary research also was an important source of information, even though there were no previous regional studies of the subject discussed in this report, and only general and/or country-based studies existed.
Analysing the collected data enabled us to create an inventory of the problems that restrict the full and equal participation of women in associations. Only restrictions that were repeatedly mentioned, and that were further explained by campaigners from different associations and in different countries in the region, have been included in this report.

GENERAL TRENDS

The most significant obstacles to women's full participation in civil society are a result of women's inferior status in the area. Women are considered to be second-class citizens. They are under the tutelage of the community, buckling under the weight of social, religious and cultural norms which delineate their daily lives. These norms are often transformed into legal norms, which rule women's lives as much in private as in public.
In addition, with regard to women's ability to take part in campaigning with associations, it is evident that the division of responsibilities between the sexes in families, and the reproductive, productive and social roles[1] assigned to women generally do not leave them much time for associative work.

To summarise, the environment in which women live in the South and East Mediterranean prevents most women with an interest in associative work from fully exercising their right to be involved. The obstacles can be classified into two types: those completely preventing women from joining associations, and those limiting their active and qualitative participation once they have joined an association. However, to facilitate reading of this report, make recommendations, and to program workable action, it would appear more pertinent to group the obstacles according to their underlying causes.

OBSTACLES LINKED TO THE LEGAL AND POLITICAL ENVIRONMENT

Sexist laws, patriarchal traditions accepted or tolerated by the authorities, the actions of religious and extremist groups, and the absence of democracy are all factors preventing women from participating freely in associations.

The climate of insecurity and lack of protection: With some exceptions, freedom of association, when it exists in the region, is exercised in a climate of insecurity with a lack of protection.
The legislation of countries in the South and East Mediterranean does not specifically question freedom of association. However, although this freedom is recognised as a public freedom, all states have found ways to limit it in one way or another. By way of

[1] From a sociological perspective, women's productive role includes work performed in exchange for payment (also payment in kind); the reproductive role includes giving birth and raising children, as well as housework (in the region under examination, this is mainly "women's work"); the social role includes administrative and community-based tasks that ensure the functioning and cohesion of society. (This last role is taken on by the public sector in the countries of the North, and by groups or individuals (in this case women) in the countries of the South, and is often an extension of women's productive roles. Women thus manage and provide various services for the community, such as fetching water, providing health care, and caring for elderly family members.)

example, and just to mention the extremes, setting up new, independent associations is virtually impossible in Syria and Tunisia, while those associations that do exist are not permitted to hold general assemblies and are considered to be illegal organisations. In Morocco, where associations are slightly more tolerated, declaration procedures are complicated by the kinds of documents that have to be provided, and in particular by the police record that executive officers have to obtain at their place of birth, which often requires them to travel. This is not always easy, especially for women or when the time for declaring the establishment of an association or for the renewal of its structures is limited. In other countries, the authorities further restrict freedom of association by adopting new legislation in the name of the fight against organised crime and terrorism.

More generally, it can be said that, in the majority of the countries studied, freedom of association is restricted through an abuse of procedures. This includes legal proceedings brought against campaigners; anti-terrorist legislation attacking fundamental rights; more and more powers falling within the competence of the police and intelligence forces; the threat of legal constraints and complaints for attacks on honour or libel; arrests; and the intimidation and search of associations' campaigners.

All this is detailed in other chapters of this report on freedom of association in the Euro-Mediterranean region. This thematic chapter aims to highlight the impact of these practices on the equal involvement of men and women in associations.
Women are indeed more easily intimidated because of a lack of public solidarity with their cause and the difficulty they have in gaining access to justice. Public opinion generally considers activism to be men's work.

Ms. Nawal Yazeji, a feminist and expert on associative life in Syria, reported, for instance, that women activists are pressured by their own families to leave associations because of the climate of insecurity in which they work. She explained: "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.

Inegalitarian laws: It is true that men and women are on an equal legal footing in terms of the right to participate in associations in the countries studied for this report. However, in addition to the problem that these laws are poorly implemented, there is the issue of differential treatment and male-female inequality in the other laws that directly affect their lives. Of course this makes it all the harder for women to participate in associations.

Indeed the inegalitarian arsenal that exists at all levels of the legal systems has a much more significant impact on women's participation in associations than it does on men's. Because of sexist laws that fail to defend women against patriarchal traditions and Islamist fascist groups, women are often nervous about joining mixed male and female organisations and becoming involved in campaigns which might run counter to their countries' traditions and culture.

For example, criminal law which, in countries like Jordan, Syria, Egypt, Palestine and others, grants extenuating circumstances for the perpetrators of "honour crimes", undoubtedly has an impact on the involvement of a significant percentage of women from traditional social sectors since women may fear that they would be targeted because of their commitment to associative life : in these societies, feminicide and "honour crimes"[2] are still fairly significant, representing the bloodier side of patriarchal dictatorship.
By being involved in mixed male and female associations, women in these countries risk being murdered if they are suspected, for example, of "violating the family honour". This is a very real risk, as no proof is required for this type of crime. The motive declared by the perpetrator is often enough. In some cases, these crimes are committed for economic and inheritance reasons, but are covered up as honour crimes.

However, during the course of this research project, no cases of honour killings were reported in the questionnaires and interviews. Some women activists from Syria did not think honour crimes had anything to do with associations. We believe that the risk is there, however, and that women threatened by this would certainly shy away from exposing themselves by getting involved in associations, and especially those with mixed male and female staff. Concerning the laws on associations, it has to be said that, on the whole, they are egalitarian in the countries examined for this study. However, the Turkish law on associations is the only one in the region that bans discrimination on the basis of sex. Thus nothing prevents associations from using their statutes to limit access to decision-making to just one of the sexes.

[2] "Honour crimes" usually begin with threats against girls and women by other family members accusing them of seeking to violate the family's "honour", and most often end in murder.

The difficulty associations face in achieving their objectives: The nature of associative work, the difficulty of working in a psychological and political climate that is not favourable to change in the region, makes it difficult for associations to achieve objectives related to human rights, women's rights and the promotion of democracy. This state of affairs discourages women more than men, in view of the heavy burdens that women have to shoulder elsewhere in their daily lives.

Relationship with the ruling powers: Both women and men are subject to intimidation by the autocratic powers that predominate in the region. However Ms Cherifa Khadar, president of the Association *"Djazairouna des Familles Victimes du Terrorisme Islamiste"*, maintains that she suffers harassment from the Algerian authorities for her stance against the national reconciliation charter because she is a woman: *"Men in associations who are activists like me are more scathing in their opinions against the government, but they are not harassed as much as I am... For years I have suffered all sorts of intimidation because I have dared to speak out and continue to oppose the implementing decrees of the national reconciliation charter and because I do it within an organisation...; but for the past months, following my participation in seminars abroad, in particular on terrorism and Islamist movements, and after undergoing training in Morocco on transitional justice, things have become worse. I have just been stripped of my position of responsibility at the local affairs office in Blida and deprived of the benefits which accompany it and of part of my monthly salary. This week, I was evicted from the accommodation provided by my job, where I have lived for 12 years, and was threatened with dismissal and 15 years in prison for the slightest faux pas. These measures have been taken against me in such a way that I can't legally contest them. In addition, the security services at Blida CTRI are spreading damaging information about me and getting members of the association to testify against me in return for advantages in kind. They have put together a dossier saying that I have been misappropriating association funds. I'm accused of meeting embassy representatives and foreign and international NGOs who they consider to be suspicious ..."*

Conflict and war situations: In Lebanon, Algeria, Israel and the Palestinian territories, conflicts aggravated by the actions of religious groups have an impact on the involvement of women in associations. These groups, which in some countries enjoy the support of the population (or even the authorities) for their roles in these conflicts, often oppose women's rights (as universally recognised) and launch attacks on their freedoms.
In addition, the lack of security in the public arena, particularly in the evening, further limits women's involvement in these countries' associations.

OBSTACLES LINKED TO THE ECONOMIC, SOCIAL AND RELIGIOUS ENVIRONMENT

The social, cultural and religious obstacles to the full development of women in society generate problems associated with poverty. The extent of these obstacles differs from country to country. They constitute invisible barriers, which come to the fore in the form of attitudes based on prejudices, archaic norms and values, hampering the empowerment and full involvement of women in society in general.

Poverty: Those interviewed during the preparation of this report said that the primary obstacle to women's involvement in associative life was the economic situation. Lack of access to financial resources is what primarily prevents women from exercising their right in this respect, especially in countries such as Morocco, where freedom of association is better guaranteed in comparison with other countries in the region.
Associative work, which mainly consists of voluntary work, with activists paying membership fees and the costs associated with travelling to meetings themselves, does not attract women because poverty has been spreading disproportionately faster among women than among men. Indeed poverty is becoming increasingly feminised, trapping women in the multiple shackles of discrimination and preventing them from asserting and exercising their rights. Fairly limited career prospects, unequal salaries and the scant participation of women in political life are also factors preventing women from developing their full potential. These reasons are significant barriers to women who consider devoting time to associative work.

Access to education: Girls' limited access to education remains an important factor that hinders women, more so than men, from participating in civil society work. Civil society work indeed requires a certain level of education in order to be effective; however, in these societies, the illiteracy rate for women is generally much higher than for men.

Women's lack of time: Women are often overextended. While it is difficult for both men and women to reconcile their professional and associative responsibilities, family and domestic responsibilities increase the burden on women's time. Women who earn

money, bear children and take on a role in the community find it hard to become active in associations. It is interesting to note here that, during training sessions on gender for civil society activists, exercises on managing women's and men's time have consistently shown that women are much more overburdened than men. With some exceptions, the result is that women are unable to devote time to associative work in the same way as men. This is one of the reasons why it has been argued that most activist women belong to the middle, if not wealthy, classes. Their incomes, or their family incomes, allow them to delegate to servants some of the responsibilities that society generally assigns to women, such as childcare.

Travel: The difficulties associated with women travelling to take part in activities in other towns or countries restrict their involvement in civil society. Women prefer to get involved in local activities closer to home to avoid problems associated with travel. Mr Mostafa Chafii, Director of the Observatory for Freedoms in Morocco explained that *"...Some women avoid travelling for family or cultural reasons, others are more put off by the means of transport on offer, travel times, the cost of getting around etc... a man can quite easily take a coach at night from a remote region of Morocco, arrive in the morning and, after a day of meetings, return to wait for his bus at 2 o'clock in the morning at the coach station, ordering himself a tea in peace and quiet. [...] Women cannot do this for cultural and security reasons. It's mostly for women that safety issues in coach stations come right to the fore. Women risk being physically attacked and, most importantly, expose themselves to all sorts of harassment because 'respectable' women should never be outside their home at night, for any reason..."*

The result of this state of affairs is that women are under-represented in national associations and national, regional and international networks. Previously, travelling (and especially travelling abroad) was complicated by legal procedures requiring women to ask their fathers or husbands for permission to get a passport or to leave the country. But even today, when these procedures have been abolished, cultural factors, family responsibilities, travel costs and assignments within certain associations[3] continue to prevent the majority of women activists from travelling for civil society activities.

Place of residence: Women's place of residence can in certain cases restrict their involvement in associations. Associations' fields of activity are not as varied in the countryside as they are in the towns, and depend on the development of decentralisation policies in each country and the extent of the territory. Generally, however, associations can more easily engage in advocacy work in areas close to the centres of power, while associations in more remote regions are mostly development and community-based. Distance from the centre can also pose funding problems. In certain countries such as Jordan, where the new law has made access to funding subject to authorisation from the Council of Ministers, development associations are at risk of disappearing in the near future, said Ms Leila Nafaa, a Jordanian feminist and president of the network "Arab Women Organisations".
In addition, in rural areas of certain countries like Morocco, women's involvement is fairly restricted and villages' commercial activities are managed by men. It is also worth noting that, even in the towns, women who live in working-class areas have more problems to overcome. Civil society work is often carried out in the evening, and women prefer to avoid returning home late. Safety issues, difficulties getting around, and pressure from society prevail in these districts.

Societal pressure: Societies in the South and East Mediterranean are mostly traditional and the populations develop negative attitudes towards women who are active in associations. This is especially the case if these associations are political in character or defend equal rights for men and women and publicly refer to the universal human rights framework. Such women often come under great pressure from society, and especially from male chauvinists, who usually invoke religious pretexts to mobilise citizens against them and their associations. This is what happened with the Moroccan association "Amal", whose members suffered aggression and harassment from one of the association's neighbours, who belonged to an Islamist group.[4]
To escape this pressure, and to evade prejudice and dominant social models, a large number of women who believe in the importance of campaigning with associations prefer to stick to charity work or to get involved in development and community-based associations. This poses the problem of succession and of recruiting new members for associations working to defend and protect human rights, and women's rights in particular. (Except for Turkey, where the majority of women activists prefer to join women's rights organisations.)[5]

The press and the media: Women activists working with associations gain access to the media under almost the same conditions as their male colleagues. However, the press' and media outlets' views on gender equality differ. For example, pro-Islamists promote negative images of women activists and vilify their work, and especially the work they carry out in defence of women's rights. In addition, certain predominantly religious satellite channels have a similarly negative impact on women's involvement in

[3] Cf. paragraph on the nature of women's assignments within associations.

[4] This association has its headquarters in a working-class district, works with women who are victims of violence, and organises activities for women in the community, such as teaching them to read and write and raising awareness of human rights and women's rights in particular. It was supported by civil society and lawyers who campaigned to take the aggressor to court. The case is in progress.

[5] See the 2007 EMHRN report on freedom of association in the Euro-Mediterranean region, page 94.

public life, and especially in associations, because they encourage women to keep out of the public arena as much as possible, in accordance with the religious precepts they preach. It is important to note, however, that these views are not only limited to the Islamist or pro-Islamist press and media, but also exist in other media, which reflects the cultural and traditional environment in these countries.

Religion: Even when a state is ostensibly secular, an association can be dissolved if it attacks religious principles. This was the case with an association in Turkey, which worked to defend the rights of lesbians[6] and was dissolved by the authorities in May 2008.

OBSTACLES LINKED TO THE ASSOCIATIVE ENVIRONMENT

The way in which associations are run, similar to the way in which political institutions (including political parties) are run, generally puts obstacles in the way of women's participation.

Inconvenient meeting and working hours: Associations' activities and meetings usually take place in the evening, after work, or during the weekends and on public holidays. These hours do not suit women who cannot come home late in the evening and who have families to look after. The questionnaire and interviews conducted for this report also suggest that inconvenient working hours are a major obstacle to women's full participation in associations. After a trial period, a great many women decide either to abandon civil society work altogether or to just take part in occasional public activities organised by their associations. Even the salaried women in associations that we spoke to say that, in spite of the money they earn, the working hours cause serious family issues.

The difficulty in gaining access to executive positions and decision-making posts: This obstacle takes second place in discouraging women from getting involved in mixed male and female associations and exists in all types of associations, whether they work in development or defend human rights and promote democracy. Gaining access to the office of president of an association is more difficult than gaining access to associations' executive positions, which is partly due to some women's refusal to take on the burden and heavy responsibilities that come with the position. But another reason is that men are reluctant to accept female superiors, both for cultural reasons and because they lack confidence in women's ability to take on public responsibility. The lack of democratic mechanisms within a large percentage of associations is also a significant factor limiting women's access to decision-making positions. In these associations, the presidents sometimes remain in the position for life, and executive positions do not change. This is not a general phenomenon, however, and to our knowledge, some major Moroccan organisations have elected women to the post of president. These include, *inter alia*, the AMDH, OMDH, AMSED, Espace Associatif, the Moroccan Euromed network of NGOs. But considering the number of associations working in the region, which is estimated to be in the hundreds of thousands, the number of those led by women is insignificant. It must also be noted that some associations elect women as heads only to project a certain image, while decisions continue to be made without actually consulting women.

It is also very difficult for women to gain access to executive positions within associations. The executive staff of the mixed male and female associations we consulted for this research project were never made up of more than 25% women. The Tunisian League for Human Rights' executive staff, for example, consists of 25 men and three women, although this could change, as the organisation's president Mr Mokhtar Trifi explained, if the government allowed him to organise a general assembly, something he has not been able to do for more than ten years.

In addition, Mr Mostafa Chaffi, Director of the Moroccan Observatory on Freedoms, noted that, in development associations, women are sometimes called on to join the executive staff merely to play an intermediary role between an association and the female beneficiaries of its projects. It appears that, generally, women are often integrated in decision-making processes due to utilitarian considerations, rather than a conviction that they have a right to be involved. A study on civil society in Morocco found three principal motives for women's involvement in associations' decision-making:

- It allowed women to look after the female beneficiaries of programmes (for example, with activities related to sewing and dressmaking, knitting, and literacy programmes), while the men were responsible for political and financial decisions.
- It made it possible to ensure that the association would receive funds, since donors increasingly require that women be represented in the executive offices of NGOs.
- It bolstered the leadership of the president of the association. (Women who are encouraged to participate in the decision-making process often are related to the president of the association.)

[6] See article: *http://www.amnesty.fr/index.php/amnesty/agir/campagnes/defenseurs/actions/turquie_respecter_la_liberte_d_association_des_lgbt*

Meanwhile, the same study indicated that the situation depended on the nature, the mission and the age of an association. Newer associations integrate women more easily than older ones. Paradoxically, the most chauvinistic organisations are generally those that have a political character, and in particular human rights organisations.

The nature of women's assignments within associations: All of the women interviewed for this report said that they had been involved in their associations' logistical work, while only few had taken part in strategic planning. At the same time, 80% of these women said that they knew nothing about the finances of their associations and were not involved in any financial decisions.
Moreover, the vast majority of representatives in mixed male and female associations in national, regional and international networks are male. Some networks and organisations encourage their members to be represented by women, but they do not put mechanisms in place that could require them to heed this directive. One reason for this is that it is difficult for women to travel far from home. However, this is not always the primary reason. When it comes to travelling abroad, Ms Nawal Yazeji, a Syrian activist, explained, women are often discouraged by men who would rather take advantage of a trip abroad themselves. Ms Yazeji also said that, due to military service requirements, men in Syria in fact faced more restrictive procedures than women if they wanted to leave the country.

Ms Khadija Errebah, an expert and trainer on gender issues, reported that, "during a training workshop on gender that [she] ran for a network of more than 80 associations operating in different areas in Zagora in southern Morocco, the female participants explained that their male colleagues generally only informed them of trips the day before, and that this practice invariably prevented them from getting involved in representing their associations in other arenas..."

The difficulty in gaining access to information: There is not much evidence of information being circulated within associations, because modern methods of communication are not sufficiently being used. Even when they are, information is circulated in an anti-democratic way. In addition, men continue to rely on their old networks for the exchange of information, which consist of meetings in cafes and public spaces. This often results in women being excluded from associative work.

Sexual harassment: Sexual harassment is a serious attack on women's dignity, whatever the environment in which it occurs. It would be easy to believe that this phenomenon could not possibly exist within associations, as these are thought to be places that train people to be more civic-minded and that promote mutual respect. However, sexual harassment was a subject of interest for this study, and while none of those who completed the questionnaire responded affirmatively when asked if they had encountered cases of sexual harassment, the issue was raised by several people during the interviews. These people refused to be cited in this report, but they admitted to having either suffered sexual harassment or, more often, to having witnessed it. Ms Khadija Errebah, a trainer on gender in Morocco and the Arab region, told us that *"Sexual harassment most certainly does take place within associations... but women never publicly talk about it; they talk about it amongst themselves but they don't dare to speak out and say that it has happened. Associative work being voluntary, the only choice they have, in the absence of any clear legal protection, is to leave the association... plus, women in general fear for their reputations..."*

Gender approach not sufficiently widespread: The gender approach and its instruments are not issues that have been taken up by associations in general. The approach itself is not sufficiently understood and the term is not always defined in the same way everywhere. Some associations, and especially those specialising in development, believe that this new approach focuses debate on the confrontation between men and women, instead of the traditional battle between social classes. Moreover, even the translation of the word "gender" from English and French into Arabic poses a serious problem. Religious movements in Arab countries use this translation for their own advantage, to encourage a debate in society that is against women. This has an impact on women's participation in public life in general.

At the internal level, gender mainstreaming seeks to ensure that all organisational policies contribute to the achievement of equal opportunities for men and women and equal access to any kind of resources. This involves policies regarding the recruitment and selection of staff, staff development, the availability of parent and child-friendly work environments, and the existence and enforcement of policies to combat gender-based discrimination. However, to conclude on a more positive note, it must be pointed out that more and more projects aiming to integrate a gender approach in the structures and functioning of NGOs are being developed in the region. While there are no visible results yet, it is interesting to note that, in some pilot projects, NGOs and networks have begun to conduct internal reviews of gender issues and to discuss ways to integrate this approach in their functioning and structures.[7]

[7] Cf. three studies conducted in 2007 by the Moroccan organisation *Espace associatif* : 1 - gender and organisation: the integration of a gender approach in the structures and the work of NGOs working for democratic development in Morocco; 2 - gender and organisation: a guide for self-evaluation for Moroccan NGOs; 3 - gender and organisation.

Conclusions

Freedom of association and the rights associated with it are of crucial importance for women, as they help them defend their rights, promote a culture of equality, influence public decisions, etc. However, as this study demonstrates, freedom of association in the region examined in this report is very much restricted when gender is considered, because it is difficult for women to participate quantitatively and qualitatively in civil society. In addition, the negative consequences of male/female inequality in terms of women's presence and participation in associations, and obstacles to women's involvement in associative life, also affect the associative landscape in other ways. This has to do with the profile of women activists, who only represent a small segment of the societies of their countries. However, in the absence of statistics on women's involvement in associations, the question here has been to report the statements of eminent female experts and activists from associations in the countries under examination.

"We've ascertained that most women activists are over the age of forty, even retired in certain countries such as Syria or Jordan," said Leila Nafaa, President of the network "Arab Women Organisations". *"This is mainly because family responsibilities have lessened at that age. The children are independent and women are less concerned with their daily needs."* Society also looks differently upon women who are settled in their families. *"Career ambitions on the one hand, and the fact that associative work is devalued on the other, make it difficult to get more new women in to take over"*, said Ms Yazeji, the Syrian feminist.

However, we found that, in the Maghreb, a larger number of young women worked in associations, and especially in youth and local development associations. This is mainly in Morocco, where the associative climate is generally favourable to both male and female participation, and where the work done by local development and community-based associations generally bears fruit quickly. However it is important to point out that women activists often come from the middle or upper classes, for all the economic and cultural reasons discussed above. In addition, to escape social pressure, some women activists choose to campaign alongside male members of their families. This can be observed in all the countries of the South, but happens most often in Egypt, where women campaign with the same associations as their husbands, but often occupy less important positions.

The study conducted for this report suggests an atmosphere of resignation in civil society. Male and female activists accept that women are insufficiently involved in associations. They say that they are united, understanding, and that they share the same values, but that they cannot change anything. Self-sacrifice characterised the interviews that we conducted with activists as part of this research project. Training on the gender approach and its instruments is well developed in the region, but is not actually applied. Nevertheless, everyone can work in his or her own way to change this situation, and the following recommendations aim to contribute to this process. They are directed at the authorities, governments, partners and backers, the European Union and Euro-Mediterranean institutions, civil society in the Euro-Mediterranean region, regional networks and the EMHRN.

RECOMMENDATIONS

General recommendations:
As set out above, women's freedom and ability to exercise their right to association is frequently undermined by a lack of access to and control over economic and political resources, by legal and cultural norms, and by social values which put them at a disadvantage within their communities in relation to most men. It is a question of working at all levels: at the level of legal reforms, because legislation and restrictive legal texts in general can become women's first-class allies. Equally, raising awareness of and promoting a culture of equality can accelerate gender equality in general, and in relation to freedom of association in particular.

Recommendations to governments:
It is the duty of governments to create an environment which encourages women's participation in associations:
- By integrating the gender approach, in its cross-disciplinary dimension, into all public policies;

- By lifting the reservations on the CEDAW and ratifying its facultative protocol;
- By protecting and promoting men and women's equal civil and political rights, which expressly refers to freedom of association;
- By doing things which might help people to reconcile family life and public life, for example by bringing in programmes centred upon the family and parental leave, and measures aimed at helping people to look after children and old people;
- By genderizing laws on associations at the linguistic level. However these must also guarantee men and women's equal right to participate in associative work;
- By making public funding for associations contingent upon men and women's equal involvement in associative work.

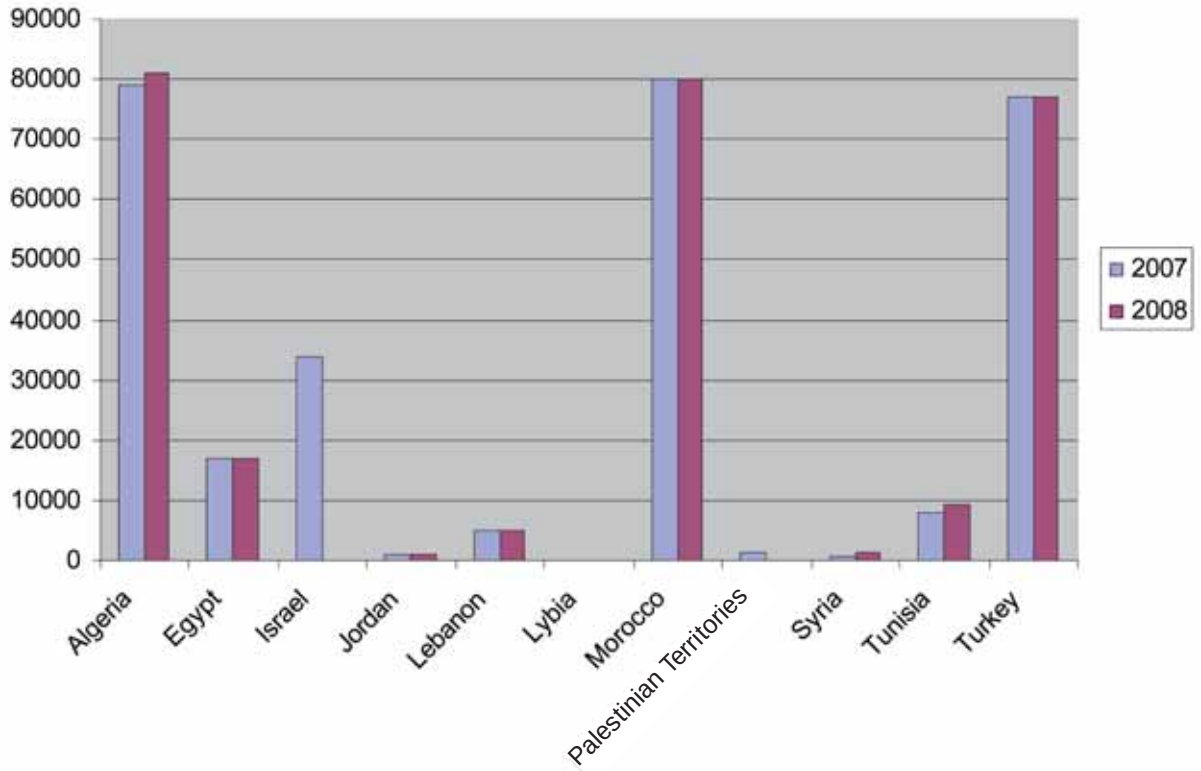
Recommendations to partners and backers:
Partners and backers must adopt the gender approach in their thinking and demand that associations involve women in decision-making structures. UN bodies such as the UNDP, UNFPA and UNIFEM have already adopted this approach, but in foreign co-operation, the European Commission should also insist on this aspect of democracy, i.e. insist that women be involved at all levels and in decision-making in partner associations.

Recommendations to European Union and Euro-Mediterranean Partnership institutions:
The Barcelona Declaration stresses the role of civil society in the Euro-Mediterranean Partnership. The equal involvement of men and women in this civil society can only make it more effective.
It is therefore important to:
- Plan, in the association agreements and action plans of the neighbourhood policy, concrete action that governments should take to guarantee freedom of association for men and women together with their equal and effective participation in the decision-making structures of associations;
- Take necessary measures against partner countries which are failing to respect freedom of association and preventing women's full participation either directly or indirectly;
- Financially and politically support feminist associations in the countries of the South and East Mediterranean because these are the associations most targeted by the retrograde movements gaining in power in these countries.

Recommendations to Euro-Mediterranean Civil Society:
It is important that every association:
- Puts in place a working structure and form of organisation which helps men and women combine associative, professional and familial responsibilities;
- Institutionalises the system of quotas in its structures, parity even in human rights associations;
- Increases its male/female equality awareness-raising actions, together with its training activities on the gender approach and on strengthening the capacities of male and female campaigners in associations;
- Questions the social roles assigned to women;
- Reformulates citizenship, combating women's exclusion;
- Links development, gender and citizenship as a condition for the success of all models of lasting human development;
- Periodically submits to an audit on gender.

Recommendations to the EMHRN and to its thematic group dealing with freedom of association:
- Promote freedom of association conscious of gender equality in the Euro-Mediterranean region;
- Monitor the equal presence and involvement of men and women in the network's structures and in the structures of its member associations;
- Defend, reinterpret and extend certain rights to help women assert themselves in associations;
- Carry out actions aimed at reinforcing the capacities of feminist associations in the region because they are powerful expressions of active citizenship;
- Promote networking in the Euro-Mediterranean region to improve the situation of women in this region;
- In its next report on freedom of association, broaden the study on gender and freedom of association to include countries in the North Mediterranean, because the problem of equal male-female participation is not confined to the South. Indeed, as regards the opportunities offered in public domains in general, industrial countries do not necessarily take first place. Hence it is worth extending this study to include all the countries embraced by the activities of the Euro-Mediterranean Human Rights Network.

Number of associations



Number of Associations per 1 000 Inhabitants