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FREEDOM OF ASSOCIATION IN THE EURO-MEDITERRANEAN REGION



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report

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TABLE OF CONTENTS

INTRODUCTION	4
METHODOLOGICAL NOTE	14
COUNTRY CHAPTERS	
Freedom of Association in 2008-2009 and Recommendations	
Algeria	16
Egypt	23
Israel	28
Jordan	36
Lebanon	41
Libya	45
Morocco	52
Syria	57
The Palestinian Territories	65
Tunisia	71
Turkey	78
The European Union countries	85
ETHNIC, LINGUISTIC, CULTURAL AND RELIGIOUS DIVERSITY AND FREEDOM OF ASSOCIATION	96
NOTE ABOUT GONGOS AND THEIR IMPACT ON FREEDOM OF ASSOCIATION	108



INTRODUCTION & METHODOLOGICAL NOTE

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INTRODUCTION

The premise of this third survey of the state of freedom of association in the Euro-Mediterranean region is that freedom of association constitutes a right that is absolutely essential, along with freedom of expression, to the exercise of virtually every other civil and political right, and to the advancement of economic, social and cultural rights. Without freedom of association effective participation in public affairs is impossible. The ability to defend and promote human rights is contingent on the ability to exercise the right to freedom of association. Without freedom of association, peaceful politics is impossible.

The grounding of the right to freedom of association is Article 22 of the International Covenant on Civil and Political Rights (ICCPR). “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests,” Article 22 begins. “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

It is most regrettable, then, to have to report that the period since the last EMHRN survey, in December 2008, has seen little or no improvement in the state of freedom of association in any country in the Euro-Mediterranean region, and in some respects continued deterioration of the ability to exercise this right. In virtually every country covered here, there are thousands of associations, a great many of them charitable in nature, and for the most part these organizations do not experience problems with the authorities unless they are affiliated, or suspected of being affiliated, with opposition political movements. The hand of the government as a general rule is heaviest, in terms of legal restrictions and official harassment, when it comes to human rights organizations as well as other groups advocating for changes that can affect the exercise of political power, including the power of security services.

• **Liberal Approaches**

One important factor is the legal regime governing associational life, and the extent to which that regime, if a liberal one, is reflected in state practices. Lebanon remains the one country in the region in which people living there can exercise their right to freedom of association relatively unhindered by the political authorities. This correlates directly with Lebanon’s liberal tradition, but also may reflect the current relative paralysis of central political power in Lebanon today.

Israel also has a liberal policy -- indeed, on paper the law for Israeli Jews is perhaps the most liberal, in that groups are not required to register with any state authority in order to carry out activities, although the lack of organizational legal personality in the absence of registration can make sustained operations difficult. Israel's vibrant associational life testifies to the benefits of such an approach. However, Israel uses the fig-leaf of other laws to routinely interdict the operations of Palestinian organizations in the occupied West Bank and East Jerusalem. In 2009, moreover, the government launched vicious verbal attacks on Israeli Jewish organizations reporting on laws-of-war violations in Gaza, urged European governments to halt their funding of these groups, and threatened to introduce legislation that would put restrictions on the ability of groups to access foreign funding. If it moves in this direction, Israel would be emulating the restrictive policies of many neighboring states.

With the exception of Israel, all of the states under consideration require at least a request for registration before an organization can undertake any activities. A number of states – think of Algeria, Morocco, Turkey, and the Palestinian Authority – this amounts to a simple declarative requirement in order for individuals to come together and form an association. In these states a group can, in theory, begin to carry out activities without awaiting authorization by the Ministry of Interior or Ministry of Social Affairs, or whatever official body is charged with overseeing associations. In practice, though, for groups expected to be critical of government policies, such as groups working on human rights or minority rights organizations, authorities sometimes – and in some places routinely – refuse to provide applicants with receipts, without which the group has no claim to “legal personality” and its organizers are unable to hold events, open bank accounts, rent office space, or any of the many other things that comprise the life of a functioning and legally recognized organization. These governments thus transform what on paper is a declarative regime into one in which prior authorization is in practice required, and in some cases often denied.

For most of the states surveyed in this report, simple notification is, at least in practice, not sufficient: an organization must request official recognition, and must receive a positive written response prior to carrying out activities. In many states, according to the law, if the authorities pose no objection within a stated period, usually 60 or 90 days, the organization has legal standing and can proceed to operate. The laws usually provide that the absence of any objection from the authorities prior to the end of the 60 or 90-day period constitutes authorization. Here too, though, this is contingent in practice on a group's having in hand a receipt proving that the group did in fact submit its application as of a particular date. Refusal by the designated authority to provide that receipt is enough to ensure that practice does not follow the law. In some states, a group must receive formal written approval before it can operate legally. Egypt's law on associations states that an organization may legally operate if the authorities raise no objection to its application within 60 days, but in practice groups find it difficult to function unless and until the state provides the group with a registration number. Engaging in activities without such official status puts the individuals involved at risk of prosecution for violating the associations law.

Efforts to carry out activities without official approbation puts the individuals involved at risk of official harassment and even criminal prosecution for membership in an illegal organization or carrying out activities without prior authorization. Tunisia's law governing associations stipulates that acting without authorization is an offense punishable by as much as five years in prison. In Tunisia, according to human rights activists there, the government has not authorized any truly autonomous organizations for the past 20 years.

• State Interference

Once an organization acquires official standing and “legal personality,” prior authorization of public events, including general assemblies of the organization itself, is, in some states, a formal requirement. Jordan, for instance, enjoys

considerable US and EU support and a reputation for genuine efforts at liberalization and “good governance,” but its 2008 Law of Societies requires an organization to submit to the government an annual plan of upcoming activities. Organizations must also inform the government two weeks in advance of any general assembly meetings; the government can delegate officials to attend such meetings, and some decisions must be submitted to the government.¹ Amendments to the law, which King Abdullah signed into law on September 16, did not adequately address these defects.² Turkey requires an organization to submit at the time of registration a detailed list of issues it plans to address, and prohibits an organization to work on things not covered by that list. Algerian law does not formally require prior authorization, but the authorities routinely prohibit recognized organizations, in particular human rights organizations, from holding meetings or public events on matters falling well within their mandates. In Tunisia authorities have prohibited chapters of the country’s oldest, and legally recognized, human rights organization, the Ligue tunisienne des droits de l’homme (LTDH), from conducting internal meetings.

Libya can probably claim credit for the most draconian associational regime in the region. Libya’s official stance is that its “Jamahiriyya” system means that the country has no government. This also means the country has no associational or civic life, since no organizational activity occurs outside of officially approved frameworks. As one official put it with respect to freedom of assembly: “the right to demonstrate is a right in the traditional sense. But that implies there are two sides, the rulers and the ruled. But when we talk about one group, there is no need.”³ Libya’s association law (Law 19) uniquely stipulates that the absence of a positive response within the specified period from the General People’s Congress signifies official rejection rather than acceptance. The General People’s Congress enjoys full discretion to refuse an application without explanation, and appeal is not possible. Law 19 also constrains freedom of association by requiring any new organization to have 50 founding members. Apart from Law 19, Law 71 bans any group activity that the authorities consider to be in opposition to the ideology of the 1969 revolution; Libya’s penal code imposes the death penalty on those accused of joining such groups. On June 29, the General People’s Congress’s decision 312/2009 required 30-day advance approval from any newly established official committee before convening any meeting or event, and required meeting organizers to provide in advance a list of all participants and the issues to be discussed.⁴

If Libya’s laws governing association are the worst in terms of violating the country’s obligation as a party to the ICCPR to respect the right to freedom of association, the combination of law and practice in Syria, including emergency rule that has been in place since 1963, leaves that country not far behind. Under the state of emergency, the government can and does prosecute human rights activists before the Supreme State Security Court (SSSC) for offenses such as membership in an illegal organization and dissemination of information critical of the government. This past year, in July, after he was detained by security services, a judge charged Muhannad al-Hasani, president of the Syrian Human Rights Organization (Swasiah), with “weakening national sentiment” and “spreading false or exaggerated information” as a direct result of his monitoring of SSSC proceedings. In a separate testament to the utter dearth of independent civic organizations in Syria today, the Syrian Bar Association then initiated disciplinary proceedings against al-Hasani. In mid-September, authorities closed the office of Mazen Darwish, president of the Syrian Center for Media and Freedom of Expression. Earlier in the year, in February, the media center published a report listing 417 political and human rights activists whom security services had banned from travel abroad.⁵

1 See: Euro-Mediterranean Human Rights Network - Human Rights Watch joint memorandum, “Replace Law on Associations Proposed Amendments Not Sufficient to Meet Rights Obligations”, 19 May 2009, online at <http://www.euromedrights.net/pages/560/news/focus/70042>

2 See the statement by the International Center for Not-for-Profit Law (ICNL), September 16, 2009 (<http://www.icnl.org/knowledge/news/2009/09-16.htm>)

3 A Libyan justice official, quoted in Human Rights Watch, *Libya: Words to Deeds* (2006).

4 Human Rights Watch, “Libya: Mark Anniversary by Restoring Rights,” August 31, 2009 (<http://www.hrw.org/en/news/2009/08/31/libya-mark-anniversary-restoring-rights>).

5 Syrian Center for Media and Freedom of Expression, *Problem of Travel Ban in Syria*, 2009.

The underlying official view is that associations are instruments for the government to use in directing and developing society in keeping with the ideology of the ruling Ba`th party, rather than independent or autonomous alternatives to state institutions. "Civil institutions are based on government institutions and support them and are not a replacement for them," President Bashar al-Asad told Al-Sharq al-Awsat in February 2001. "The development of civil society institutions should come at a late stage, and therefore it does not represent one of our priorities."⁶

Syria's Law on Associations and Private Societies (Law 93/1958) dates from the period of the country's brief political union with Egypt, and reflects then-prevailing ideas endorsing state control of society. The law stipulates that an association is registered by default if more than 60 days pass without an official response, but also states that the association can operate legally only after the Ministry of Social Affairs and Labor publishes its organizing documents in the official registry. As in Jordan, an organization must inform the authorities in advance of any general meeting, to which the ministry may send an official. Syrian organizations must also submit minutes of meetings to the ministry within 15 days. The ministry can also appoint any number of its own to the organization's board. The law is somewhat unique in openly specifying that the ministry, as part of the approval process, requests General Security to investigate the organization's founders. As a result, no Syrian human rights groups are registered. One group, the National Organization for Human Rights, has challenged the Ministry of Social Affairs and Labor's denial of its registration request. Those proceedings were ongoing at the time of writing; the ministry, meanwhile, has responded by calling for the prosecution of members of the group.

• Security Services

A substantial role of security services in determining the parameters and possibilities of associational life is the rule in virtually all of the countries surveyed here, but in most if not all other cases such scrutiny by security services is extra-legal. In Egypt, the "NGO file" is assigned to one or more officers in the State Security Investigations (SSI), a branch of the Ministry of Interior, who phones the activists on a regular basis, requesting updates on an organization's plans, or recent meetings. The SSI, which has personnel operating in the Ministry for Social Solidarity, also routinely reviews (and rejects) registration applications by non-governmental organizations (NGOs), and scrutinizes NGO leaders, activities, and funding. This SSI role has no legal basis in Law 82/2002, which governs associational life in Egypt, but Egypt, like Syria and Algeria, continues to operate under a decades-old state of emergency. SSI rejection of a group's application tends to be based on the extent of social activism of its founding members, although sometimes objection to a group's name can be enough to trigger a negative decision.⁷

Egypt's security services rarely provided a reason for rejecting a group's registration request, but in those instances when it did, the reason usually involved Article 11 of the law, which prohibits activities that "threaten national unity" or "violate public order or morals." While this language more or less tracks that of Article 22 of the ICCPR, the authorities' interpretation is excessively broad, with results that are completely inconsistent with international standards. In the case of the Egyptian Association Against Torture, for instance, the ministry (then called the Ministry of Insurance and Social Affairs) determined that the EAAT's plan to lobby decision makers and campaign against torture violated Egypt's constitution, because the constitution did not specifically provide for the existence of "pressure groups" or advocacy to make Egyptian laws compatible with international human rights standards.⁸ When the New Woman Foundation applied for registration, the letter it received from the social affairs ministry said, "We inform you that we have a letter from the security directorate of Giza number 189 stating that the security forces do not agree to the

6 Quoted in Human Rights Watch, *No Room to Breathe: State Repression of Human Rights Activism in Syria* 19, 6 (October 2007), p. 14.

7 For discussion of how Egyptian security services intervened in NGO registration procedures in the period after Law 82 came into force, see Human Rights Watch, *Margins of Repression: State Limits on Nongovernmental Organization Activism* 17, 8 (June 2005), pp. 17-21.

8 *Ibid.*, pp. 22-23. The Egyptian Association Against Torture has not carried out activities in recent years.

creation of the above-mentioned organization.⁹

A person or persons who initiate a group's activities prior to receiving official authorization is liable to a prison term of up to three months.

These authoritarian practices have not changed. In August 2008 the Ministry of Social Solidarity (as it is now known) sent a directive to some organizations in greater Cairo warning them against inviting delegations from outside the country or accepting invitations abroad without first seeking the approval of security services.¹⁰ As this survey's chapter on Egypt reports, the ministry in May 2009 refused at least one organization permission to function, citing the decision of the security office within the ministry, and the authorities threatened to close three organizations working together on a project to strengthen democracy in rural and industrial areas. Over the past two years Egyptian human rights organizations experienced a number of instances in which security services intervened to force the cancellation of a seminar or similar event dealing with, for instance, amending Egyptian laws governing children's rights or ways to activate the provisions of the ICCPR. Rights activists like Kamal Abbas and Rahma Rifat of the Center for Trade Union and Workers' Services (CTUWS) are routinely harassed and sometimes detained when leaving Egypt to attend meetings abroad, or when returning.

• Maximizing Control

It is evident from the content of Law 84 and its implementing regulations, as well as from the behavior of Egyptian authorities, that security, even an exaggerated understanding of security, is not the only concern of the state. The same can be said, moreover, of practically every other government reviewed here. In addition to security, authorities are concerned to maximize control over society in its organized and organizing dimensions. Hence the feature in so many laws of associations in the region that allows, or mandates, the relevant ministry to clear in advance any group meetings or activities, to attend such meetings, and to know exactly what transpired in them. It is, at its most innocent, a patriarchal approach which treats adults who come together as an association as children whose choices must be constrained and whose ability to make decisions freely must be heavily circumscribed by law and by a culture of harassment and intimidation.

Egyptian authorities are today reportedly drafting amendments to the law on associations, in a typically non-transparent fashion that includes no consultations with NGOs themselves. By all accounts, the amendments would further restrict, rather than enhance, the right to freedom of association. Among other things, according to Abdel-Aziz Hegazi, the presidentially-appointed head of the General Federation of NGOs and Foundations (GFNF), a body established under Law 84, all NGOs would have to join the federation, and all funding would be channeled through it. There has been no indication that the amendments being considered would work in the direction of making the registration process, and then compliance with the law, less burdensome, or its implementation less arbitrary.

It goes without saying that groups whose founders are from among ruling elites, or whose political stance is supportive rather than critical of the government, face few obstacles in registering or carrying out activities. Quite the opposite is true for groups critical of official policies. Take the case of Algeria, where authorities this year, as in years past, prevented human rights groups like Djazairouna (Our Algeria), the Collective of Families of the Disappeared, and SOS Disappeared from holding a forum in July because the groups have been critical of the 2006 Law on Peace and National Reconciliation, which provides an amnesty to members of security forces for actions they took in the name of "combating terrorism," and to members of armed groups who lay down their arms. The law was a major initiative of President Bouteflika. Cherifa Kheddar, the energetic and courageous founder of Djazairouna, continues

9 Cited in *ibid.*, p. 23.

10 Communication to the author from the Cairo Institute for Human Rights Studies.

to face harassment in her civil service job because of her activities with the group and its critical stance towards the government's "national reconciliation" policies. By contrast, the *Mouvement des generations libres*, a group headed by Mourad Sassi, an ally of President Bouteflika, had no problem holding its founding assembly in July 2009, with much publicity – little wonder, since the movement states that its main objective is to "make the head of state's policy for national reconciliation a reality." Algeria has also increased its enforcement of a 2006 ordinance that forbids the country's non-Muslim minorities from gathering for worship except in locations approved by the state.

In next door Tunisia, every truly independent human rights organization that has applied for legal recognition over the past decade has met rejection, and authorities constantly and relentlessly harass human rights activists with constant police surveillance and, in some cases, physical attacks on the street by individuals who appear to be acting with the approval of the authorities. The authorities use the media, which they largely control, to defame those who voice critical views. The venerable independent Tunisian Human Rights League (LTDH) continues to face lawsuits by dissident members that regularly win favorable rulings in Tunisian courts, which lack independence, thereby providing a legal veneer for the authorities to interdict most League meetings at its branches throughout the country. In September 2008 authorities jailed Tarek Soussi, a member of the International Association in Support of Political Prisoners, an unrecognized local group, for "maliciously spreading false information capable of disturbing public order." On the other hand, the daily *La Presse* on August 17, under the headline "Civil society expresses its total support for President Ben Ali's civilizational project," reported that hundreds of associations were backing Ben Ali's candidacy for re-election this October "in practice he runs unopposed".

Some repressive states, like Syria and Libya, simply disallow independent civil society organizations and make no pretense that existing organizations represent anything other than officially sanctioned opinion. Others, like Tunisia, have pioneered in the region the establishment of GONGOs – government-organized "non-governmental" organizations. These groups are well-resourced by the authorities, and their representatives attend international and regional gatherings to put forth officially sanctioned views of government policies and to attack the perspectives and credentials of genuine national or expatriate NGOs. Egypt has lately gotten into the GONGO game as well by supporting the creation of groups both in Cairo and in outlying areas that can bid for European and US financial support available only to associations and not to central government bodies.

• Liberal Laws, Restrictive Practices

Morocco stands out among Arab states in the southern and eastern Mediterranean for the progress it has made in a number of human rights areas – releasing many political prisoners, expanding the boundaries of permitted political speech, and, not least, formally acknowledging serious past abuses and compensating thousands of victims or surviving families. When it comes to freedom of association, the operative law, a decree that dates back to 1958, requires simply that an association "declare itself to local authorities." Under amendments introduced in 2002, only courts have the power to dissolve an association. Unlike in Jordan, Syria, and Tunisia, there is no penalty in law for individuals who belong to or act within an association that has not declared itself, but the law does penalize activities such as financial or property transactions (for example, receiving or attempting to secure funds on behalf of an unregistered association), and an undeclared organization cannot rent an office, hire a hall, or organize gatherings on public thoroughfares. Associations by law cannot exist if its objectives are "contrary to good morals" or "undermine" Islam or the monarchy, or the country's "territorial integrity" – the latter understood to mean criticism of Morocco's de facto control of Western Sahara, which the United Nations politely refers to as a "non-self-governing territory." These are the same broadly worded "red lines" that continue to circumscribe free expression in Morocco and, as we shall see, associational life as well.

The law in its declarative provision favors the exercise of the right to freedom of association, and independent associations play a vigorous role in Moroccan society, including organizations that routinely criticize official policies

and practices. But the law protects and advances the right to freedom of association only so long as the local authorities carry out in good faith the role assigned to them in the law. In fact, one can discern a pattern of disregard for the law, in enough different parts of the country that it seems to reflect a policy intended to weaken and keep vulnerable certain associations. The official practice most commonly employed to subvert the purpose of the law is refusal by local authorities to issue a provisional receipt for the documents that associations must submit as part of the declaration process. This receipt constitutes proof that the association made a good-faith effort to file its declaration. Frequently the local official also refuses to accept the submitted documents at all. This is contrary to the law, which does not give local authorities discretion not to accept the documents, or to refuse to issue a receipt. Nor does it give local authorities the power to assess an organization's legality. Without proof of having informed the relevant authorities, in the form of a receipt confirming an application to register, a group may not collect dues, receive grants, or solicit funds, and they encounter obstacles that range from opening bank accounts to renting public spaces or organizing demonstrations. While they may otherwise attempt to carry out activities, the authorities use their uncertain legal status to keep them off balance and discourage current and potential members.

• **Minority Rights**

The groups that appear to be most affected by this unstated and informal policy are those that work to defend the rights of the unemployed, the rights of the Sahrawi and Amazigh populations, such as Sahrawi human rights organizations like the Sahrawi Association of Victims of Grave Human Rights Violations (ASVDH) and the Committee for the Respect of Liberties and Human Rights in the Western Sahara (CODESA) and the Amazigh Network for Citizenship. Other cases have involved charitable and educational associations whose leaders are affiliated with Al-Adl wa'l-Ihsan (Justice and Spirituality), the country's largest Islamist movement, groups that campaign against corruption or for the rights of immigrants from sub-Saharan Africa, and the National Association of Unemployed University Graduates (ANDCM).¹¹

The extent to which Moroccan groups advocating for the rights of the Sahrawi and Amazigh communities have been among those most affected by these problematic practices by Moroccan officials highlights the extent to which minorities in the region are particularly affected by policies that affect the right to freedom of association. The essay in this survey that is devoted to this issue notes, for example, advocates of Kurdish rights in Syria, particularly since the disturbances that erupted in the largely Kurdish town of Qamishli in 2004, have been prominent and numerous among the rights activists in Syria persecuted and sentenced to long prison terms after blatantly unfair trials.

In Turkey, Kurdish groups and human rights organizations working on Kurdish issues have also been singled out for unwanted attention. Another minority in Turkey whose rights to freedom of association and expression have come under assault are those advocating on behalf of lesbian, gay, bisexual, and transgender people. An Istanbul court in 2008 ordered the closure of Lambda Istanbul, a group that works to end police harassment and ill-treatment of gays and transgender people, after the Istanbul governor's office complained that the group's activities were "against law and morality" and plainclothes police raided the group's headquarters. The Supreme Court of Appeals overturned the closure order in November 2008, and a lower court granted the group permission to continue operating in April 2009. Two members of Lambda Istanbul were recently murdered – 26-year-old Ahmed Yildiz in July 2008 and 28-year-old Ebru Soykan in March 2009.

¹¹ Human Rights Watch, Morocco: Freedom to Create Associations: A Declarative Regime in Name Only (October 2009). When Human Rights Watch released this report in Rabat in early October, Moroccan officials declined all requests for meetings to discuss freedom of association, and a government spokesman, Khalid Naciri, dismissed the report as "superficial," dealing only with "associations that have no presence in [Moroccan] society" and "have no respect for the feelings of [Moroccan] citizens."

This report, like its two predecessors, represents a collaborative effort by members of the Euro-Mediterranean Human Rights Network. In composing the 11 country sections that comprise this third EMHRN report on freedom of association in the southern and eastern Mediterranean region, authors¹² were asked to begin by evaluating specific legislation relevant to the enjoyment of the right to freedom of association – not just laws on association but also emergency legislation, counterterrorism legislation, press and publications laws, and so forth. In addition, authors looked at any developments over the course of the year relating to the roles of international or regional bodies such as the UN Human Rights Council and the African Court for Human Rights. Authors then assessed the operation of the law or laws governing associations as reflected in the experience of groups that attempted to register, and the remedies they had if denied. Thirdly, authors were asked to relate how associations were able to operate over the course of the year, the extent of harassment they faced, the extent to which government policies enabled them to operate or not, and their access to domestic and foreign financial support. This assessment should include an evaluation of discriminatory factors that may affect the ability of women or minorities to form associations or sustain associational life. Finally, authors were asked to discuss the procedures of dissolution or less extreme measures such as suspension that associations may encounter in their relations with state authorities¹³. Members of the EMHRN Working Group on Freedom of Association have been involved in each step of the process – drafting of the chapters' indicators, organisation of seminars, sending of information about the national legislation and practices, approval of the final report – and they have enriched each chapter with their inputs.

The problematic laws and regulations discussed in this essay and the country reports that follow, and the pernicious and arbitrary enforcement of the laws, are both manifestations of a deeper, underlying issue – namely, the political project of those who unaccountably exercise political authority in most of these societies to sustain that power and fend off any developments that may threaten its unfettered exercise. In other words, until now we have seen no political will to reform the authoritarian approach to any exercise of the right to freedom of association, or to other internationally guaranteed political rights, that characterize almost all of the countries reviewed here.

12 Youssef Bouhairi, Yavuz Gacturk, Hussein Otaibi, Rina Rosenberg, Randa Siniora, Jad Yaacoub.

13 Some researchers decided to provide short answers to each of the questions they received from the EMHRN, while others chose to integrate their responses into a more general description of the situation in their respective countries."

INDICATORS of Freedom of Association in the Euro-Mediterranean Region in 2009

One part of this project aims at developing indicators that allow for an assessment of improvements with respect to freedom of association in the Euro-Mediterranean region. These indicators have been slightly modified since 2007 to ensure that they do not only assess legislation related to the right of association, but also the right's implementation in practice. The assessment is based on an analysis of the situation to which independent NGOs, and particularly those active in the human rights field, are subject.

REGISTRATION

Colour Green: Countries where (all) groups who wished to create an association were able to begin implementing their activities immediately after notifying the relevant authorities that their organisations had been established ("notification system").

Colour Orange: Countries where a notification system existed in law but was not fully implemented in practice. (Some groups faced specific obstacles.)

Colour Red: Countries where (all) groups who wished to create an association were required to obtain, in law or in practice, prior authorisation from the authorities to be able to start implementing their activities ("prior authorisation system").

DISSOLUTION

Green: Countries where only courts of law could close (any) associations and the courts' decisions were in accordance with paragraph 2 of Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

Orange: Countries where the authorities dissolved specific groups, or threatened to dissolve them, on the grounds that they did not respect international human rights standards. (See green colour.)

Red: Countries where the administrative authority could (or even decided to) close any association and/or decisions were based on grounds that were in violation of paragraph 2 of Article 22 of the ICCPR.

INTERFERENCE

Green: Countries where (all) NGOs were free to carry out their activities.

Orange: Countries where specific NGOs faced regular, but not systematic, difficulties in implementing their peaceful activities.

Red: Countries where the authorities systematically interfered in the management of (all) NGOs and/or members of (all) associations were subjected to various forms of harassment by the authorities.

ACCESS TO FOREIGN FUNDS

Green: Countries where (all) NGOs only needed to notify the relevant authorities to be able to receive foreign funding, with provisions that guaranteed transparency and demonstrated respect for the law.

Orange: Countries where NGOs were legally allowed to receive foreign funding through a simple notification process, but the authorities strictly controlled some organisations' access to foreign funding in practice.

Red: Countries where prior authorisation was required for (all) NGOs to be able to receive funding from abroad.

OTHER ELEMENTS

Green: Countries where the authorities allowed for (the whole of) civil society to develop freely.

Orange: Countries where, due to targeted restrictions, specific groups were not able to fully enjoy their right to association.

Red: Countries where other laws (emergency laws, anti-terrorism laws, press and publications laws, etc.) prevented (all) associations from freely implementing their activities.

METHODOLOGICAL NOTE¹

Trade unions and political parties were not included in the first two EMHRN reports on freedom of association. Why?

First of all, it is worth mentioning that our notion of civil society does not only encompass non-governmental organisations (NGOs), but also trade unions and employers' organisations, professional associations, charities and other types of association that engage citizens in the life of the community at the local level. However, for two main reasons – material and political reasons – we decided to exclude them from the scope of research of our first two reports on freedom of association.

First, we faced the problem of feasibility. Given the scope of the issue, trade unions and political parties constitute a major research topic themselves and deserve an in-depth study, which seemed difficult – if not impossible – to include in our freedom of association report.

Furthermore, we observed that different national and international structures (including trade unions themselves) already worked on the issue of trade union freedom, and we concluded that there would be no reason to duplicate what already existed.

Finally, studying political parties is a difficult task which raises questions about the very concepts of human rights and democracy. Except for the case where a political party directly calls for violence, questions such as whether a government is correct in prohibiting a far-right party (as was the case in Germany) or a party with a religious background (as was the case in Algeria in the 1990s), or simply whether a democratic state can dissolve a political party at all, remain unresolved and touch on sensitive political issues.

Would it be relevant to include trade unions and political parties in the next EMHRN annual reports on freedom of association?

As we have emphasised before, it is relevant to include trade unions as they not only constitute a component of civil society but also play a very unique role in the development of the human rights cause in the Euro-Mediterranean region. In France, the influence of workers' organisations has enabled certain significant political and social evolutions, such as the 1936 movement, which – thanks to the involvement of trade unions – led to the first social reforms in the country.

As we also mentioned before, trade unions generally defend their interests successfully and have even

¹ "This methodological note is based on different interviews with Wadih Al-Asmar and Michel Tubiana, members of the EMHRN Executive Committee, Khémais Chamhari and Jacques Montacié, members of the EMHRN Working Group on Freedom of Association".

already created trade union networks in the Euro-Mediterranean region, such as the Euromed Trade Union Forum. Nevertheless, the Forum does not deal with all issues – for instance, it does not conduct legislative analysis for different countries – and there is certainly an area of action where work would be possible.

In this context, the question is not whether it is relevant to work on these other two forms of associations, but rather whether it would be relevant to support organisations already working on these issues.

How exactly could trade unions and political parties be included in the next EMHRN annual reports on freedom of association?

If the EMHRN were to include these two forms of associations, this could be done in two different ways: develop a (some) new specific indicator(s) dealing with trade unions on the one hand and political parties on the other, and either add them to the indicators developed for the drafting of the 11 country chapters of the annual report or dedicate a specific thematic chapter to trade unions and/or political parties.

In the first case, however, the study would necessarily be superficial and would contribute only very limited additional insight to what already exists – and would therefore not be very relevant. The second possibility would offer the advantage of getting a richer and more documented study – it could, for instance, help to depict the legal framework that regulates the existence and the organisation of political parties in the 11 Southern and Eastern Mediterranean countries. However, this would require the identification of a (some) qualified individual(s) to answer those questions at the regional level, which is not an easy thing to do.

An alternative solution could be to focus a thematic chapter on trade unions and/or political parties on a different country every year, and to examine the 11 Eastern and Southern Mediterranean countries one after another.

Is such an approach possible in the short/middle term?

The most important obstacle relates to the large number of trade unions and especially of political parties in the Euro-Mediterranean region, which makes work on these issues difficult. Such a study would require substantial “groundwork” to select information, and the EMHRN so far lacks the necessary financial and human resources for this.

Besides, the very nature of trade unions and political parties in the region could constitute another important obstacle: As has been detailed in the 2009 Report, just like with NGOs, there are trade unions which are subservient to the powers that be. This would inevitably entail difficulties when analysing any data that is collected.



ALGERIA

In June 2008, the Algerian Minister of Interior and Local Collectivities, Yazid Zerhouni, announced that 81,000 associations were officially registered in Algeria. He expressed his willingness to revise Act No. 90-31 of 1990 on associations and to review registration procedures, as, he said, a great number of associations had deviated from their original purpose and 95% of them had failed to submit their annual financial and activity reports, even though the law requires them to do so.¹ More than a year later, there was still no public debate on the issue of associations, however, and no official information on potential amendments to the Law was available. Some members of civil society fear that any new act would require all associations to focus on issues at the local level and that national associations would only be allowed to register in exceptional cases. If this were to happen, local associations would be forced to limit their activities to the wilaya (province) where they are registered and would no longer be able to create partnerships with foreign associations or to join international federations “Art 21 of Act No. 90-31 on association”.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

Freedom of association in Algeria is governed by Act No. 90-31, which has never been amended since it entered into force in 1990. The 1996 Constitution guarantees freedom of expression, association and assembly for all citizens, and Algeria has also ratified the International Covenant on Civil and Political Rights (ICCPR), which, in Article 22, stipulates that individuals’ freedom to freely associate with others must be protected.

In reality, however, and in spite of Algerian legislation’s apparent conformity with international human rights principles, freedom of association remains subject to arbitrary government policies, and citizens’ right to

¹ <http://www.lexpressiondz.com/article/2/2009-08-12/66526.html>

assemble, demonstrate and publicly express themselves (regulated by Act No. 91-19 of 2 December 1991)² is completely disregarded under the state of emergency that has been illegally maintained for the past 17 years. The 1992 decree which declared the state of emergency subjects the exercise of these freedoms to the discretion of the authorities³ and has been used as a tool to keep human rights associations and opposition movements in check. Moreover, an act which has been in force since June 2001 expressly forbids any demonstrations on public thoroughfares.

International human rights bodies have been informed about violations of the freedom of association in Algeria on several occasions. However, in November 2007, the Algerian government responded to the Human Rights Committee's recommendations with regard to respect for freedom of expression, assembly and association⁴ by simply stating that "freedom of association, expression and assembly and freedom to demonstrate are enshrined in the law" and that "[a]ny restrictions [...] are those referred to in the provisions of the Covenant relating to public order, security, morality and respect for the private lives of others."⁵

In May 2008, the Committee against Torture also recommended that the Algerian government review the need to further extend the state of emergency.⁶ During the same month, within the context of the Universal Periodic Review of the UN Human Rights Council, the Government of Algeria accepted a recommendation, expressed by Mexico, to review the impact that the state of emergency has on the enjoyment of fundamental freedoms.⁷

2 Amendment to Act No. 89-28 of 31 December 1989 on public meetings and demonstrations

3 Article 4 of Decree 92-44 of 9 February 1992, which established the state of emergency

4 Concluding observations published on 1 November 2007, CCPR/C/DZ/CO/3/CRP.1, §25

5 Comments by the Algerian government on 19 November 2007, CCPR/C/DZA/CO/3/Add.1, §5.

6 Committee against Torture, Concluding observations published on 26 May 2008, CAT/C/DZA/CO/3, §4.

7 Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, 23 May 2008, Ad/HRC/8/29, II, §10.

In spite of various recommendations from international bodies, however, the Algerian government continued to regularly violate the rights to peaceful assembly and demonstration throughout 2008, citing the state of emergency as its justification.

I - Formation of Associations

In theory, Act No. 90-31, which governs the establishment and registration of associations in Algeria, respects the freedom to associate freely by establishing a declaratory system in which an association does not need any preliminary authorisation from the authorities to be established.

Article 7 of the Act states that an association is duly constituted after a declaration has been submitted to either the wilaya where the association has its headquarters (for local associations) or to the Ministry of Interior (for national organisations). The relevant authority must issue a registration receipt within 60 days of receiving an association's file. According to Article 8 of the Act, the administrative authority is not competent to refuse to register an association. If it considers the association to have an illegal character, it must refer the matter to the administrative chamber of the competent court at least eight days before the period for issuing the registration receipt expires. If the case is not referred to a court, the association is deemed duly constituted once the 60 days provided to issue the registration receipt have passed, even if the administrative authority has not issued a receipt.

Finally, Article 45 of Act No. 90-31 provides that "Anyone who manages, administers or is active within 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, or by only one of these two penalties". This article is confusing as, contrary to Articles 7 and 8, which describe a declaratory process, it uses the term "unapproved" and penalises activities within an unapproved association. This raises questions about the value of the registration receipt, which is more of an authorisation to act as an

association, rather than evidence of the declaration of an association.

In practice, however, registration receipts are issued on a case-by-case basis and/or following instructions from the administrative hierarchy. In spite of the law's provisions, the authorities never refer cases to the courts and arrogate the right to indefinitely delay the issuance of registration receipts. Sometimes receipts proving the submission of a request for registration are not issued, while, at other times, the submission is simply rejected, as was the case with the SOS Disappeared association. There are no legal remedies for associations that are not officially notified of a refusal. Despite the provisions of Article 8, a group which cannot present a registration receipt therefore has in fact no legal status and can neither initiate legal proceedings nor open a bank account or apply for funding.

The same procedure must be followed when the composition of an association's board of directors changes, and associations encounter the same difficulties as during the registration process. The Algerian League for the Defence of Human Rights (Ligue de défense des droits de l'Homme, LADDH), for example, has not been able to obtain a receipt confirming that it notified the authorities of the composition of its board of directors. This is in spite of the fact that it sent a registered letter with a request for acknowledgement of receipt, and then had a bailiff deliver it, in November 2007.

The Ministry of Interior and Local Collectivities has not published the number of associations that have registered since June 2008, but several groups' experiences since plans were announced to modify the regulations for the establishment of associations⁸ reveal how the current provisions of the law have been misused in practice. The registration requests of associations operating at the national level have been either put on hold by the Ministry of Interior or redirected to the wilayas, which are competent to register local associations. Exceptions seem to be made, however, and, on 29 July 2009, the "Movement for Free Generations" held its constitutive assembly in Algiers, which the press considered to symbolise the birth of

the first Algerian NGO.⁹ The association is meant to be "the natural continuation of the assemblies that have supported the President of the Republic since 1999", and its main objective is to "make the head of state's policy for national reconciliation a reality".¹⁰ The constitutive assembly of this movement – whose president, Mourad Sassi, is close to the President of the Republic, and which already has representatives in the 48 wilayas and offices abroad – was organised in anticipation of its legal registration by the Ministry of Interior and Local Collectivities.¹¹

It is also worth noting that, when stating that there were 81,000 associations in Algeria, the Minister of Interior did not specify how many of these were national and local associations registered in Algeria and did not provide a breakdown by field of activity. While such a breakdown can be found on the website of the Ministry of Interior and Local Collectivities, the site does not indicate when the figures were published. According to the Ministry, there are 962 national associations (including seven which work on human rights issues, 12 which focus on childhood and youth and 23 which focus on women)¹² and 77,361 local associations, none of which focus on human rights in particular, and only 0.90% of which protect and promote women's rights.¹³

The available figures also show that there are only 18 foreign associations in Algeria. The law defines as a foreign association "any association, regardless of its form or objective, which has its headquarters on the national territory and is run totally or partially by foreigners" and subjects them to specific procedures. Article 40 of Act No. 90-31 stipulates that "the creation

9 Quotidien le Midi libre, 30 juillet 2009- http://www.lemidi-dz.com/index.php?operation=voir_article&date_article=2009-07-30&id_article=evenement@art5@2009-07-30réconciliation

10 Daily newspaper El Watan, 30 July 2009- <http://www.elwatan.com/Le-Mouvement-pour-les-generations>

11 Midi Libre, 30 July 2009, http://www.lemididz.com/index.php?operation=voir_article&date_article=2009-0730&idarticle=evenement@art5@2009-07-30,http://fr.allafrica.com/stories/200907300511.html.

12 <http://www.interieur.gov.dz/Associations/frmltem.aspx?html=1>

13 <http://www.interieur.gov.dz/Associations/frmltem.aspx?html=2>

8 The groups in question did not want to be cited in this report.

of any foreign association is subject to the preliminary approval of the Ministry of the Interior”, without any further specifications. This means that any authorisation is issued at the discretion of the Minister. In practice, foreign associations with headquarters abroad generally are not approved but operate under a “framework convention” established with an Algerian Ministry.

II-Life of Associations

As liberal as it may seem, the legal framework that currently governs the creation and functioning of associations does not sufficiently encourage the development of a diverse, dynamic and effective independent civil society which could serve as a counterweight to the government and could be a source of ideas and initiatives for constructive change. In addition to the restrictions that are regularly imposed on all types of civil society initiatives (environmental, social, cultural, training, defence of human rights, etc.), the government administration has shown great contempt for community organisations. There are no consultative mechanisms or possibilities for dialogue, and associations have no influence on political leaders. The problems they raise and the solutions they suggest are ignored at the national level. Consequently, civil society feels powerless, and there is a general sense of discouragement and demobilisation. The declarations of the Minister of the Interior, Yazid Zerhouni, in June 2008 speak for themselves. He argued that a majority of the 81,000 registered associations were not actually active in the field and that 95% of them were not complying with the requirement that they submit annual financial reports in accordance with Article 18 of the Associations Act.¹⁴ If the Minister’s assertions are true, this seems to confirm what numerous analysts have already asserted: the Algerian public authorities are indifferent towards community life; official policy does not address the issue; there is a lack of grants and resources (training, follow-up, etc.) for associations; and there is no space for the authorities and associations to interact or for a dynamic and effective civil society to develop.

At the same time, civil society is frequently prevented from organising and from accessing public space. Assembly and demonstration bans and administrative and judicial harassment of democracy and human rights activists effectively suppress potential civil society movements and organisations which seek to address sensitive issues, such as the national reconciliation policy, forced disappearances, victims of terrorism, or the promotion of an effective multi-party system and a vibrant civil society.

Registered national associations, associations without a registration receipt and foreign associations are also subject to restrictions, if not outright denials, of their fundamental freedoms. This also holds true for foreign associations that have been present in Algeria for many years, as was evidenced by the case of the Friedrich Ebert Foundation, which had been present in the country since 2002, but had to announce the suspension of its activities in Algeria in September 2008. The decision followed a declaration by the Secretary General of the General Union of Algerian Workers (UGTA, an official and authorised trade union), who accused the Friedrich Ebert Foundation of abusing its privileges through a planned programme of events and debates. The UGTA Secretary General argued that the Foundation’s “Ramadan Nights” of September 2008 constituted “opposition spaces created by a foreign institution” and that the “presence of the Foundation in Algeria should be reassessed”. An event on “Political, Trade Unionist and Associative Pluralism” and all of the Foundation’s events for October 2008 were cancelled. The Foundation has not been able to organise any public activities since then.

Similarly, the Algerian League for the Defence of Human Rights (LADDH) was barred from holding a training course for journalists in Zeralda on 26-28 May 2009. The administration provided no justification for the prohibition, which came one day before the training was scheduled to begin. The LADDH interpreted the prohibition as follows: “It is easy to understand that the LADDH’s approach, whose aim is to equip young journalists with basic notions of human rights [...] causes problems. [...] The fact remains that this prohibition reminds us all that Algeria is still under a state of emergency and that, at the end of the day, everything

14 <http://www.presse-dz.com/revue-de-presse/6733-la-loi-sur-les-associations-sera-revisee.html>

depends on the good will of those in power.”¹⁵

Associations of families of the disappeared (the Collective of the Families of the Disappeared (CFDA) and SOS Disappeared) and of terrorism victims (Djazairouna and Somoud) tried to voice their disagreement with the national reconciliation policy and to encourage public reflection on the issue. They therefore planned to hold a forum entitled “Preserving Memory to Rebuild Society” at the Trade Unions House in the suburbs of Algiers on 16 July 2009, but a heavy police presence on the day of the event prevented all access to the venue. The Wali of Algiers was alleged to have ordered the Chief of Security of the Daïra to prevent the event from taking place “for security reasons”. However, the organisers were not presented with any written notice. Moreover, one of the scheduled speakers, a Moroccan human rights defender and former disappeared person, was denied entry into Algeria without any justification.

In addition, the prohibition of demonstrations under the state of emergency also considerably restricts the possibilities for associations and activists. In January 2009, a “great march” in support of the Gaza Strip, which brought together several thousand protestors, was tolerated for the first time in Algiers, but was closely supervised by the police. At the time of the elections in April 2009, several thousand people also joined demonstrations organised in Kabylie by the Front of Socialist Forces (FFS, an opposition party), in spite of the demonstration ban. However, the one hundred mothers of disappeared people who protest in front of the National Advisory Commission for the Promotion and Protection of Human Rights (CNCPPDH) each Wednesday always face lines of security forces who do not hesitate to assault them. This was the case, for example, on 8 April 2009, the Wednesday before the presidential elections,¹⁶ and in November 2008, when the group protested outside the Ministry of Justice.¹⁷

15 “Les droits de l’Homme sous interdiction”, in Errabita, LADDH periodical, 2nd trimester 2009, p.28.

16 http://www.algerie-disparus.org/cfda/index.php?option=com_content&task=view&id=263&Itemid=125

17 http://www.algerie-disparus.org/cfda/index.php?option=com_content&task=view&id=248&Itemid=121

In addition, activists and representatives of foreign human rights NGOs who wish to conduct missions to Algeria, to participate in meetings or to provide training, are regularly refused entry. Marc Schade-Poulson, the Executive Director of the EMHRN, for example, was refused a visa in July and September 2009, and Sihem Bensedrine, a Tunisian journalist and human rights activist, was refused entry upon her arrival at the Algiers airport in April 2009. The LADDH had invited her to participate in a programme on media monitoring.

Human rights defenders also continue to be regularly subjected to acts of administrative or judicial harassment. Thus, in November 2008, the appeals court confirmed the sentence of Mrs Saker, the wife of a disappeared man, who had participated in an unauthorised march. The same month, the court also confirmed the sentence of Amine Sidhoum, a human rights activist and lawyer who has worked with families of the disappeared, and who was found guilty in April 2008 of “discrediting a judicial decision” and “insulting the state”.¹⁸ Moreover, Cherifa Kheddar, the president of the Djazairouna association and a civil servant in the Bliida wilaya, also continues to face pressure at work because of her community activities. After the last forum-workshop on “Memory”, organised by a coalition of victims’ associations (Djazairouna, Somoud and CFDA/ Sos Disparus) in Algiers, which was shut down by the authorities, Kheddar was summoned by her superiors, who asked her to explain her involvement in the organisation of this event.

The example of Dr Kamel Eddine Fekhar, a member of the LADDH and an elected official of the Front of Socialist Forces (FFS) in Ghardaïa, is also significant. Fekhar, who launched a call for official recognition of the badite rite in the M’Zab valley, was arrested on 15 June 2009 along with three other FFS activists “for the destruction of public property and putting a police van on fire” during the Berriane riots of February 2009. The witness on whose testimony the arrest had been based eventually recanted and declared that he did not know Fekhar. The LADDH expressed its concerns about “human rights and political party activists being [...] likened [...] not to protesters but to troublemakers

18 <http://www.sodepau.org/spip/spip.php?article232&lang=fr>

and political enemies” who needed to be neutralised.¹⁹ Meanwhile, representatives of the FFS denounced “the systematic transformation of community expression into riots followed by violent crackdowns and arrests, and then by the prosecution of honest citizens, including community and political activists and trade unionists”.²⁰

Associations’ access to fundings regulated by Act 90-31 of 1990, which stipulates that they can receive funding only from the following sources: members’ contributions, income from activities, donations, bequests, and grants from the state, wilayas or local councils. The state, wilayas and local councils generally award national grants only in exceptional cases, and only to associations whose work is considered to be in the public interest. For example, in 2006, the Ministry of Solidarity awarded a grant of several thousand euros to the National Organisation for Terrorism Victims (ONVT) to provide assistance to victims of terrorism. In return, the authorities expected the ONVT to support the government’s policy of national reconciliation. However, the ONVT’s secretary general rejected the grant’s conditionality and, as a result, is now being prosecuted for embezzlement by the Ministry of Justice and will be tried in September 2009. Associations which want to remain independent only have very limited access national resources and are further restricted by a legal provision which stipulates that foreign funding “is subject to the agreement of the relevant public authority which verifies the origin, the amount and the compliance with the mission stated in the statutes.”²¹

III - Dissolution of Associations

Article 33 of Act No. 90-31 of 1990 regulates the dissolution of associations and states that “the dissolution of an association can either be voluntary or be governed by a judicial decision”. Article 5 states that “Any association is ipso jure null and avoid if it was founded for a purpose contrary to the established institutional system or to public order, public decency or the laws and regulations in force.” Article 35 specifies that judicial dissolution can take place either at the request of the public authority, or after the complaint of a third party, when the activities of the association are contrary to the law. Thus, the public authority does not have jurisdiction to decide the dissolution of an association, but can only refer the matter to a court. In March 2009, the authorities’ determination to “clean up” civil society resulted in the summoning of “all trade unionist and student movements, as well as of cultural and sport associations working at the university level”. They were asked to submit comprehensive documentation of the outcomes of their activities and were threatened with administrative sanctions and dissolution.²²

19 “Les droits de l’Homme sous interdiction”, Errabita, LADDH periodical, 2nd trimester 2009, p.28.

20 Daily newspaper El Watan, 16 June 2009- <http://www.dzactiviste.info/2009/06/16/kamel-eddine-fekhar-et-4-autres-militants-du-ffs-arretes-par-la-police>.

21 Article 28 of Act No. 90-31 of 4 December 1990

22 http://www.algeria-watch.org/fr/article/pol/administration/dissolution_associations.htm

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**

- Put an end to the state of emergency which has been illegally maintained for 17 years now and which stands in the way of civil liberties.
- Act in accordance with the measures in the International Covenant on Civil and Political Rights and the international Human rights instruments ratified by Algeria; integrate these measures within national legislation.
- Implement the recommendations of the United Nations Human Rights Council and Committee against Torture as regards the protection of civil liberties.
- Guarantee the separation of executive, legislative and judicial powers, and guarantee the independence of the judicial system, the cornerstone of human rights.
- Guarantee that the reform of Law 90-31 of 1990 is carried out in a manner that is favourable for freedom of association (i.e., the creation, registration and actions of associations).

- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**

Creation and registration:

- Maintain the declaratory registration system.
- Systematically deliver a receipt upon filing for registration; deliver a registration certificate within a legal period of 60 days.
- Guarantee effective recourse within a reasonable timeframe to associations whose registration requests have been refused by administrative authorities.
- Abolish prison sentences for leaders of non-approved, suspended or dissolved associations, who pursue their activities (Art. 45), for such measures are contrary to the very foundations of the declaratory system.

Organisation and actions:

- Remove obstacles to the freedom to demonstrate and repeal all legislation forbidding demonstrations in public places.
- Encourage freedom of expression by removing obstacles to the freedom to hold public meetings, seminars and training sessions whose objects and goals are not illegal.
- Abolish Article 28-2 of Law 90-31 of 1990, whereby the granting of foreign subsidies is subject to the prior approval of the concerned public authorities.
- Modify Articles 144 to 148 of the Penal Code, which pertain to slander, as well as Article 46 of Law 06-01 of 27 February 2006, which establishes any written or verbal declaration denouncing criminal acts perpetrated by state agents during the 1990s as an offence.

- **ENVIRONMENT REQUIRED FOR THE SUSTAINABLE DEVELOPMENT OF CIVIL SOCIETY:**

- Implement public policies that encourage a dynamic and efficient civil society; in accordance with the recommendations of the 2006 Istanbul Action Plan, favour women's participation on the social and political scene; enable dialogue between public authorities and civil society actors.
- Involve civil society in the decision-making process for public interest policies, in particular Law 90-31 on associations should be revised.



The Egyptian parliament approved the government’s request to extend the state of emergency by another two years in May 2008, and emergency rule remained in force during the period covered in this report (September 2008 to September 2009). Moreover, Law 84 of 2002, the Law on Associations, provides broad powers to the authorities and allows them to continue their campaigns of arrest and intimidation against civil society activists. While there have been persistent rumours since 2008 about the possible introduction of new amendments to Law 84 of 2002, civil society has not been consulted on this issue. The recent declarations by the president of the General Federation of NGOs and Foundations, Abdel Aziz Hegazi, who accused human rights organisations of endangering national security, have also been a serious source of concern for independent human rights organisations. They fear that any modification of the already restrictive Law 84 may result in even stricter government control of civil society.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

During the year under review, more than 100 bloggers and local journalists were subjected to assaults, arrests and raids. During the spring of 2009, for example, three bloggers were held at Cairo Airport on their return from abroad, with no reason given, and had their personal papers confiscated. On 28 September 2008, Ibrahim Eissa, the editor of the independent Al-Dustour newspaper, was sentenced to two months imprisonment because of an article commonly referred to as “rumors over the President’s health”. He received a presidential pardon and did not serve his sentence.

The Ministry of Social Solidarity held closed meetings on amendments to the NGO law (Law 48 of 2002) and ignored NGOs' requests for participation and an exchange of views during a campaign for freedom of association.¹ According to information leaked to the media and statements made by Abdel-Aziz Hegazi, the chairman of the General Federation of NGOs and Foundations (GFNF),² the proposed amendments would impose tighter restrictions on NGOs' activities and would expand the role of the GFNF.³ They would also impose more restrictions on funding, and Mr. Hegazi has requested that funding be channeled through the GFNF, which would be in direct contact with donors. There are also indications that NGOs will be required to join the Federation, and that the Ministry of Social Solidarity would consult the Federation regarding the dissolution of any NGO.

I - Formation of Associations

The NGO Egyptians for Human Rights has been refused a permit. After submitting its application and obtaining approval from the local branch of the GFNF, the NGO received a letter (No. 866 of 19 May 2009) from the Matariyah branch of the Ministry of Social Solidarity, which rejected the association's registration request. The letter stated that the refusal was based on the decision of the Ministry and on an attached letter (No. 735 of 12 May 2009) from the Ministry's security office, which cited security reasons based on Article 11 of Law 84 of 2002. The NGO founders went to court, and the case was still pending at the time of writing.

Another NGO, Egyptians in One Land, experienced the same difficulties, and its case is to be heard in court in November 2009.⁴

• Article 11

Associations operate in various fields and develop society according to rules and regulations stipulated by the law and the administrative instructions. Associations may operate in more than one field, provided they obtain the approval of the relevant unions and administrative agencies.

It is forbidden to set up clandestine associations or to include the following among the group's aims:

- 1- Formation of military units, or any activity of a military nature.
- 2- To threaten to undermine national unity, public order and morals, or to call for segregation among citizens according to race, colour, language or faith.
- 3- Activities that, according to the law, may only be carried out by political parties or professional associations.
- 4- Profit-making activities or objectives, except for commercial measures that would benefit the aims of the association.

1 The Campaign for the Freedom of Association was initiated by the New Woman Foundation in April 2007 and now has 65 NGO members.

2 These statements were made during a roundtable discussion organised by the National Council for Human Rights on 23 December 2008, in the presence of a number of NGOs and the Deputy Minister of Social Solidarity.

3 According to Article 69 of Law 84 of 2002, the Egyptian president appoints the chairman of the GFNF, and 10 of the Federation's 30 members.

4 See the second report of the Campaign for Freedom of Association, "Civil Society Organizations in Egypt - between legislation and implementation – under siege", July 2008, available online at <http://www.ncwregypt.org>

II - Life of associations

The One World Foundation for Development and Civil Society Care (OWF) was planning to hold a workshop on 6 July 2009 which would have focused on the monitoring of parliament performance during its last session, and which would have addressed the question of whether parliament would be dissolved before the end of its term. However, OWF received a last-minute telephone call from its partner at the Konrad-Adenauer Foundation, who informed the organisation that the hotel that was to host the workshop had cancelled the reservation because of a technical problem with the air conditioning. The timing raised questions about the hotel's real reason for cancelling the event.

The Women's Alliance for Women's Rights, an NGO in the Sinai town of Areesh,⁵ faced bureaucratic obstacles when it applied for governorate approval to locate a site for a seminar on customs, tradition and the quota law in July 2009.

The group's members believe that they were exposed to harassments because the employees in charge had a poor understanding of the law, which does not even include any explicit requirement for associations to apply for approval. These restrictive measures are commonly applied to NGOs, and especially to those working on human rights.

The Abnaa el-Sawalha ("Children of Sawalha") and "Social Development El-Shalufa" associations in Suez and the Maakoum ("With You") association in Helwan were also threatened with closure to pressure them to cease their activities. The three associations are partners in a project to strengthen democracy in rural and urban areas which is managed by the Better Life Foundation of Minya and implemented in six provinces. The project aims to enable the partner associations to identify their local needs and problems and to address them through communal committees for issues such as health and education.⁶

5 A non-profit women's rights organisation (license 319, 2007, issued by the Ministry of Social Solidarity) set up by activists experienced in promoting empowerment of women in marginalised communities. For more information, visit the website of the Arab Network for Human Rights Information at www.anhri.net/egypt.

6 Interview with Nawla Darwish, project director, 28 July 2009.

It is worth noting that other associations have been subjected to similar practices over the past few years. In March 2008, for example, the New Woman Foundation was threatened with the cancellation of its celebration of Egyptian Women's Day, and a seminar (related to the Child's law) in the Giza town of Hawamdiya was cancelled in April 2009.

Moreover, on 1 July 2009, Kamal Abbas, the General Coordinator of the Centre for Trade Union and Workers Services (CTUWS), was stopped at Cairo International Airport on his way to Brussels, where he was to attend an annual regional trade union conference. The security services confiscated his passport for more than one hour, without offering any reason or clear justification, and only returned it and allowed him to travel just before his flight departed.

It is also worth noting that, 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 appealing to the judiciary and re-applying for registration by the Ministry of Social Solidarity. On 30 March 2008, the Administrative Court ruled in CTUWS' favour, and the centre was reopened.⁷

Law 84 of 2002, which governs freedom of association, does not discriminate against women in the formation or operation of associations, but political participation by women is generally weak due to socio-cultural reasons and the widespread belief that women are inferior to men.⁸ The government's repressive measures against the women's organisations mentioned above also restrict women's participation in society and politics, in clear breach of the government's commitment to promote women's participation in social and political life as part of the Istanbul Action Plan adopted by the Euromed Ministerial Conference in Istanbul in 2006. Most of the 78 new associations that were registered around the country in June and July 2009 – including the Association for the Advancement of Woman and Child in the Northern Sinai region of Ganayen, Bir Abd; the Woman and Family Association in Alexandria; and the Arab Women Forum Association, Aswan – provide

7 See the second report of the Campaign for Freedom of Association, "Civil Society Organizations in Egypt - between legislation and implementation - under siege", July 2008.

welfare services, and a comparatively high number of women set up or joined associations dealing with mothers and child care.

A survey on women in decision-making positions (NGOs and the nature of links with other actors)⁸ found that there were no women on the board of directors of half of the 408 NGOs surveyed around the country, while 25 percent of the NGOs had one or two female board members. Meanwhile the initial results of a New Woman Foundation study on “The Situation of Women as Decision-Makers in NGOs”⁹ show that women’s access to leadership positions is limited, and that scant attention is paid to gender integration.

III - Dissolution of Associations

The Egyptian Organization for Human Rights (EOHR) was threatened with closure by the Ministry of Social Solidarity after requesting foreign funding, even though it had not received a response from the relevant authorities within the timeframe stipulated by law.¹⁰ Although the EOHR met all the requirements for its funding request, it received a letter from the Old Cairo branch of the Ministry and was summoned for questioning based on Article 42.6 of Law 84 of 2002. The EOHR issued a statement casting doubts on the Ministry’s motivations, as the letter had been sent shortly after the organisation released its 2008 annual report on human rights in Egypt. This indicates that associations’ freedom to operate with full transparency and credibility is threatened.

Faced with this situation, a number of NGOs acted in solidarity with the EOHR,¹¹ which requested clarification

from the Ministry of Social Solidarity. A few days later, the EOHR received a letter from the Ministry assuring it that no instructions had been received to dissolve its board. This incident illustrates how the government and Ministry of Social Solidarity exploit the NGO law to repress and threaten associations in general, and human rights organisations in particular.

The NGO community has demanded that amendments be made to Article 42 of the NGO law, which gives the executive branch extensive powers in the dissolution of associations, and insisted that only the courts should be allowed to issue dissolution orders.¹²

8 Dr. Sahar Taweela et al., “Opinion Poll of NGOs on the nature of their links with other activists”, Centre for Social Contract, Cabinet of Ministers, 2009.

9 In-depth meetings and discussion with executive directors, board members, male and female members of 22 independent human rights organisations.

10 See Euro-Mediterranean Human Rights Network and the Observatory for the Protection of Human Rights Defenders, “New harassment of a human rights organization”, available at http://en.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3755.html

11 The Campaign for Freedom of Association organised a seminar on “Registration and Dissolution of Associations among Obstacles of Law 84 to International Treaties” at the New Woman Foundation on 12 May 2009. A number of NGOs from across the country attended. The speakers were Abdallah Khalil, UN consultant on international law for human rights, and Nashwa Nashat, researcher at the EOHR.

12 For more information on the NGO draft law prepared by NGOs, see Essam El Din M. Hassan et al., “Towards a Democratic Legislation Supporting the Independence of Non Governmental Organizations”, Cairo Institute for Human Rights Studies, Cairo, 2009.

RECOMMENDATIONS

1- End the state of emergency enforced since 1981.

2- Act in conformity with the provisions of the International Covenant on Civil and Political Rights and the norms and principles set forth in the other international instruments on human rights ratified by Egypt. Take into account the relevant jurisprudence of the United Nations Committee on Human Rights.

3- Complete and genuine separation of the executive, legislative and judiciary powers. Respect and promote the independence of the judiciary as one of the guarantors of human rights.

4- Amend Law No. 84 of 2002 on NGOs and draft new provisions of the law – in consultation with all relevant parties (including NGOs) – in order to comply with international standards on the right to association. In particular:

- The right to establish an association through simple notification without the need for a prior license.
- In accordance with article 22 of the International Covenant on Civil and Political Rights and with related jurisprudence, apply a restrictive interpretation to the concepts of “law and order” and “public morality” as discussed in article 11 of Law No. 84/2002.
- Allow NGOs to freely choose a suitable legal structure and to decide whether to register under the Associations Law or as a nonprofit company under civil law.
- The right of associations to freely choose their fields of activity.
- The right of associations to form thematic and regional unions, as well as their right to join networks or alliances for common purposes, nationally, regionally and internationally. Membership in the General Federation of NGOs and Foundations should not be compulsory.
- Associations’ freedom from ministerial or government interference in their meetings.
- The internal affairs of associations should be monitored only by their board of directors and external monitoring should be confined to the regular judiciary. The General Federation of NGOs and Foundations should not be allowed to monitor associations’ internal affairs.
- Acknowledge associations’ right to receive domestic and foreign funding without a prior licence and subject only to notification.

5- Put an end to acts of intimidation against civil society activists and human rights defenders, and provide legal protections to allow them to conduct their activities without interference.

6- Establish a new institutional relationship with civil society associations which is based on transparency, the impartiality of the state and amended legislation on associations. Establish an adequate consultative mechanism to ensure that civil society can contribute to decision-making on public policy issues.



ISRAEL

In February 2008, the Israeli government presented its policy regarding the non-profit sector for the first time. It was hoped that this step would result in greater freedoms and respect for civil society organisations. However, the situation has not improved during the past year. On the contrary, violations of the freedom of association rights of Palestinian and Israeli Jewish organisations in Israel and occupied East Jerusalem have escalated since the Israeli military attacks on Gaza in December 2008 - January 2009 and have become a new source of concern for human rights organisations.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

1) Is there any specific legislation that affects freedom of association? Which related laws (e.g., anti-terrorism law, emergency law, criminal law, publications law) negatively affect freedom of association? How?

While the Israeli Supreme Court has recognised freedom of association as a fundamental right,¹ 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**

1 The first case regarding the right to freedom of association was brought by an Arab group in 1960, when the Registrar of Companies refused to register their company, "El-Ard Ltd", on the grounds of "state security". See HCJ 241/60, Kardosh v. The Registrar of Companies, 15 P.D. 1151 (1964). The Supreme Court ruled that the right to freedom of association is a fundamental right which can only be limited by express legislative authorisation; in this specific case, the court found that the Registrar had exceeded its power and must allow the company to register.

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**, as well as the British Mandate-era emergency legislation known as the Defence (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).² Within this category of laws also falls the Oslo-era **Law Implementing the Interim Agreement on the West Bank and Gaza Strip (Restriction on Activity) - 1994** which was legislated to ensure that the Palestinian Authority does not engage in political, diplomatic, security or other activities within the area of Israel, particularly in Jerusalem. The third type involves direct or indirect restrictions on the freedom to form professional associations and the requirement that certain professionals belong to such an association in order to practice their profession (e.g., the Bar Association for lawyers).

2) How do international and regional legal bodies (such as UN Committees, the UN Human Rights Council Universal Periodic Review or the African Commission on Human and Peoples’ Rights) rate the situation with regard to freedom of association? If any such bodies have made recommendations, have they been implemented by the authorities? If yes, how? (Legislative amendments, repealing of laws, etc.) If no, how do you explain the non-implementation of the recommendations?

Israel has ratified all of the core 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) (article 22 refers to the right of freedom of association) and the Convention on the Elimination of

All Forms of Discrimination Against Women (CEDAW) (article 7 refers to ensuring the equal participation of women in NGOs and associations), but they have not been incorporated into Israeli domestic law and are thus only persuasive authority before Israeli courts. In 2008, the UN held the Universal Periodic Review of Israel. There was no specific mention of restrictions on freedom of association. However, one of the important new recommendations issued in January 2009 concerned Israel’s closure of Palestinian organisations in East Jerusalem. Paragraph 41 stated: “... to immediately withdraw all legislative and administrative measures aiming at making occupied East Jerusalem Jewish, including measures that allow archaeological digging around the Aqsa Mosque, the building of a synagogue, the establishment and expansion of settlements and **the shutting down of Palestinian institutions** ...”³ The Israeli government’s closure of Palestinian NGOs and institutions in East Jerusalem is further discussed below.

I - Formation of an Association

1) Does the law require prior authorisation for an association to register?

There is no article in the law which prohibits any group from acting as an association without being registered. Both registered and non-registered associations may conduct activities as a group. But a non-registered association will not have “legal personality”. If a group wishes to register as an association, prior authorisation by the Registrar of Associations is required.⁴

2 See e.g., Machsom Watch, “Guilty: Membership and Activity in Unlawful Associations, Military Courts”, 2008, available at: <http://www.kibush.co.il/downloads/Guilty.pdf>. According to Machsom Watch, thousands of West Bank Palestinians are detained and prosecuted in Israeli military courts for one or more of 10 offences associated with “unlawful association”, such as “membership in an unlawful association” or “attending a rally” or “possessing a publication” or “collecting money or support for” such an association. The charges against these individuals derive from the Defence (Emergency) Regulations – 1945 and the Prevention of Terrorism Ordinance – 1948 as incorporated into Israeli military orders. Many of these individuals are not involved in military activities against Israel nor are they identified with Hamas.

3 UN General Assembly, UNIVERSAL PERIODIC REVIEW, Report of the Working Group on the Universal Periodic Review, Israel, A/HRC/10/76, 8 January 2009, available at: <http://unispal.un.org/UNISPAL.NSF/fd807e46661e3689852570d00069e918/3e28bad630fc4e0c8525755200548663?OpenDocument>

4 Under Article 3 of the Law of Associations – 1980, the registration of an association may be rejected if it: (1) negates the existence of Israel; (2) negates the democratic character of Israel; and (3) uses the association as a cover for illegal activities.

2) During the past year (September 2008 - September 2009), how many groups (including women's groups) have tried to register as associations? Has this figure increased or decreased compared to the previous year? Did any groups encounter delays or were they refused authorisation? If so, on what grounds? Are there effective remedies in cases where registration is denied/delayed? Please provide examples.

No data is available on the website of the Registrar of Associations⁵ as to the number of NGOs which tried to register over the past year, whether or not they encountered delays or were refused authorisation, and on what grounds. In March 2009, the Ministry of Justice (MOJ), Yad Hanadiv and the Joint Distribution Committee (JDC)-Israel signed an agreement to establish an online database of non-profit associations in Israel.⁶ According to the MOJ, the database will include governance decisions taken by NGOs as reported to the Registrar of Associations, including rules, aims, contact information, financial statements, lists of salaried employees, branches, and the manner in which the organisation uses its resources to advance its goals. According to the MOJ, around 25,000 organisations are currently registered in Israel, which employ about 230,000 salaried workers and 220,000 volunteers.⁷ The database is expected to be launched in 2010. No such plans were introduced to provide greater public access to information and transparency on the work of the Registrar of Associations.

3) What is the average time to register an association, according to its objectives?

No information available.

4) Did the authorities take any positive steps to register organisations that have been waiting for a long time?

No information available.

5 See: www.justice.gov.il/MOJHeb/RashamAmutot/odot.htm (Hebrew).

6 See: www.guidestarinternational.org/file_download/276. The Israeli Center for Third Sector Research at Ben Gurion University of the Negev also has an online database of NGOs but fees must be paid to BGU for searches and data analysis. See: <http://cmsprod.bgu.ac.il/Eng/Centers/ictr/Database/databank.htm>.

7 There is no official data available as to the number of Palestinian and Israeli Jewish organizations or women's rights or feminist organizations.

II - Life of an Association

1) During the past year (September 2008 - September 2009), were members of associations free to carry out their activities or did they face specific difficulties (e.g., in opening bank accounts, organising meetings, etc.) or harassment by the authorities (restrictions on free expression and assembly, restrictions on movement, arrests, etc.)? Were men and women treated differently in this regard?

Israel continued to impose severe restrictions on the freedom of movement of all Palestinians living in the OPT in 2008/2009. EMHRN Executive Committee Member Maysa Zorob, for example, has been prevented from returning to the West Bank since visiting Europe in early 2008 because she holds a Gaza passport. This is despite the fact that she lived in the West Bank before her trip, has never lived in Gaza, and was only issued the passport because her parents are from Gaza. Thousands of other Palestinians face the same situation as a result of a military order issued in 2007, which, like all other military orders, has not been published in the Official Gazette – Palestinians are thus effectively prevented from informing themselves about their rights. Moreover, Israel's total closure of the Gaza Strip made it almost impossible for Palestinian human rights defenders to attend human rights related events in the West Bank and abroad.⁸ Applications for travel permits by human rights defenders were routinely denied based on the grounds of undisclosed "security concerns". The process is arbitrary with rules and procedures unannounced and randomly changed as decided upon by the Israeli military.

The Israeli police and security forces detained 832 individuals, mostly Palestinian citizens of Israel, during demonstrations in Israel against the war on Gaza ("Operation Cast Lead"), which took place from 27 December 2008 to 18 January 2009.⁹ About one-third of

8 See: The Observatory for the Protection of Human Rights Defenders, Annual Report 2009, http://www.omct.org/pdf/Observatory/2009/obs_report09_02_MMO_eng.pdf?PHPSESSID=75a0914a09a2fdc23e6b7b69e7dc9042

9 Adalah, "Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza," September 2009, English summary available at: http://www.adalah.org/features/prisoners/GAZA_REPORT_ENGLISH_FOR_THE_NEWSLETTER.pdf

See also: <http://www.phr.org.il/phr/article.asp?articleid=688&catid=55&pcat=45&lang=ENG>

those detained were minors. Approximately 80% of those arrested were detained until the end of the proceedings against them, and more than half of this group were minors.¹⁰ Many instances of police violence against unarmed demonstrators were also documented during the clamp-down on demonstrations. In the Arab village of Kufr Kanna, for example, incidents were recorded of armed police officers using heavy-handed tactics against demonstrators, including striking them on the head and extremities without first attempting to communicate with them, spraying tear gas at protestors' faces, dragging individual protestors away and beating them with arms, helmets and metal batons.¹¹ During and after "Operation Cast Lead", the General Security Service (GSS) demanded that dozens of Arab political leaders and activists in Israel meet with them for investigations. At these meetings, GSS investigators threatened that these leaders would be held criminally accountable for any legal violation by any member of their political party or extra-parliamentary movement.¹² The GSS investigators asked the leaders to convey these instructions to the party activists and ordered them to prevent the activists from committing any breach of public order. Such threats constitute a deliberate attempt to infringe the rights of assembly of Arab citizens of Israel, including their right to organise, demonstrate and express their political opinion.

On 26 April 2009, six members of New Profile,¹³ an Israeli feminist and pacifist organisation, were arrested by Israeli police, their homes searched and their computers seized.¹⁴ Five of the six were released after interrogation on the condition that they have no contact with any other New

10 Ibid, Adalah report.

11 Meezaan Center for Human Rights (Nazareth, Israel), Report on the Anti-Gaza War Demonstrations, 2009 (Arabic). Available at: <http://www.meezaan.org/1/news-54.html>. The report contains photographic evidence of the injuries sustained by demonstrators.

12 Adalah sent an urgent letter to the Attorney General on 31 December 2008, demanding that he prohibit the GSS from making these threats. See: http://www.adalah.org/eng/pressreleases/pr.php?file=09_1_2_1. Also in the context of the Gaza blockade, in April 2008, the GSS interrogated and sought to intimidate one of the employees of Physicians for Human Rights-Israel, a Palestinian citizen of Israel who has worked with PHR-I for 20 years. During the course of the interrogation, the GSS demanded that PHR-I limit its activities to "humanitarian" and not "political" actions, and requested information regarding its structure and funding. See: <http://www.phr.org.il/phr/article.asp?articleid=583&catid=55&pcat=45&lang=ENG>

13 New Profile provides free counselling to Israeli youth who wish to become conscientious objectors, leave the army on grounds of mental health, or to replace the draft by volunteering for national civic service.

14 See statement of War Resisters International: <http://www.wri-irg.org/de/node/7517>

Profile members, and 10 other activists were summoned for investigation. The reason given by the police for the arrests was an investigation against the websites of New Profile (<http://www.newprofile.org>) and Target 21 (<http://www.target-21.h1.ru/>), a Russian language website, for violations of article 109 of the Israeli Penal Law, "incitement to evade military service", which carries a five-year prison penalty. The Attorney General's Office claims that these organisations aided and abetted draft-dodgers in lying to the Israeli army to receive an exemption from performing mandatory military service. The investigation was opened in September 2008 - the first time a criminal probe had ever been launched against a group for allegedly encouraging draft dodging - following the declaration of a "war on draft evasion" by Defense Minister Ehud Barak and IDF Chief of Staff Gabi Ashkenazi in summer 2008.¹⁵

In July 2009, Breaking the Silence (an NGO of veteran Israeli soldiers that collects testimonies of soldiers who served in the OPT since the Second Intifada regarding abuses against Palestinians and demands accountability for these actions) issued a report in which 30 Israeli soldiers who participated in the fighting in Gaza during "Operation Cast Lead" provided testimonies about their combat experiences.¹⁶ In these testimonies, the soldiers revealed sharp disparities between the official Israeli army version of events and actual "accepted practices" on the ground, including: the wanton destruction of hundreds of houses and mosques with no military necessity; the firing of white phosphorous gas in populated areas; the indiscriminate shooting and killing of innocent civilians; the illegal use of Palestinian civilians as human shields; and a permissive atmosphere that enabled soldiers to act without moral restrictions. Immediately after the publication of the report, the Israeli army and Ministry of Defense initiated a smear campaign against the organisation by depicting them as traitors and de-legitimising the testimonies as hearsay statements of anonymous sources.¹⁷ Further,

15 See <http://www.haaretz.com/hasen/spages/1020999.html>; see also the letter of New Profile Attorney Smadar Ben Natan to the State Prosecutor protesting the drastic step of initiating a criminal investigation in this case: <http://www.newprofile.org/english/?p=91>

16 See http://www.shovrimshatika.org/oferet/news_iem_e.asp?id=1

17 See: <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1246443810679>. Further, since April 2009, when PHR-I released a fact-finding report on the Gaza attacks and medically related IHL violations, the Israeli authorities have forbidden its doctors from entering Gaza to perform medical duties. Since September 2006, the authorities stopped Israeli Jewish doctors from entering Gaza and only allowed doctors who are Palestinian citizens of Israel to enter for these visits. According to PHR-I, the Israeli military

the Prime Minister and the Israeli foreign ministry have called on at least three European governments to stop providing funds to the organisation (Spain, Holland and the UK).¹⁸ Senior government officials have reportedly also begun to discuss the possibility of banning foreign funds to Israeli NGOs that engage in “political activity” such as criticising government policies.¹⁹

Since the beginning of 2009, Israel has also prohibited numerous Palestinian cultural and educational activities in East Jerusalem which were organised to mark the declaration of **Al Quds as the “Capital of Arab Culture 2009.”**²⁰ Like the orders closing down the renowned Orient House and its institutions, these events in Jerusalem were similarly banned under the Oslo Accords-era “Law Implementing the Interim Agreement on the West Bank and Gaza Strip (Restriction on Activity) – 1994.”²¹ All of the opening events due to take place on 21 March 2009 were prohibited, including a ceremony to light the opening flame, an opening ceremony at the Mahmoud Darwish Cultural Centre (in Nazareth), and a soccer competition at the Al-Mutran school. A general prohibition on all marches and assemblies in the Palestinian neighbourhoods of East Jerusalem was also declared.²² In this context, cultural activities which the Israeli Minister of Internal Security prevented from taking place included several events organised by the Palestinian National Theatre (Al Hakawati): the “Jerusalem is Ours” folklore festival on 21 February 2009 (prohibition order issued on 19 February 2009; published in the Official Gazette on 19 March 2009); the Ahmad Kanaan Art Exhibition on 22 March 2009 (prohibition order issued on 19 March 2009; published in the Official Gazette on 31 March 2009); the ceremonial opening of

authorities explained that the doctors are now prevented from entering Gaza due to the publication of the report.

18 See: <http://www.haaretz.com/hasen/spages/1104513.html> and <http://www.haaretz.com/hasen/spages/1110037.html>

19 See: <http://www.jpost.com/servlet/Satellite?cid=1248277938265&pageName=JPost%2FJPArticle%2FShowFull>

20 See: <http://www.alquds2009.org/>

21 See: “Law Implementing the Interim Agreement on the West Bank and Gaza Strip (Restriction on Activity) 1994” (as amended 1996, 1997). The 1994 version of the law in English is available at: <http://www.mfa.gov.il/MFA/Foreign%20Relations/Israels%20Foreign%20Relations%20since%201947/1995-1996/Law%20Implementing%20Agreement%20on%20Gaza%20and%20Jericho%20Are>

22 Ibid. Prohibition orders issued on 19 March 2009 and 20 March 2009, published on 31 March 2009. See also: Haaretz, 22 March 2009, as posted at: <http://www.alquds2009.org/e-printnews.php?id=169>

“Palestine for the Arts” on 23 May 2009; “Encouraging Palestinian Artists” on 28 May 2009 (prohibition order issued on 27 May 2009); and the Palestine Festival of Dance and Music/Popular Art Centre on 4-5 July 2009.²³ This sweeping power afforded to the Minister of Public Security under the “Law Implementing the Interim Agreement” is difficult to legally challenge, as the prohibition orders are routinely issued immediately before an event is scheduled to take place.

2) Do the government’s policies create an enabling environment? Has civil society’s (including women’s NGOs’) involvement in public debate increased or decreased this year? Please provide examples.

There is a robust civil society in Israel and a great deal of public debate.

3) Is prior authorisation required to obtain domestic or foreign funding? How much control did the authorities exercise in this respect between September 2008 and September 2009?

Prior authorisation is required to obtain state funding and some tax exemptions. NGOs need the Registrar of Associations’ prior approval in order to receive public funds. These procedures and requirements are not enumerated in the Law of Associations – 1980, nor are there any accompanying laws articulating the Registrar’s discretionary powers. This procedure allows the Registrar to thoroughly examine the financial expenditures of associations in order to issue the certificate, without which an association may not receive public funds. No prior authorisation from the Israeli government is required to obtain foreign funding. However, on 15 January 2008, the Knesset passed Amendment No. 11 to the Law of Associations – 1980, entitled “Donation from a foreign political entity”. The amendment imposes new and more detailed reporting requirements and obligations on NGOs for sums over NIS 20,000 received from foreign political entities.²⁴

23 Ibid. The Official Gazette of Israel and op. cit. See: The Civic Coalition for Defending the Palestinians’ Rights in Jerusalem, “Closure of Jerusalem Organizations: Assault of the Palestinian Arab Identity of Jerusalem,” report by the Center for Land Research and the Jerusalem Center for Democracy and Human Rights, April 2008 (Arabic) (“Report of the Civic Coalition”). See also “Can Jerusalem celebrate its Arab culture,” The Guardian, 10 April 2009, posted at: <http://www.alquds2009.org/etemplate.php?id=182>

24 The law defines a “foreign political entity” as including a foreign country or union of foreign countries; the Palestinian Authority (PA); and a

4) Are there any discriminatory measures or (social) practices that prevent women from getting involved in associations?

There are no discriminatory measures in the Law of Associations – 1980 that prevent women from getting involved in associations. However, the law is silent as to whether there should be equal or appropriate representation of women in the general assemblies or on the board of directors of associations. Some NGOs' by-laws include quotas of women for the organisations' governing bodies. Certain social restrictions and harsh criticism by the Islamic movement also limit the activities of Palestinian feminist and women's rights organisations in Israel, such as "Nisaa wa-Afak" (Women and Horizon, an Islamic feminist organisation) and "Aswat" (a Palestinian lesbian organisation).

III - Dissolution of an Association

1) Which authorities are legally competent to dissolve an association?

Articles 43-54 of the Law of Associations – 1980 provide that an association may be dissolved in two ways: voluntarily, by the General Assembly of the association itself, or involuntarily, by an order of the **District Court**. The application for dissolving an association shall be made by the **Attorney General or the Registrar of Associations** (art. 50-a), but only after the Registrar has warned the association in writing to remedy the position. If the association or its objectives are aimed at the negation of the existence or the democratic character of the State of Israel, no prior notice is required.

2) Have any associations been dissolved during the past year? If so, on what grounds? Were these cases taken to court, and if so, what was the outcome?

As previously reported, in September 2006, Israeli

corporation established by statute of one of the bodies of a foreign country or the PA. 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." Donations from individuals and businesses, especially from abroad, amount to around US \$1.5 billion per year and are responsible for 19% of the non-profit sector's funding. 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).

security forces raided the offices of **Ansar Al-Sajeen (The Prisoners' Friends Association)**, located in the Arab village of Majd Al-Krum in the north of Israel. They confiscated the association's property, including all of its computers, files, documents and furniture. The Israeli Defence Minister declared the organisation illegal and said that such a measure was "necessary in order to protect state security, public welfare and the public order."²⁵ In November 2008, the Defence Minister issued a "seizure order" for all of the property and any assets of the organisation pursuant to his authority under Regulation 120 of the Defence (Emergency) Regulations.²⁶

In July 2009, the Israeli authorities closed down the offices of the **Nidal Centre for Community Development**, located in the old city of Jerusalem, pursuant to the Prevention of Terrorism Ordinance - 1948.²⁷ The latest target of numerous Israeli closure orders in East Jerusalem,²⁸ the Nidal Center, which was established in 1999, provides educational and cultural services and skill-building opportunities to Palestinian youth. Israeli forces raided the offices and detained the Centre's director. The Centre was shut down because Israel claimed it was affiliated with the Popular Front for the Liberation of Palestine (PFLP), an organisation which has been declared a "terrorist organisation" under Israeli law.²⁹ According to the closure orders issued, the Centre will be closed until 11 September 2009.

²⁵ For more information, see: http://www.adalah.org/eng/pressreleases/pr.php?file=06_12_21.

²⁶ See: www.mod.gov.il/pages/general/pdfs/terror.pdf (Hebrew).

²⁷ See: <http://www.imemc.org/article/61131> and <http://www.alternativenews.org/english/2095-the-occupation-extended-the-closure-of-nidal-center-for-community-development-jerusalem-for-a-month.html>.

²⁸ East Jerusalem, which Israel unilaterally annexed in 1967, is considered occupied territory under international law. After the War in 1967, however, Israel extended the municipal borders, dissolved the Arab municipality, and extended Israeli law, jurisdiction and administration to East Jerusalem. Israel alone views Jerusalem to be its capital, an "undivided, united Jerusalem"; the international community does not recognize it as such. Over the years, Israel has gone to great lengths to create facts on the ground to deprive Palestinians of their right to live in the city and to secure a heavy Jewish presence in the occupied parts of the city. One such mechanism used by Israel to try to eliminate any Palestinian Arab character of the city is the closure of Palestinian NGOs and political and cultural institutions, as well as the prohibition of various activities that the Israeli Minister of Public Security deems to be conducted by the Palestinian Authority or on its behalf or under its auspices. While Palestinians will always view East Jerusalem as their political, economic, social, religious and cultural capital, today, after over 40 years of occupation, it has become increasingly isolated.

²⁹ See OCHA-OPT: <http://unispal.un.org/unispal.nsf/361eea1cc08301c485256cf600606959/022f041518274e58852575fc0070619e?OpenDocument>

According to the Civic Coalition for Defending the Palestinians' Rights in Jerusalem ("the Civic Coalition"), since August 2001, at least 26 organisations serving the Palestinian community in East Jerusalem have been closed, including the Orient House, the Jerusalem Chamber of Commerce and the Arab Studies Association, which were closed in 2001.³⁰ On 3 February 2009, the Minister of Public Security, pursuant to his power under the "Law Implementing the Interim Agreement on the West Bank and Gaza Strip (Restriction on Activity) - 1994" extended for an additional six months the closure orders against the Orient House, its institutions, and its related extensions, which, according to the Minister, are all representatives of the PA or acting on its behalf or under its auspices without the written permission of the Government of Israel.³¹

3) Does national legislation provide for measures that are less extreme than dissolution? (E.g., measures to suspend associations' activities.) If yes, are such measures implemented? Please provide examples.

Article 40 of the Law of Associations gives the Registrar the power "to appoint an investigator to investigate the activities, management, functioning, and financial position of the association based on the law, and to deliver a report thereon." Article 64 sets forth fines and criminal penalties for individuals and associations for two kinds of offences: the first one belongs to the category of fraud (individual responsibility) and the other has an administrative character. The administrative offences mostly concern duties that an association must perform vis-à-vis the Registrar (e.g., failure to submit a financial report or to hold the annual GA meeting or to carry out the orders of the investigator or the liquidator). No information is available about the implementation of these articles.

³⁰ See the Report of the Civic Coalition. According to the Civic Coalition's report, the closure of Palestinian institutions in East Jerusalem contravenes Israel's commitment to preserve them as stated in a letter attached to the 1993 Oslo agreement. According to the Palestinian negotiation team, the re-opening of the Jerusalem institutions is part of the "Road Map"; in fact, during Phase I, which should have been implemented in 2003, the Government of Israel "reopens Palestinian Chamber of Commerce and other closed Palestinian institutions in East Jerusalem based on a commitment that these institutions operate strictly in accordance with prior agreements between the parties." See the full text of the Road Map at: http://news.bbc.co.uk/2/hi/middle_east/2989783.stm

³¹ The Official Gazette of Israel (Reshumot), 1 March 2009, available on the website of the Ministry of Justice: <http://www.justice.gov.il/mojheb> (Hebrew)

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**

1. Cancel the state of emergency in place since 1948 and cease using the “Emergency (Defence) Regulations [EDR] – 1945” to close down NGOs, without due process of law;
2. 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;
3. Cancel the “Law for the Prohibition of Terror Funding – 2005” as it contradicts fundamental principles of criminal law;
4. Cancel and cease using the “Law Implementing the Interim Agreement on the West Bank and Gaza Strip (Restriction on Activity) – 1994” to close down Palestinian NGOs in East Jerusalem and prohibit Arab cultural activities in the occupied part of city;
5. Implement the recommendations of the UN Human Rights Council’s Universal Periodic Review Working Group.

- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**

1. Ensure that refusal to register an association (according to Articles 3 and 4 of the Law) complies with Article 22 of the ICCPR and Article 7 of CEDAW;
2. 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 NGO sector;
3. Cancel Articles 38(A) and 38(A)(a) of the “Law of Associations – 1980”, which give the Registrar of Associations the power to obtain every document from an NGO as he deems relevant, because these authorities constitute an undue intervention by the government in NGO activities;
4. Provide greater public access to information and transparency on the work of the Registrar by making it available on the Registrar’s 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.
5. Close the investigation into / prosecution of New Profile activists, stop the General Security Services (GSS) harassment of Arab and Jewish human rights defenders, demonstrators and political activists, and hold police and security forces accountable for abuses through independent investigations.

- **WITH REGARD TO PUBLIC STATE AND FOREIGN FUNDING TO NGOS:**

1. Set forth clear, written standards or criteria in order to ensure equal state funding for NGOs for all sectors;
2. Cease interference with foreign governments regarding funding to NGOs such as Breaking the Silence, and do not introduce or support legislation to further restrict foreign funding to thousands of NGOs.



JORDAN

Following criticism from both Jordanian and international civil society about the 2008 Societies Law, the Government of Jordan held extensive talks with civil society associations about possible amendments.¹ Civil society groups had questioned in how far the Law complied with Jordan's international obligations and submitted a number of demands, which, however, were ignored by the government and the parliament. The amendments that were eventually introduced were only superficial and did not change the essence of the Law or remove any of the restrictions imposed on civil society.² On the contrary, the Societies Law (No. 51 of 2008) and the 2009 amendments to the Societies Law, ratified by King Abdullah II on 16 September, further consolidated the existing restrictions on citizens' right to form associations. The Law does not leave much room for associations to work independently of the relevant councils or ministries, whose approval is required before associations can carry out any activities. The Societies Law stipulates that prior authorisation must be obtained for both the establishment of an association and all of its activities.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

The government has justified aspects of the Societies Law which hinder the work of associations by pointing to the need to achieve and reinforce accountability and transparency and to coordinate the activities of associations. It has also argued that the Law's provisions serve to fight terrorism, extremism and organised

¹ See: Euro-Mediterranean Human Rights Network - Human Rights Watch joint letter on the occasion of the EU-Jordan Association Council, 30 July 2008, available online at <http://www.euromedrights.net/usr/00000022/00000051/00002421.pdf>.

² See: Euro-Mediterranean Human Rights Network - Human Rights Watch joint memorandum, "Replace Law on Associations Proposed Amendments Not Sufficient to Meet Rights Obligations", 19 May 2009, online at <http://www.euromedrights.net/pages/560/news/focus/70042>; see also: Euro-Mediterranean Human Rights Network, Club of Madrid, Human Rights Watch and the Observatory for the Protection of Human Rights Defenders (a joint programme of the International Federation for Human Rights - FIDH and the World Organisation Against Torture - OMCT), joint statement, "Freedom of Association in Jordan: King Abdullah II Should Reject New Societies' Law", 22 July 2009, online at <http://en.emhrn.net/pages/560/news/focus/70806>.

crime, to safeguard public security, political stability and the social order, and to prevent any infringement on the authority of the state. Moreover, the Government has claimed that the Law protects Jordan's national sovereignty and prevents foreign interference in domestic affairs. Some of the legal obstacles to freedom of association may have been based on legitimate concerns. However, these concerns conceal the government's true intentions, namely to control and direct the activities of associations, in violation of the right to association.

I - Formation of Associations

Restrictive legislation is increasingly used to obstruct, slow, and sometimes altogether prevent the formation of associations. The Societies Law No. 51 for the year 2008 includes many such restrictions:

- a- Article 6 of the Law prohibits the existence of unregistered associations and mandates that associations register before being allowed to undertake any activities. This violates international standards on the freedom to form associations.
- b- The Law stipulates that associations can only obtain legal status through registration; however, the registration procedures are burdensome and unclear.
- c- Article 7 limits the freedom to form associations by imposing restrictions on the founders of associations. The Law stipulates that the founders must be Jordanian, 18 years of age or above, and that they cannot have been convicted of any misdemeanour, offence, or crime.
- d- Article 11 of the Law grants the administrators of the Registrar, which is not part of the judiciary, the right to refuse to register any association without providing any reason for the refusal. This leads to abuses of power and prevents the judiciary from examining the Registrar's decisions.
- e- Article 11 also forces applicants to contest a refusal of registration in the Supreme Court, rather than in the regular courts, because the Supreme Court only reviews the procedure's lawfulness.
- f- Article 29 of the original law prohibits the formation of non-Muslim and non-Christian associations. This is discriminatory and constitutes a restriction on freedom

of belief, an essential right stipulated by international conventions.

II - Life of Associations

Even if an association is successfully established despite the obstacles mentioned above, the Societies Law imposes many restrictions on the association's activities. These restrictions take various forms:

- 1- Outright prohibitions of specific fields of activity: Article 3 of Law No 51 of 2008 prohibits associations from engaging in any kind of political activity related to the goals of political parties, but does not set any criteria for "political activities". This obstructs associations' activities and makes it easier for the government to justify the dissolution of associations, as promoting democracy, encouraging political participation and protecting human rights are some of the most important functions of civil society associations.
- 2- Interference by imposing supervision: The Law allows for unfair interference in the activities of associations by giving the relevant ministries the power to supervise them. This interference manifests itself as follows:
 - a- The relevant ministry and Controller of the Registry have to be notified in advance of the date, place and agenda of any meeting that an association's board plans to hold. If this does not occur, the meeting is considered illegal (Article 14 of the Association Law No. 51 for the year 2008)).
 - b- Associations are required to receive the approval of the relevant ministry before the following actions can be considered valid and legal: (1) a decision to elect a new board of directors, and (2) a decision to amend any of the association's rules and regulations. (Article 14 of the Jordanian Association Law No. 51 for the year 2008)
 - c- The Law obliges associations to submit their annual reports, work plans and budgets to the relevant ministries at the beginning of the year. Annual reports must include the association's achievements, activities, sources of income,

expenses and annual budget, which must have been audited by a certified accountant (Article 16 of the Jordanian Association Law No. 51 of 2008).

d- The Law grants the concerned minister the right to replace the elected board of any association with an interim board (Article 19 of Law No. 51 of 2008).

e- Associations' bank accounts are not confidential and can be viewed by the relevant ministries and the Registrar (Article 17-e of the Amendment Law No. 22 of 2009). Ministries' right to monitor associations allows for frequent and unjustified interference in the activities of undesirable associations.

f- The Law allows the government to delegate officials to attend associations' general meetings (Article 14 of Law No. 51 of 2008).

g- Some of the decisions taken by the general assemblies of associations are not considered valid unless approved by the government. Associations must submit copies of any amendments to their basic rules and regulations within 15 days after the general assembly meetings during which such decisions were taken. If an association does not receive a response from the relevant ministry within 60 days, a proposed amendment is considered valid (Article 14 of Law No. 51 of 2008 and its amendment, Law No. 22 of 2009).

3- Closure and dissolution are the harshest tools used against associations. The amendments to the Societies Law give the Council (which is not part of the judiciary) the right to dissolve associations even for insignificant violations (including the receipt of foreign funding without the government's approval), and even if it is the first time the association has committed such a violation. The Law stipulates that only the Supreme Court can review appeals against the dissolution of an association (Article 20 of Law No. 51 of 2008).

III – Obtaining Funding

The Societies Law can be used to limit associations' ability to obtain the necessary funding to carry out their activities.

1- Advance approval: The Law stipulates that associations must submit a request for approval from the relevant ministry to receive donations or any kind of funding from non-Jordanian sources. The Law gives the ministry the right to refuse requests without providing any justification, and stipulates that only the Supreme Court of Justice can review complaints about refusals, thus denying the associations the right to a two-level trial which would guarantee fairness.

2- No financial support is offered to associations: The Law does not encourage associations to diversify their funding sources, and does not offer tax and custom exemptions or facilitate investment options that would allow associations to fund their activities themselves. The Law also does not encourage private sector contributions, as donations are not tax deductible. Moreover, while the Law established a donations fund, it leaves it to the discretion of the fund's management to decide what associations are eligible to benefit from it.

IV - Practices

Despite the limited implementation of the 2008 Societies Law (as this Law entered into force in December 2008 only),³ the Ministry of Social Development dissolved three associations for violating provisions of the law.⁴ Moreover, the Ministry did not approve several new board members of the Arab Women Association, and after the Law for Human Rights Group obtained the cabinet's approval to receive funding for one of its projects, the Ministry of Social Development demanded to be informed in detail about all project activities, reports, and all other details.

In this regard, the EMHRN's 2009 Shadow Report on the implementation of the Istanbul Plan of Action notes that women's rights organisations in the South and East Mediterranean, including in Jordan, face increasing pressure. This is due to a general political climate that restricts freedom of expression and association and conservative trends and interpretations of women's roles in society that impose limits on their work and activities in the public, civil and political spheres.

3 About 150 associations have been registered since December 2008.

4 Interview with civil servants from the Ministry of Social Development, August 2009. No additional information was made available.

Moreover, the granting of security permits for associations' activities has been increasingly restricted. The security services demand very specific information from associations, and, for example, require them to submit a list of the names and nationalities of all participants in an event, the names of instructors, details about papers that will be presented and topics that will be discussed, etc. Even if an association is able to submit all required information, a refusal is still possible. The authorities have refused to grant permits for many activities, prompting most associations to hold their events on their own premises, and thus preventing them from reaching their target audience.

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**
 1. Endorse all international human rights treaties and agreements, and lift any reservations to them. Endorse the additional protocols pertaining to individual complaints as a basic insurance for the protection of human rights. Highlight the level of importance attached to these treaties and agreements in national legislation by including them in the Constitution.
 2. Ensure that any legislation aiming at fighting terrorism respects Jordan's international human rights commitments and other relevant standards; and ensure that such legislation does not prescribe any restrictions on peaceful activities.
 3. Establish a separation of powers between the executive, legislative and judiciary, and stress the independence of the judiciary as one of the guarantors of human rights.

- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**
 1. Revise the Societies Law, in consultation with all relevant parties (including NGOs), in order to comply with international standards on the right to association. In particular:
 - The right to establish an association through simple notification without the need for a prior license. Only the regular courts should review cases related to the formation and activities of associations and examine refusals of registration, closures, dissolutions, or legal violations.
 - Associations' freedom from ministerial or government interference in their meetings.
 - Internal affairs of associations should be monitored only by their general boards and external monitoring should be confined to the regular judiciary.
 2. Acknowledge associations' right to get domestic and foreign funding without a prior licence and subject only to notification, with provisions that guarantee a commitment to transparency and respect for the law.



LEBANON

Lebanon certainly has the most liberal associations law among the countries of the South and East Mediterranean region. Overall, this law is well implemented in practice - even though, in the past, some groups have faced delays when attempting to formally register as associations. It is also worth mentioning that the political events of 2007-2008 have not had a negative impact on the development of civil society. On the contrary, the appointment of a former member of a civil society association as the head of the Ministry of Interior has led to improvements with regard to freedom of association in 2008-2009.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

A national unity government was formed following the Doha agreement of spring 2008. However, the mandate of this government was limited by several factors, most notably by the Parliamentary elections in summer 2009 that would lead to the formation of a new cabinet. Consequently, the Doha government's lifetime was short, and its activities focused on the elections.

Nonetheless, Lebanese civil society associations were able to welcome Ziad Baroud as the head of the Ministry of Home Affairs. Baroud is a young lawyer known for his commitment and dedication to human rights (and civil rights in particular), and a founding member of the "Association pour la Défense des Droits et des Libertés" (ADDL), an association created in 1995 to promote and defend fundamental liberties and human rights in Lebanon.

A month after his nomination, the new minister achieved the implementation of the recommendation related to Circular No. 10 (2006), which facilitates the creation of associations.

I - Formation of an Association

Freedom of association in Lebanon is guaranteed by the Law of 3 August 1909, the so-called “Ottoman law”, which was inspired by the French law on associations and is enshrined in Article 14 of the Constitution. The 1909 law is liberal in that it allows for associations to be created through a simple notification or declaration. Article 2 of the Law on Associations states that **“the formation of an association does not require any preliminary authorisation, but it is compulsory to notify the government about its formation once it is created.”**

Despite its liberal nature, however, and unlike the French law, the Lebanese law forbids “secret” or undeclared associations and gives the government the right to dissolve them.

From September 2008 to September 2009, the Home Affairs Minister implemented Circular no.10/am/2006, which aims to simplify the process of forming an association and has achieved significant progress in this field. In past years, the founding members of an association had to go to the Social Affairs Ministry with documents certifying the creation of their organisation and clearly stating their areas of work. These documents were then transferred to the relevant ministry and/or trade union, depending on the nature of the main activity of the association in question. The General Security police also intervened in the process and conducted checks on the founding members of the association. It could take months, if not years, before the **“Ilm wa khabar”** (the declaration receipt) was sent to the association’s members.¹

Today, the length of this procedure has been reduced. The founding members only have to bring two copies of the rules and regulations of their association and a piece of identification to the Home Affairs Ministry, which asks for the advice of General Security Directorate before it publishes the receipt of the declaration² in the Official Gazette, within a month at the latest.

1 However, Article 2 of the Lebanese Law on Associations considers an association to be established at the time that its rules are signed by the founders.

2 The law requires that a receipt be issued immediately, without any investigation. However, the investigation is not compulsory for the issuance of a receipt.

Thus, the ADDL association finally received its receipt in 2009, after having waited for 13 years. It is worth noting that the receipt was approved and published in 2009, but that it carried the original date of the declaration (18 March 1996), in a clear and strong indication that the law on associations should be respected.

An estimated 588 associations, including feminist groups, presented themselves for declaration under Baroud’s mandate. None of the groups were refused authorisation.³

Foreign organisations are divided into two categories: foreign organisations and branches of foreign organisations. Those who do not hold Lebanese citizenship can still form an association, and the average registration time is now five months instead of three years. An estimated 100 associations are foreign organisations.

Based on a joint study published by the Ministry of Social Affairs, the United Nations Development Programme and the American University of Beirut in 2008, about 5,623 associations were created in Lebanon between 1900 and 2007, including about a hundred international NGOs.⁴

Associations can be categorised according to their main activities as follows: 28.53% social services; 20.06% culture, science, education, agriculture; 15.20% local development; 6.88% awareness raising in several fields; 6.84% health services; 4.32% miscellaneous; 4.26% arts, music, scouts, tourism, sports; 3.74% politics, law; 3.25% humanitarian assistance; 3.23% environment and culture; 2.79% religion; 0.90% human rights.

However, certain groups still have not received their **“Ilm wa khabar”** as their activities are considered to be contrary to Lebanese law. Thus, the HELEM Association, which defends LGBT rights, has been awaiting its receipt since 2005. The Home Affairs Minister cannot issue a receipt, since homosexuality is prohibited under the Lebanese criminal code.⁵

3 www.LEBANON-SUPPORT.org

4 MOSA/UNDP Project “Capacity Building for Poverty Reduction” and IBSAR (Center for Nature Conservation and Sustainable Futures), AUB NGO Roster 2008

5 Article 534 of the Lebanese criminal code prohibits sexual relations

II - Life of an Association

Associations in Lebanon are free to hold meetings without having to obtain a preliminary authorisation from the authorities. They are allowed to open bank accounts and to receive funding from national and international donors.

However, at the beginning of each year, associations are required to disclose their accounts for the preceding year and to submit their budgets for the following year (as approved by their general assemblies) to the authorities. A list of members must also be presented to the Home Affairs Ministry – a provision which is questioned by some NGOs, but which the authorities consider a mere formality.

The role of charities and feminist, cultural and public awareness associations is complementary to the role of the state. They participate freely in the development of civil society through interventions in the media and various activities, and their number is increasing.

The authorities themselves are more aware of the fact that civil society associations must and can be involved in public debate. The most significant example is that of the National Project for Human Rights, which was launched by the Lebanese government in close cooperation with relevant civil society organisations. During the summer of 2008, different associations were invited on several occasions to participate in the sessions held by the human rights parliamentary commission. This project is still ongoing.

Another example is provided by the involvement of the Lebanese Council of Women,⁶ which was founded in 1952 and comprises 170 NGOs throughout Lebanon, in calling for an increased number of women in Parliament and in the Council of Ministers during the last legislative elections. The LCW met with representatives of practically all Lebanese political parties to promote better representation of women at the parliamentary and ministerial levels. However, no decision has so far been taken at the political level to achieve this goal.

which are "contrary to the laws of nature". These acts carry a sentence of up to one year in prison. This prohibits homosexuality, as well as sodomy and fornication.

6 In French: Conseil des Femmes Libanaises.

Despite all the positive measures already mentioned and the progress made in promoting freedom of association in Lebanon, an incident took place during an event organised by the Support of Lebanese in Detention and Exile (S.O.L.I.D.E.) association and the Committee of Parents of Lebanese Detainees in Syrian Prisons on 11 April 2009. On the occasion of the fourth anniversary of their sit-in in the centre of the capital city of Beirut, the Committee of Parents, supported by S.O.L.I.D.E., held a press conference followed by a march towards Parliament to submit a letter calling for the creation of a National Commission for Victims of Enforced Disappearance. The police used force to prevent participants from reaching the Parliament. It was only after clashes with the police that a small delegation received permission to enter the Parliament.

III - Dissolution of an Association

The Law on Associations allows for the dissolution of an association under the following circumstances:

- When the lifetime of an association is limited by its working rules and comes to an end.
- By a decision of the association's general assembly.
- By a decision of the criminal court, based on Articles 336, 337 and 338 of the criminal code, which prohibit the formation of secret associations.
- By a governmental decree following the refusal of the authorities to issue a receipt, in cases where the association's activities correspond to the activities prohibited by Article 3 of the Law on Associations. The government can issue a decree dissolving a political association if its members have committed crimes against the security of the state while using their political status.

According to the information received, no association was dissolved during the time period covered by this report.

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**
 - Abolish special courts, military tribunals and justice council rulings.
- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**
 - Put an end to police interference in the registration process of associations.
 - Ensure that all individuals, including sexual minorities, can create associations to defend their rights independently of the existing legislation, which requires reform.
 - Remove obstacles to the freedom to demonstrate in public.
- **ENVIRONMENT REQUIRED FOR THE SUSTAINABLE DEVELOPMENT OF CIVIL SOCIETY:**
 - Encourage the participation of associations in public life, in particular when it comes to the development of public policies.



LIBYA

The political system of Libya is unique within the Euro-Mediterranean region. Libya does not have any independent civil society – Law 71 of 1972 prohibits the formation of any group that promotes ideas that undermine the Revolution, and provides for the death penalty for anyone who creates, joins or supports an association prohibited by law (Article 3). Nevertheless, and unlike previous years, 2009 witnessed hesitant but interesting (in the Libyan context) diplomatic overtures and improved relations with the US and Europe. Despite these positive steps, however, Libya cannot be said to have improved its human rights record. Although it has released a number of political prisoners and has tolerated a degree of freedom of expression, Libya continues to be ruled by the Revolutionary Committee system, which concentrates power in very few hands, and ultimately in the person of the leader, Muammar al-Gaddafi. As a result, the right of association continued to be denied or severely restricted for all individuals, and the recommendations of last year’s Review remain valid.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

Over the past year, Libya, which has a self-proclaimed government based on People’s Committees, has continued to focus on improving relations with the Western world, and on presenting itself as a modern nation with opportunities for trade, investment and oil exploration.

The United States has lifted the last remaining sanctions against Tripoli, and a senior American official said in July 2009 that Washington would seek military cooperation with Libya to address the threat posed by terrorism and Al-Qaeda in the Maghreb.¹

¹ AFP, “US wants greater military cooperation with Libya: Feltman”, 26 July 2009.

In July 2009, the EU and Belgium announced that they would provide 80 million euros to support Libya in managing illegal migration and protecting asylum seekers on humanitarian grounds.²

At the same time, Italy has struck a deal with Libya to curb migration. Under this agreement, Italy intercepts refugees at sea (most recently in late August 2009) and transports them to Libya, in spite of the latter country's poor human rights record and its torture, ill-treatment and forced repatriation of asylum seekers, refugees and migrants.

Moreover, for the first time in a number of years, Libya has allowed Amnesty International and Human Rights Watch to visit the country. In a press release issued in May 2009, Human Rights Watch stated that, "[f]or the first time in memory, change is in the air in Libya", and cited increased possibilities for public debate, an increasing oversight role by the Justice Ministry, and the emergence of a relatively bold lawyers' association as evidence for its assessment.³

Nevertheless, all officially recognised cultural, charitable and sports associations remain financed and controlled by the state and by the security apparatus. Libya remains one of the Arab states that have no real civil society, other than well-controlled charity, sports or cultural associations, and no independent human rights organisations. The only human rights group based in Libya is the Human Rights Society, which is part of the Gaddafi International Charity and Development Foundation (GICDF) and headed by Saif al-Islam, the son of Muammar al-Gaddafi.

Even the semi-private Al-Ghad media outlet (audio-visual and print) owned by Saif al-Islam el-Gaddafi was nationalised in May 2009 and its leadership was replaced.⁴

Prison conditions in Libya are poor. On 21 May 2009, for example, Fat'hi el-Jahmi, a prominent political prisoner, died under suspicious circumstances after

the Libyan government had hastily evacuated him to Amman, Jordan, from the hospital where he had been detained.⁵ El-Jahmi had been jailed since 2002, in spite of his deteriorating health. Also in May 2009, Ali Mohamed al-Fakheri, a Libyan prisoner who had been held in secret US and Egyptian detention before being returned to Libya, was found dead in his cell in Abu Salim prison.⁶ The official cause of death was suicide, but no postmortem was carried out even though the family had requested it. Developments have also occurred in the high-profile case of 12 men who had been detained in 2006 for planning a peaceful demonstration. In June 2008, a Tripoli state security court sentenced one of the men, Idris Boufayed, to 25 years in prison on charges of planning to overthrow the government; the rest of the detainees received sentences of up to 15 years in prison. By March 2009, all 12 were freed, but 'Abd al-Rahman al-Qataiwi, who was held with the 12 men, had disappeared. Those who have been released do not appear to have undertaken any more advocacy work. They remain under surveillance and have been subjected to harassment and pay cuts at their workplaces.⁷ However, at least one of them has resumed writing for an online newspaper: prominent intellectual Jamal al-Haji wrote an obituary for Fat'hi el-Jahmi in which he cast doubt on government claims concerning el-Hajji's death.⁸

1) Is there any specific legislation that affects freedom of association? Which related laws (e.g., anti-terrorism law, emergency law, criminal law, publications law) negatively affect freedom of association? How?

Law 19 of 2001 governs the formation of social, cultural, sports and charitable associations.⁹ It requires every NGO

5 See Euro-Mediterranean Human Rights Network and the Observatory for the Protection of Human Rights Defenders "Deep concern about the death of human rights defender Fathi El-Jahmi: United Nations and Libyan authorities urged to react", 3 June 2009, available at http://en.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3760.html

6 Human Rights Watch, "Libya/US: Investigate Death of Former CIA Prisoner", 11 May 2009, available online at <http://www.hrw.org/en/news/2009/05/11/libya-us-investigate-death-former-cia-prisoner>

7 Interview with Libyan League for Human Rights, 9 August 2009.

8 See: <http://www.maktoobblog.com/redirectLink.php?link=http%3A%2F%2Fwww.libya-watanona.com%2Fadab%2Fjalhajji%2Fjh22069a.htm>

9 See: <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=97>

3 Sarah Leah Whitson, "Tripoli Spring", Human Rights Watch, 28 May 2009.

4 See: <http://www.libya-alyoum.com/look/article.tpl?IdPublication=1&NrIsue=1&NrSection=3&NrArticle=22182&IdLanguage=17>.

to obtain official permission to operate and regulates the association's budget, fund-raising activities, board composition, meetings and resolutions. Scientific societies and scout organisations are exempt and deal directly with the relevant authorities.

Other laws and regulations affecting the freedom of association include various restrictions in the 1969 Constitutional Proclamation; the Declaration of People's Power; the Charter of Human Rights; and Law 20 on the strengthening of freedoms. They all prohibit the formation of associations with an ideology at variance with the principles of the al-Fatih Revolution of 1969.

Law 71 of 1972 criminalizes partisan activism,¹⁰ which is defined as activities that run counter to the principles of the Libyan revolution and is punishable by death. In 1975, the Penal Code was amended to include articles of this law¹¹ and thereby became one of the most important obstacles to the formation of associations.

On 29 June 2009, the General People's Committee (GPC – the government) moreover issued Decree No. 312, which requires authorisation from the ministries of industry, general security authority, tourism authority, and oil industry for any event or seminar.¹² While the decree seemed to target industrial fairs and business events, it was issued shortly after a seminar on civil society in the town of Derna, where participants had criticised the lack of freedom in the country. A government newspaper, Al-Shames, accused the Derna Culture House event of being “nothing more than a cover for the real aim of this festival...which is to lament the absence of civil society based on an imported, rejected model, and to call for its adoption.” Following protests by academics and intellectuals, the government denied that the law targeted cultural associations.¹³

2) How do international and regional legal bodies (such as UN Committees, the UN Human Rights Council Universal Periodic Review or the African

Commission on Human and Peoples' Rights) rate the situation with regard to freedom of association? If any such bodies have made recommendations, have they been implemented by the authorities? If yes, how? (Legislative amendments, repealing of laws, etc.) If no, how do you explain the non-implementation of the recommendations?

Libya has signed all major UN human rights conventions, with some reservations. In practice, however, it has not fulfilled its obligations under these conventions.

Following its review of Libya's fourth periodic report in October 2007, the UN Human Rights Committee (CCPR) urged Libya to take all necessary measures to ensure the right to freedom of association, and to abolish legal provisions stipulating the death penalty for the establishment of associations whose ideology opposes the principles of the 1969 Revolution.¹⁴

In January 2009, the UN Committee on the Elimination of Discrimination Against Women reviewed Libya's combined second to fifth periodic report, noted the absence of any NGO representation, and urged Libya to cooperate with civil society during the preparation of its next periodic review.¹⁵

Moreover, the Special Rapporteur on Human Rights Defenders of the African Commission for Human and Peoples' Rights said in a report that most African countries had not allowed for real freedom of association and expressed her hope for better cooperation between the state and human rights defenders in several countries, including Libya.¹⁶

¹⁴ International Covenant on Civil and Political Rights, Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Libyan Arab Jamahiriya”, UN Doc. CCPR/C/LBY/CO/4, 15 November 2007, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/453/27/PDF/G0745327.pdf>.

¹⁵ Committee on the Elimination of Discrimination against Women (CEDAW), “Concluding observations of the Committee on the Elimination of Discrimination against Women – Libyan Arab Jamahiriya”, UN Doc. CEDAW/C/LBY/CO/5, Forty-third session, 19 January-6 February 2009, available online at <http://daccessdds.un.org/doc/UNDOC/GEN/N09/227/84/PDF/N0922784.pdf?OpenElement>.

¹⁶ Intersession Report by Mme Reine Alapini-Gansou, Special Rapporteur on the Rights of Human Rights Defenders in Africa, May 2008-November 2008; available online at <http://www.achpr.org/english/Commissioner's%20Activity/44th%20OS/Special%20Rapporteurs/Human%20Rights%20Defenders.pdf>

¹⁰ See: <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=55>

¹¹ See: <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=68>

¹² See: <http://www.gpc.gov.ly/myfiles/2009/pdf/decision/312-1.pdf>

¹³ See: <http://www.almanaralink.com/new/index.php?scid=1&nid=17096>

However, the Libyan authorities have consistently claimed that there is no need for NGOs as the country is ruled by direct democracy. They have also emphasised that the need to protect the principles of the revolution remains paramount.

I -Formation of an Association

1) Does the law require prior authorisation for an association to register?

Yes, Law 19 of 2001 and Regulatory Act 73 of 2002 require a written application to the government, with full details on members and a mission statement.¹⁷ A prison sentence of three months and a fine are imposed if activities are begun without a permit. An application is considered rejected if no response is given within 60 days.

In July 2009, the government ordered a reshuffle of the committee in charge of examining the applications.¹⁸ No further changes were announced.

2) During the past year (September 2008 - September 2009), how many groups (including women's groups) have tried to register as associations? Has this figure increased or decreased compared to the previous year?

According to Libyans in exile, the families of the victims of the Abu Salim Massacre (see below) – who have been pressing for information on the fate of their relatives – have established a committee and have applied to the authorities in Benghazi to be recognised as an NGO. They have not yet received a response to their application and have faced increasing pressure to abandon their campaign.

In August 2009, an association was set up for the support of relatives of war victims. Led by Khamis Muammar al-Gaddafi, a police officer who is one of the leader's younger sons, Athal Association and the Gaddafi Development Foundation jointly announced plans for the compensation of those who were wounded or died

during Libya's war with Chad.¹⁹

No additional information was available on other associations' attempts to register.

3) Did any groups encounter delays or were they refused authorisation? If so, on what grounds? Are there effective remedies in cases where registration is denied/delayed? Please provide examples.

Registration of an association is a lengthy process as it includes security checks of the founding members of the association (the law requires a minimum of 50 persons) by the Internal Security Agency. Some associations are known to have continued their - mostly cultural - activities by applying for permission for each individual event, or by operating unofficially, mainly as privately run charitable organisations.

Apart from the case of the Abu Salim victims' families (see above), no information was available about instances where delays occurred or associations were refused registration.

4) What is the average time to register an association according to its objectives?

The maximum period for the processing of applications is 60 days, but, according to Libyan activists in exile, this can be unofficially extended for many years. For instance, a member of a small heritage society said in a public meeting that his group had applied for a license in 1991 and had still not received a reply.²⁰

5) Did the authorities take any positive steps to register organisations that have been waiting for a long time?

No positive steps are known to have been taken.

17 See: <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=97>

18 See: <http://www.gpc.gov.ly/myfiles/2009/pdf/decision/334-1.pdf>

19 See: <http://www.almanaralink.com/new/index.php?scid=1&nid=17175>

20 See: <http://www.almanaralink.com/new/index.php?scid=42&nid=191>, Hussein el-Mizdawi video.

II - Life of an Association

1) During the past year (September 2008 - September 2009), were members of associations free to carry out their activities or did they face specific difficulties (e.g., in opening bank accounts, organising meetings, etc.) or harassment by the authorities (restrictions on free expression and assembly, restrictions on movement, arrests, etc.)? Were men and women treated differently in this regard?

As noted above, the government passed a decree restricting freedom of assembly in June 2009, and Libyan activists in exile reported that some of the speakers and participants of the Derna Culture House event in May were briefly held for questioning.

Similarly, a student seminar on voluntary work which had been scheduled to take place at Garyounis University in Benghazi in early June was apparently cancelled at the last minute because one of the speakers was Ragab el-Gurushy, whom press reports described as a former prisoner of conscience. Three weeks later, the dean of the university was replaced by government decree 300/2009.²¹

According to Human Rights Watch and Libyans in exile, the Benghazi-based committee of the families of the victims of the Abu Salim Massacre (cf. above) was the only group with a human rights agenda that was active during the past year.²² The group was awaiting registration and, despite growing pressure, continued to hold sit-ins and to demand an investigation into the 1996 Abu Salim prison riot. An estimated 1,200 detainees were killed during this riot and only about 800 of them have been officially declared dead. Security forces have raided the homes of members of the association and, in August, two brothers of an Abu Salim victim were briefly detained, ostensibly in connection with a stolen car. The committee has nevertheless carried on with its campaign and issued a letter in mid-August accusing the security forces of threatening its members and

raiding their homes.²³ In this specific case, the fact that many of the activists are female relatives may be the reason why the government tolerates the group to a certain extent and has provided some families with new information about the deaths of their relatives.

2) Do the government's policies create an enabling environment? Has civil society's (including women's NGOs') involvement in public debate increased or decreased this year? Please provide examples.

The Abu Salim relatives committee notwithstanding, it is clear from the incidents in Derna and Garyounis (see above) that, while the government may tolerate a certain degree of freedom of expression or assembly, it continues to maintain a firm grip on civil society in general.

3) Is prior authorisation required to obtain domestic or foreign funding? How much control did the authorities exercise in this respect between September 2008 and September 2009?

Article 15 of Law 19 restricts fund-raising exclusively to sources that have been approved by the authorities, and Article 14 requires associations to obtain permission before accepting donations from a foreign source.

No information was available on the implementation of these articles.

4) Are there any discriminatory measures or (social) practices that prevent women from getting involved in associations?

There are no discriminatory measures targeting women, but social customs often prevent women from participating in public activities. However, many charitable and humanitarian organisations are run by influential women, and in particular by women who have had a role in promoting the revolution. On 3 September 2008, Ayadeena, a new charitable association established by 72 well-connected women in Benghazi, was licensed by Decree 498 to provide economic and educational support to disadvantaged families.

²¹ See: <http://www.gpc.gov.ly/myfiles/2009/pdf/decision/300-1.pdf>

²² Sarah Leah Whitson, "Tripoli Spring", op. cit.

²³ See: <http://www.almanaralink.com/new/index.php?scid=1&nid=17142>.

III - Dissolution of Associations

1) Which authorities are legally competent to dissolve an association?

According to Law 19, the Secretariat of the General People's Committee and the local People's Congresses may issue an order to close the headquarters of a society or its branches for a period not exceeding three months (renewable) as an interim measure in preparation for its merger or dissolution. In addition, the Revolutionary Committees (the armed wing of the government) have the power to dissolve any association that they consider a threat to the "authority of the people".

2) Have any associations been dissolved during the past year? If so, on what grounds? Were these cases taken to court, and if so, what was the outcome?

No dissolutions of associations are known to have taken place. It must be noted, however, that no truly independent associations or human rights groups are allowed to officially exist in Libya.

3) Does national legislation provide for measures that are less extreme than dissolution? (E.g., measures to suspend associations' activities.) If yes, are such measures implemented? Please provide examples.

Article 30 of Law 19 states that the secretariat of the People's General Committee (PGC) or of the local People's Congresses may suspend an association and set up a committee to take over control if its executive committee is dissolved. The executive committee must then be invited to reconvene and reach a decision over its fate.

No such instances were known to have taken place between September 2008 and September 2009.

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**
 - Draft a Constitution respectful of fundamental rights that will be submitted to the Libyan people for approval by referendum on the basis of a secret ballot.
 - Abolish all provisions of national laws which say that fundamental individual and collective freedoms are guaranteed only “within the limits of public interest and the Revolution”
 - Void all laws and regulations that are contrary to the spirit and the letter of the International Covenant on Civil and Political Rights and of the Convention on the Elimination of All Forms of Discrimination against Women.
 - Initiate a reform process with the aim of transposing all of Libya’s international commitments into national law and applying them to the country’s institutions.
- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**
 - Revoke Law 19 governing the freedom of associations and democratically draft a law incorporating international standards on the right to freedom of association.
 - Draft a law conforming to international treaties on human rights in order to ensure:
 - The right to establish an association through simple notification without the need for a prior license.
 - Associations’ freedom from authorities’ interference in their meetings and operations.
 - Associations can only be dissolved by internal bodies according to their own regulations, or by a court of law.
 - The right to receive local and foreign funding.
 - Cooperate with the families of victims and provide information on disappeared persons, including those connected to the Abu Salim massacre.
 - Free all human rights defenders and members of associations who are arbitrarily detained.

LIBYA



While the human rights situation in general, and freedom of association in particular, significantly improved starting in the late 1990s, developments later began to stagnate. The events in Sidi Ifni constituted a particular source of concern for human rights associations during the past year and demonstrated that any achievements in the field of human rights remain “fragile”. The situation with regard to Freedom of Association has stagnated, and a number of associations have continued to encounter obstacles in exercising their right to assemble and in registering,¹ as the administrative authorities have failed to implement relevant legal provisions.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

The preamble of the 1996 Constitution affirms Morocco’s commitment to universally recognised human rights. Article 9 guarantees all citizens the freedom to move to and settle in any part of the territory, freedom of opinion and expression, freedom of assembly and association, and freedom to join any labour union or political association.

In Moroccan national legislation, freedom of association is governed by the Code of Public Liberties of 1958, which contains Dahir No. 1-58-376 on freedom of association, Dahir No. 1-58-377 on public gatherings, and Dahir No. 1-58-378, which establishes the press code. The Dahir of 1958 on freedom of association was amended and modified in 1973 and 2002. The reform of 2002 was a result of Act No. 75-00, which was promulgated on 23 July 2002, and mitigated the strict character of the Dahir of 1973 by making some modifications concerning the declaration procedure, the capacities of associations which are simply declared, and the procedure for recognising associations’ work as being in the public interest.

¹ The Euro-Mediterranean Human Rights Network, Human Rights Watch and the Moroccan Observatory for Public Liberties addressed a letter to the Ministers of Interior and Justice on 26 June 2009, to draw their attention to a number of associations which have been unable to obtain the registration receipt required by law.

However, exercise of freedom of association is limited by legislative instruments which are shaped by security-oriented and repressive attitudes and result in an unwillingness on the part of the administration to enforce the provisions of the existing law. Act No. 03-03, which was promulgated in the wake of the attacks of 16 May 2003, contains several provisions which restrict freedom of association. The law modified the criminal code and the code of criminal procedure to make them more repressive. According to Article 1, for example, a number of offences constitute “terrorist” acts “when they are intentionally related to an individual or collective enterprise which aims at gravely disrupting public order through intimidation, terror or violence”. Such a relatively broad definition of “terrorism” can lead to violations of the freedom of association in the name of public order or state security.

It is in this context that, in 2009, the public authorities searched the homes of activists from the Adl Oua Ihsan (Justice and Charity) association, and on 9 July 2009, the Court of Appeal of Beni Mellal postponed the trial of 32 of the movement’s women activists until 21 September. The women are being prosecuted for belonging to an unrecognised association and for organising and holding meetings without authorisation. The public authorities have banned all of the movement’s public activities, as well as meetings at the homes of its representatives. In Oujda, Mohamed Abbadi was prosecuted for holding unauthorised meetings, and Mohamed Barchi was prosecuted in Casablanca. It is worth noting that the Moroccan authorities tightened their control over the Adl Oua Ihsan movement in 2009, partly due to the fact that the Italian police were investigating 11 of the movement’s activists, who were suspected of “criminal association for purposes of international terrorism”. Following several investigations, the Italian authorities managed to unveil a financing mechanism for “extremist” activities and plans to establish an Islamic caliphate in Morocco, and concluded that the movement was part of the “jihadist trend”. The Moroccan authorities use the provisions of Act No. 03-03 to control the religious domain and money transfers to finance Islamist movements, in order to reduce the movement’s financial means and limit its propaganda and recruitment activities.

In the recommendations it made within the framework of the Universal Periodic Review in April

2008, the UN Human Rights Council underlined that Morocco had made important advances with respect to democratisation. However, the government was urged to institutionalise the protection of freedoms and to guarantee the independence of the judiciary as the protector of collective freedoms. The Moroccan government was also invited to reconcile its obligations with respect to public liberties with security considerations in its fight against terrorism. Accordingly, the Moroccan government was called upon to act on its commitments in the field of human rights by adopting legislative instruments to protect individual and collective freedoms and determine the public authorities’ scope of action, in accordance with Morocco’s international human rights obligations.

I - Formation of Associations

A paragraph which was added to Article 5 of Dahir No. 1-58-376 of 15 November 1958 through Law No. 07-09 of 18 February 2009 stipulates that, as soon as they receive an association’s declaration of establishment, the public authorities have “the possibility [of] conducting investigations and [of] receiving a copy of the concerned individuals’ police records.” According to a previous amendment of Article 5, by Law No. 75-00 of 2002 on the formation of associations, the administration moreover is required to issue a provisional receipt before issuing a final receipt within 60 days from the date of the declaration. The same procedure must be followed when an association’s members amend its statutes or hold new elections. If the receipt is not issued within the 60-day period, the association is entitled to carry out its activities in accordance with its statutes. However, in practice, the administrative authorities do not respect the law. They either request the fulfilment of formalities not required by law, or refuse to issue the provisional receipts necessary to enable associations to complete other administrative procedures.

The Act of 2002 also authorises the directors of associations to entrust a bailiff with the mission of submitting the declaration of the association’s establishment to the competent authorities. Administrative practice has not changed, however, and local authorities continue to refuse to issue provisional receipts to bailiffs.

Thus, while the Amazigh Network for Citizenship submitted a declaration to the authorities of the Rabat-Salé-Zemmour-Zâir wilaya following its inaugural meeting in 2002, it only received a receipt in 2006. In accordance with its statutes, the Network held its second National Congress in Khemisset on 4-6 July 2008, and afterwards submitted a declaration and request for renewal to the Wilaya of Rabat, as required by law. However, it has not been successful in obtaining a receipt since then, and the year 2009 was characterised by the authorities' unwillingness to acknowledge the renewal of the boards of several Amazigh associations, including the Aguelmane association of Dayet Aoua (Ifrane province) and the Touiza association (Nador province).

Likewise, the founding members of the National Association of Unemployed Graduates tried to submit the documents required to establish the association in October 1991, but the authorities have continuously refused to issue a provisional receipt. The association has nonetheless held nine general assemblies, the last of which took place in 2008 and was followed by another attempt to inform the Wilaya authorities of the composition of the association's board in writing, in accordance with Article 5 of the law on associations. The association has not succeeded in obtaining a receipt.

In addition, the authorities in Al Ayoun have continued to refuse accepting the submission of documents by the Sahrawi Association of Victims of Grave Violations Committed by the Moroccan State (Association sahraouie des victimes de violations graves commises par l'État marocain, ASVDH). Following a complaint by the organisation in May 2005, the administrative tribunal of Agadir ruled in 2006 (ruling no. 041-2006 R) that the authorities' administrative decision had been illegal because it had not respected the relevant legal provisions (decree no. 176/2006).

These practices put associations in a vulnerable position where their members' right to associate is restricted, and where they cannot easily rent spaces for the organisation of demonstrations, open a bank account or raise funds for their organisation. They are thereby prevented from fully contributing to the development of democracy and social, economic and cultural justice in Morocco.

It was not possible to determine the exact number of associations in 2008-2009. It is worth noting however that the number of NGOs dealing with violence against women has increased from 32 to 61 over the past four years.

II - Life of Associations

Public gatherings must be authorised by the Interior Ministry. The Ministry can refuse to authorise a meeting if it believes that the association in question is likely to "disrupt the public order".

The public authorities are therefore unwilling to grant some students associations, including the National Union of Moroccan Students, the freedom to carry out their activities. The same holds true for human rights organisations, such as the Association marocaine des droits de l'Homme (the Moroccan Human Rights Association), whose Rabat section was refused permission to organise an event on 7 June 2009, on the occasion of World Environment Day.

The members of the National Association of Unemployed Graduates are often subject to interventions by the police, who resort to violence to break up the students' demonstrations in front of the Parliament in Rabat and point to the need to maintain public order and prevent traffic disruptions. On 22 July 2009, several members of the association were injured during clashes with the police and four of them were hospitalised at the Avicenne Hospital.

On 9 July 2009, the Marrakech Court of Appeal moreover sentenced 11 activists of the National Union of Moroccan Students². The students were charged with participating in an armed gathering, insulting behaviour and violence against civil servants, destruction of public and private property, arson, aiding and abetting arson, attempted murder, and aiding and abetting a murder attempt. They had been detained following a march of 3,000 students on 14 May 2008, which had been linked to a strike by the students of the Law Faculty of Marrakech and led to a confrontation with the police's

2 Zahra Boudkour, Morad El Chouni, Khaled Miftah, Mohamed Larbi Gadi, Youssef Alaoui, Othmane El Chouni, Alae Derbali, Youssef Masdoufi, Abdallah Rachidi, Mohamed Rachidi, and Jalal El Kitbi

mobile intervention teams, which caused injuries on both sides. Abdelkader Bahi, a student, is disabled after falling from the fourth floor of a student residence building, and, on 1 January 2009, Abderrazak El Gadiri, a student at Marrakech's Law Faculty, died in the intensive care unit at Ibn Tofail hospital after suffering a head injury. El Gadiri had participated in a protest in solidarity with the people of Palestine, which had been organised by a group close to the National Union of Moroccan Students following the Israeli attack on Gaza. To this day, the authorities in charge have failed to respond to human rights organisations' requests that the Prosecutor's Office open an investigation into the cause of death, inform the public of the circumstances of the death, which remain unclear, and prosecute those responsible.

III - Dissolution of Associations

The 2002 Act abolished the government's right to suspend associations and entrusted the judiciary with ordering, as an interim measure subject to judicial review, the closure of associations' premises and the prohibition of any meeting of the members before a decision is taken on the dissolution.

Article 3 of Dahir No. 1-58-376 of 15 November 1958, which was modified by Law No. 75-00 of 2002, prohibits the formation of "any association which is founded for an illicit reason or purpose, which is contrary to the law or public morality, or whose goal is to undermine Islam, the integrity of the national territory or the monarchy, or to promote discrimination". In addition, the provisions of the amended Act leave the administrative authorities much room for interpretation, and it is ambiguous and open to interpretation what acts should be considered to be "undermining" Islam, territorial integrity or the monarchy. This ambiguousness restricts associations' activities, especially since the judiciary cannot be considered truly independent.

In April 2009, the Moroccan government submitted an advocacy memo to the Office of the UN High Commissioner for Human Rights to defend its decision to dissolve the Moroccan Amazigh Democratic Party. It cited the Political Parties Act, which prohibits political parties founded upon ethnic or linguistic criteria, and

on the basis of which the administrative tribunal of Rabat had ordered the dissolution of the party on 17 April 2008. The Political Parties Act states that "the formation of any party on a religious, linguistic, ethnic or regional basis is null and void". Following this decision, the Interior Ministry argued that "Amazighness, as an essential component of the Moroccan identity, remains in the ownership of all Moroccans and cannot, in this case, be the object of fallacious promises that can jeopardise national unity."

On 24 June 2009, the Casablanca Court of First Instance sentenced Chakib El Khyari, the President of the Rif Human Rights Association and a member of the Federal Council of the Amazigh World Congress, to three years' imprisonment and a fine of 754 000 DH (approx. 6,800 euros) for "insulting behaviour towards State institutions" (for publicly denouncing drug trafficking and corruption); receipt of money from foreign institutions to carry out a media campaign to undermine and discredit the Moroccan authorities' efforts in the fight against drug trafficking; breach of the Code of Exchange; and deposit of funds in a foreign bank without authorisation by the Exchange Office. The decision and the sentencing of El Khyari could lead to the dissolution of the Rif Human Rights Association.

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**

- Act in accordance with the provisions of the International Covenant on Civil and Political Rights, as well as with all international human rights instruments ratified by Morocco.
- Implement recommendations elaborated by the United Nations Human Rights Council during the Universal Periodic Review regarding the protection of civil liberties, the independence of the legal system, and the respect of fundamental human rights within the framework of the war against terrorism.
- Integrate a measure into the Constitution which guarantees the primacy of international conventions over national legislation when it comes to the protection of human rights.
- Implement a system of control in order to ensure the constitutionality of government decisions.

- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**

Creation and registration

- Guarantee the effective application of the law when filing for registration and the systematic delivery of temporary receipts – stamped and dated on the spot (Article 5, Line 1).
- Enforce court rulings pertaining to government authorities which overstep their jurisdiction by refusing to deliver temporary receipts to persons who wish to form an association.
- Revise the Law of 11 November 1974 related to the status of court judges in order to guarantee judges' freedom of association and expression.

Organisation and actions

- Encourage freedom of expression by removing obstacles to the freedom to hold meetings or other public demonstrations, whose objects and goals are not illegal.
- Fight against the impunity of the police by carrying out impartial, in-depth investigations following allegations of abusive treatment.

Dissolution

- Guarantee that the reasons behind the dissolution of an association are in conformity with Paragraph 2 of Article 22 of the International Covenant on Civil and Political Rights which states that: "*No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*"

- **ENVIRONMENT NECESSARY FOR THE SUSTAINABLE DEVELOPMENT OF CIVIL SOCIETY:**

- Encourage the participation of associations in public life, notably when it comes to the development of public policies.

SYRIA



The legal framework related to freedom of association in Syria is one of the most restrictive in the Euro-Mediterranean region. In addition to the emergency law, which equips the authorities with far-reaching powers, the law on association requires any group wanting to register as an association to obtain prior authorisation from the authorities. Under Article 306 of the Criminal Code, the establishment of an association aimed at changing the social or economic state system is punishable by a maximum sentence of seven years' imprisonment.

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. On 29 October 2008, the Damascus criminal court sentenced the 12 members of the Damascus Declaration for Democratic Change to two-and-a-half years in prison.¹ Most of them are members of human rights associations and of the Committees for the Revival of Civil Society.² Recently, the Court of Appeal issued ruling No.1735, case 237, rejecting the appeal presented by the Damascus Declaration defence, and upheld the judgment of the Damascus criminal court of 29 October 2008.³

In addition, the adoption of Decree 64 on 30 September 2008, which stipulates that security forces are only accountable to the army for crimes committed in the line of duty, has further endangered the right to freedom of association. The recent arrest of Mohannad Al-Hassani, chairman of the Syrian Organisation for Human Rights (Sawasiah), on 28 July 2009 (see below), also confirms that the situation related to freedom of association has further deteriorated this year and that the recommendations made in last year's report remain valid.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

1 Euro-Mediterranean Human Rights Network, Observatory for the Protection of Human Rights Defenders, Human Rights Watch and Human Rights First, "Unfair trial of 12 members of the National Council of the Damascus Declaration for Democratic National Change", 17 September 2008, online at http://en.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2008/3785.html.

2 The Damascus Declaration detainees are: Fidaa al-Hourani, Riyad Seif, Akram al-Bunni, Ahmed To'ma, Aly Abdallah, Gabr al-Shufi, Walid al-Bunni, Yasser al-Eiti, Fayeza Sara, Mohamed Hajji Darwish, Marwan al-'Aash, Talal Abu Dan. See the 29 October 2008 statements by the National Organisation for Human Rights, the CDF and Syrian Observatory for Human Rights, online at http://www.nohr-s.org/fs/index.php?option=com_content&task=view&id=1222&Itemid=174 and <http://www.cdf-sy.org/statement/statement2008/curt3.htm>.

3 Syrian Observatory for Human Rights, statement dated 13 July 2009, online at <http://www.anhri.net/syria/shro/2009/pr0713.shtml>.

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

A. THE SYRIAN CONSTITUTION

Article 153 of the Syrian Constitution of 1973 stipulates that “all laws and regulations issued prior to the declaration of this Constitution shall remain in effect until further amendment”. It thereby allowed for the continued implementation of Military Decree No. 2 of 8 March 1963, which established emergency rule and martial law.⁴ Emergency rule has given the authorities and security agencies full control over the country for more than 45 years, and has created a deplorable situation with regard to political and civil rights and the Syrian institutional framework. The Arab Human Development Report for 2009 finds a decline in institutional quality in the fields of political stability; government effectiveness; regulatory quality; rule of law; control of corruption; and average institutional quality.⁵ During the past year, there has been a conspicuous decline in the Syrian government’s respect for human rights, with massive abuses documented across many levels.

B. THE CURRENT LAW OF ASSOCIATIONS

Amendments to Law 93 of 1958 have been under discussion since 2000, but no changes have been made so far. The law continues to govern both older and newly formed associations despite its negative impact on civil society in Syria.

The law:

- imposes a ban on activities that threaten the “public order”, a vague term that allows for government

⁴ Other laws that remain in effect:

Law Protecting the Revolution, legislative decree No. 6 of 1/1/1965

Law Enacting Military Courts, legislative decree No. 109 of 17/8/1968

Law Establishing the State Security Court, legislative decree No. 47 of 28/3/1968

Law of Exceptional Census, legislative decree No. 93 of 23/8/1962

⁵ See the AHDR 2009, pages 267-269, using World Bank Governance Indicators, 2008.

interference through the Ministry of Social Affairs.

- gives the government complete authority to supply a license or refuse it, and does not contain clear criteria for refusal.
- requires associations to submit annual plans for government approval. The Ministry may revoke any decision taken by an association’s board of directors, general assembly or director if the Ministry deems the decision to be illegal or contrary to public order or morals (Article 35). Government officials have the right to attend associations’ meetings. It also gives the Ministry the right to disband any association’s board of directors and replace it with state officials.
- requires associations’ statutes to follow a standardised model; members do not have the right to deviate from this model, even with regard to matters concerning their own positions.
- gives the government the right to examine an association’s financial records at any time, without a specific reason or court ruling, and requires associations to submit a request for approval in order to receive foreign funding.

These procedures clearly make it difficult for associations to operate independently of the government and limit the possibilities for the creation of new associations.

C. GENDER AND FREEDOM OF ASSOCIATION

In general, there has been no progress regarding women’s right to equality. Related laws were not amended in women’s favour, the Syrian government has not lifted its reservations to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and no information is available concerning a draft law allowing Syrian women to pass on their citizenship to their children.⁶ This means that the impact of women’s rights associations, including the Women’s Union, is still non-existent, and that these associations remain marginal to the executive and legislative institutions.

⁶ For more information, see Euro-Mediterranean Human Rights Network, “Freedom of Association in the Euro-Mediterranean Region, 60 years after the Universal Declaration of human rights”, 2008, Discussion Paper on Gender and Freedom of Association

D. LEGAL CHANGES

The government has not introduced any significant legal amendments with respect to human rights, and has not taken a single positive step regarding freedom of association. On the contrary, the Syrian president issued Decree 64 on 30 September 2008, which stipulates that security forces are only accountable to the army for crimes committed in the line of duty. Freedom of association is endangered and activists are put at risk as security agencies are given free rein to commit a broad range of abuses while summoning, interrogating, detaining, jailing or even pursuing activists, without being held accountable. Despite the existing restrictions, the number of associations in Syria has actually grown.⁷ These associations work mainly as charity organisations, with the exception of a few organisations that work in the field of specialised development. The rate of increase is low compared to the population of Syria, which is around 20 million, and compared to neighbouring countries. In addition, the government has not provided any licenses to human rights organisations, and only two women's rights organisations remain after other organisations' licenses were withdrawn in the past.

After it took power, the Baath Party established a number of so-called "popular democracy" institutions, such as the Farmers' Union, the Union of the Youth of the Revolution, and the General Women's Union. It prohibited the formation of parallel unions or associations, thereby monopolising the civil society arena and transferring all existing and future associations to its own institutions. In the past year, the government has intensified its repression of civil society and both licensed and unlicensed associations, which left associations no choice but to work outside the law and made activists subject to arrest, detention and travel bans.

⁷ The number jumped from 540 associations in 2001 (40 percent in Damascus) to 1,012 in 2005, and reached about 1,400 in 2007. (According to a television report on the fourth "Arab Youth Forum" held in Damascus on 10-13 July 2007 by an initiative of the Cairo-based Arab Women's Organisation, based on information by Mrs. Bushra Kanafani, Syria's representative to the organisation.) In 2006, the number of associations in Damascus rose to 430; most of them were charity organisations. There is no official figure for the number of newly licensed organisations in 2008.

I – Formation of an Association

The Ministry of Social Affairs uses political and security criteria in deciding whether to approve or refuse licences and registrations, and the security agencies have the final word. A refusal may be based on the nature of an association's aims or the identity of its founders, and the applicant association may not change its legal status to that of a civil or non-profit company while retaining its aims and founding members. Violations are punishable according to Article 327 of Law 148 of 1949.

One example is the Maan "Together" Committee for Women's Rights Issues, which has not received any response to the application it submitted on 27 July 2006, despite repeated requests to the Ministry. The Committee on Violence against Women, which was set up in 2001, has also not received a license yet.

The Administrative Court in Damascus postponed to 24 February 2009 the lawsuit brought by the National Organisation for Human Rights in Syria (NOHRS) against the Ministry of Social Affairs and Labour to abolish Ministerial Decree No. 617 of 2006, under which the organisation had been refused a license. The court then adjourned the case a second time, to 14 April 2009, to allow for further examination. Meanwhile, the Ministry filed a lawsuit (no. 3934 of 2009) against NOHRS' members, who had started operating activities before obtaining a license.

II – Life of an Association

The situation with regard to freedom of association has deteriorated as a result of decreasing international pressure on Syria.

A. INTERFERENCE IN ASSOCIATIONS' BOARDS OF DIRECTORS

On 7 June 2009, the Ministry of Social Affairs and Labour ordered the dissolution of the board of the Union of Charity Organisations in Aleppo, whose national committee was to elect a new board the following day. The Ministry ordered the formation of a temporary

board, effectively cancelling the committee meeting and the board election, and took over control of the union.⁸

The same occurred when, following ministerial instructions, the Department of Social Affairs and Labour in Aleppo ordered the dissolution of the board of the Ihsan (charity) Society headed by Dr. Hala el-Za'eem and replaced it with an appointed board. The association had provided support to about 3,500 poverty-stricken families before the new board put an end to its work.⁹

On 25 October 2008, the authorities illegally intervened in the activities of several associations. Within less than two hours, members of several charities in Damascus (Al-Ansar, Al-Furqan, Al-Gharra', Al-Tamadun Al-Islami, Hifz Al-Ni'ma, and others) were summoned and forced to dissolve their organisations' boards of directors.¹⁰ The authorities also dissolved the following societies: Arbab Al-Sha'ir Al-Dinia (religious), Dialogue among Civilizations and Al-Ta'akhi Bain Al-Mathaheb. The Ministry of Awqaf moreover took over independent religious institutions, issuing a decree that all donations should be made directly to the Ministry. Some donors received threats from the security agencies. The Ministry of Awqaf is currently campaigning for a ban on the collection of donations to build new mosques.¹¹

B. VIOLATIONS OF THE RIGHT TO ASSEMBLY

Article 16 of the Constitution stipulates that Syrians have the right to peaceful assembly and demonstration, and Article 39 provides citizens with the right to gather and demonstrate in a manner conforming to the principles of the Constitution. However, neither licensed nor

unlicensed groups undertook such activities.

In some places, the authorities banned any indoor or outdoor festivities marking International Women's Day on 8 March 2009. The authorities closed down some celebrations and arrested Faisal Sabry Na'assu, a member of the central committee of the Syrian Kurdish Democratic Party, and Fanar el-Jameel on 9 March 2009. They were immediately brought before a military court in Damascus, released on 4 April 2009, and then given three-month jail sentences on 9 August 2009, in an outright violation of the right to peaceful assembly.¹²

On 20 March 2009, security forces joined public forces in using tear gas and batons to disperse a peaceful gathering of Kurdish Syrian citizens celebrating the festival of Norouz in the Aleppo neighbourhoods of el-Sheikh Maqsoud and el-Ashrafiya. Tens of participants were arrested. Some were taken to court, while the rest were released.¹³

C. VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION

In its annual report issued in October 2008, Reporters without Borders ranked Syria 159th out of a total of 173 countries in its index of press freedom around the world.¹⁴ The government blocked the websites of 225 human rights associations and other civil society organisations covering Syrian issues (an increase of 65 over last year).¹⁵ On 29 September 2008, the government blocked the Arab Network for Human Rights Information website (anhri.net).¹⁶ Other blocked

8 See Bassam el-Qady on the Syrian Women Observatory website, 6 September 2009, online at <http://nesasy.org/content/view/7460/257>.

9 Syrian Human Rights Committee report, Jan. 08- Jan. 09, p.47, available online at <http://www.shrc.org/data/aspx/014ARLREP.aspx>.

10 Those dismissed included Dr. Salah Ahmed Kiftaro, Dr. Bassam A'jak, Dr. Abdusalam Rajih, and Sheik Rajab Deeb from Al-Ansar Society; Sheik Osama Abdulkareem Al-Rifa'i from Al-Furqan Society; Sheik Sariah Abdulkareem Al-Rifa'i from Hifz Al-Ni'ma Society; Sheik Abdurazzaq Al-Halabi, Sheik Hussam Saleh Farfoor and Sheik Abdulfattah Al-Buzum from Al-Fateh Society; Sheik Abdurazzaq Al-Shurafa from Al-Gharra' Society; Eng. Muath Al-Khateeb Al-Hasani, Sheik Suleiman Zabibi, and Sheik Mujeer Al-Khateeb Al-Hasani from Al-Tamadun Society

11 Ibid., p.48.

12 The human rights situation in the first half of 2009, El-Sawt magazine, issued by the CDF, 24 June 2009, p. 26; and Syrian Human Rights Committee statement, 9 August 2009, available online at http://christ.gotobg.net/~soparo/ar/index.php?option=com_content&view=article&id=9328:2009-08-09-09-53-02&catid=34:2008-05-23-23-58-43&Itemid=187.

13 Al-Sharq Al-Arabi website, www.asharqalarabi.org.uk/huquq/c-huquq-wa237.htm.

14 Eighth Annual Report, Syrian HR Committee, 2009, p.53; Article 19 classifies Syria as one of the top ten worst enemies of the internet. (See summary, annual report CDF 2007, p.14.)

15 Eighth Annual Report, Syrian HR Committee, 2009, p.53; report by the Syrian Centre for Media and Freedom Expression, "Silent Pens and Loud Censorship", May 2009, p.7. The centre has documented and verified the blocking of several sites. Visit http://www.scm-sy.net/index.php?page=category&category_id=24&lang=ar for more information.

16 Eighth Syrian HR Committee Report 2009, p.54.

websites included Alnazahanews.com, which was run by the lawyer Abdallah Ali, who was detained at the State Security Information Department on 30 July 2008 and released on 12 August when the website was shut down.¹⁷

On 13 September 2008, the Syrian immigration and passport authority at the Lebanese border did not allow a delegation from Reporters without Borders to enter the country. The delegation was headed by the organisation's director, Robert Menard, who was to meet with journalists and human rights activists to discuss issues facing the press and freedom of expression in Syria.¹⁸

D. VIOLATIONS OF THE RIGHT TO FREEDOM OF MOVEMENT

By May 2009 at least 414 individuals had been subjected to travel bans. This included 101 human rights defenders, 75 of whom belonged to 12 human rights organisations, and 20 women.¹⁹

Alaa El-Deen Biassi, member of the board of trustees of the CDF, was prevented from travelling on 8 October 2008. He had wanted to travel to Rabat for an EMHRN workshop on migration and asylum on 10 – 12 October 2008.²⁰ Dr. Hassan Abbas²¹ was prevented from travelling to France, where he was to participate in a Euromed civil forum in Marseilles from 31 October to 2 November 2008.²²

17 Syrian HR Committee Report 2009, p.12, and CDF report on the occasion of World Press Freedom Day.

18 CDF statement, 18 September 2008, available online at <http://www.cdf-sy.org/statement/statement2008/mraslon.htm>.

19 Syrian Centre for Media and Freedom of Expression, online at http://www.scm-sy.net/index.php?page=category&category_id=22&lang=ar.

20 CDF statement, 9 October 2008, online at www.anhri.net/syria/cdf/2008/pr1009.shtml.

21 National Organisation for Human Rights, 1 November 2008, online at <http://www.nohr-s.org/new/2009/01/11>.

22 The lawyer Hassan Aewou, member of the board of trustees of the CDF was prevented from travelling to Jordan to participate in the second phase of the training of trainers on women's rights, which began on 26 November 2008 (CDF statement, 29 November 2008, online at www.anhri.net/syria/cdf/2008/pr1129.shtml); Zeinab Notfaji, a member of the Committees for the Revival of Civil Society, was not allowed to travel to Beirut to visit her family in November 2008, although she holds both Syrian and Lebanese citizenship (Syrian HR Committee, 2009 report, p.46); The lawyer Nagib Dadam, a board

The authorities did not offer explanations for any of the travel bans. While it is the security agencies, and not any government agency or the judiciary, who impose the travel bans, it is clear that their aim is to prevent the activists from informing the international community about the human rights situation in Syria.

E. CONTROL OF TRANSFERS, WORK PERMITS

This type of harassment takes place with no explanation, other than that it is "in the public interest". Khedr Soliman Abdel Karim, an artist and former member of the board of trustees of the CDF, was transferred to a workplace 62 km away from his home.²³ Soliman Khaled, a member of the board of trustees of the Organisation for the Defence of Human Rights (MAF), was banned from using his private office located beside the civil registry office in the Qahtaniya neighbourhood, and barred from entering the building.²⁴ Osama Edouard Qaryo, a member of the CDF, was moved from his village of Tel Tamr to an educational compound in Qamishli, about 100 km away.²⁵

member of the Human Rights Association in Syria, was prevented from travelling on 14 April 2009, when he was scheduled to attend meetings of the 20th session of the Arab National Conference in Khartoum (CDF, 19 April 2009, online at <http://www.cdf-sy.org/statement/statement2009/ddam.htm>); The lawyer Abdel-Rahim Ghemaza was prevented from travelling to Kuwait for a Syrian client's court hearing on 28 April 2009 (National Organisation for Human Rights, statement dated 5 May 2009, online at www.nohr-s.org/new/2009/05/05/966/); In March 2009, Rassem al-Atassi, an engineer and president of the Arab Organisation for Human Rights in Syria, was not allowed to travel to Cairo, and Zoheir Shamseldin al-Saghir, a member of the board, was prevented from travelling to Jordan (See Frontline Defenders website, 18 May 2009, <http://www.frontlinedefenders.org/ar/taxonomy/term/1822> and <http://www.frontlinedefenders.org/ar/node/1671>); Taysir Ibrahim al-Mussalma, a member of the Arab Organisation for Human Rights in Syria, was banned from travelling to Jordan for a relative's wedding on 11 July 2009 (Statement by the Arab Organisation for Human Rights in Syria, 11 July 2009, <http://www.aohrs.org/modules.php?name=News&file=article&sid=1841>); The engineer Rassem al-Attasi, the president of the Arab Organisation for Human Rights in Syria, was prevented from travelling to Amman, Jordan, to participate in the 14th Asia-Pacific conference for human rights organisations on 5-6 August 2009 (Statement by the Arab Organisation for Human Rights in Syria, 4 August 2009, <http://www.aohrs.org/modules.php?name=News&file=article&sid=1856>); On 12 February 2009, the lawyer Moussa Shanani, a member of the Syrian Organisation for Human Rights, was detained at Damascus Airport for a few hours upon his return from Qatar. He was taken to a State Security branch, where he was held until midnight. He was released, but his identity papers and passport were confiscated, and he was summoned to the State Security branch on 17 February 2009 (CDF statement, 22 February 2009, online at <http://www.cdf-sy.org/statement/statement2009/shnani.htm>)

23 The situation of human rights in the first half of 2009, Al-Sawt magazine, issued by the CDF, 24 June 2009, p.26.

24 CDF statement, 27 April 2009, online at <http://www.cdf-sy.org/statement/statement2009/khaled.htm>.

25 Kurdish Committee for Human Rights, statement dated 7 April 2009,

F. COURT SUMMONS, JUDGMENTS AND DETENTIONS

On 28 July 2009, Syrian security forces arrested human rights defender and lawyer Mohannad Al-Hassani, the chairman of the Syrian Organisation for Human Rights (Sawasiah), after summoning him several times. The measures taken against Al-Hassani are apparently closely related to his human rights activities, especially in monitoring the trial of political activists in the State Security Court. Al-Hassani had previously been subjected to physical abuse near the State Security Court after attending a hearing. A court employee attacked him after having been instructed to do so by the chief prosecutor.²⁶ El-Hassani was transferred to the Public Prosecutor, who sent him to the Damascus court of first instance. On 30 July 2007, he was questioned on the charges of weakening the national morale, spreading false information and attacking state symbols. The judge remanded him to Adra central jail in Damascus. In addition, on 11 August 2009, the Damascus branch of the Lawyers' Association held a disciplinary trial for Al-Hassani, whom it had charged on 8 August 2009 with "presiding over a human rights organisation, with no license and with no approval from the Lawyers' Association, whose activities include spreading false or exaggerated news that are damaging to Syria's dignity and reputation."²⁷

On 20 August 2008, the Court of appeal rejected the appeal for the release of the writer Michel Kilo (Committees for the Revival of Civil Society) after he had completed three-fourths of his term.²⁸ Kilo had been sentenced to three years in prison on 14 May 2006 for his role in the Beirut-Damascus Declaration. He was

online at <http://www.kurdchr.com/modules.php?name=News&file=article&sid=671>.

26 Cairo Institute for Human Rights Studies, statement dated 30 July 2009, online at <http://www.cihrs.org/Arabic/NewsSystem/Articles/2512>.

27 Euro-Mediterranean Human Rights Network, "Release immediately human rights defender Muhannad Al Hassani!", 3 August 2009, available at http://en.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3825.html. See also: Syrian Observatory for Human Rights, statement dated 12 August 2009, available online at <http://www.anhri.net/syria/shro/2009/pr0812.shtml>.

28 Statements by the Syrian Observatory for Human Rights, 20 August 2008, and Reporters without Borders, 22 August 2008, online at <http://www.anhri.net/syria/shro/2008/pr0820.shtml>.

finally released on 19 May 2009.

On 17 September 2008, the activist Mohamed Badiea Dak el-Bab was released after a six-month detention, during which a military court charged him with spreading false information abroad.²⁹

On 14 October 2008, two weeks after decree 64 was issued (allowing for the impunity of the security forces), Sami Maatouk, a Syrian Observatory for Human Rights member, and his friend Johnny Soliman were killed by a security patrol outside his home in al-Meshirfa, a border village near Homs. According to official sources, the patrol opened fire while chasing smugglers.³⁰

On 29 March 2009, the Homs Military Prosecution informed the Damascus branch of the Lawyers' Association by official memorandum that it would take action against the lawyer and human rights activist Khalil Maatouk, who would be charged with contempt of the Syrian president, defamation of public office and inciting sectarian strife, according to Articles 374, 307 and 378 of the penal code, and Article 78 of the Law Regulating the Legal Practice. Maatouk had demanded that the killers of his nephew, Sami Maatouk, be brought to justice.³¹

On 25 March 2009, Raqah city police arrested Ahmed al-Hajji, a board member of the Arab Organisation for Human Rights in Syria. On 22 April 2008, the Military Court sentenced al-Hajji to five days in jail for the defamation of public office.³²

On 18 April 2009, Nizar Rastanawi, a member of the Arab Organisation for Human Rights in Syria, ended his prison term of four years. He had been arrested in Hama by military security forces on 18 April 2005, and

29 Statement by the National Organisation for Human Rights, 17 September 2008, available at http://www.nohr-s.org/fs/index.php?option=com_content&task=view&id=1199&Itemid=174.

30 CDF, statement dated 15 October 2008; Kurdish Organisation, statement dated 16 October 2008; Syrian League for Human Rights fact-finding report on the al-Meshirfa village incident, available online at <http://syriaohr.com/20-10-2008-syrian%20observatory7.htm>.

31 CDF statement, 24 April 2009, online at <http://www.cdf-sy.org/statement/statement2009/khalil.htm>.

32 CDF statement, 25 March 2009, online at http://www.cdf-sy.org/statement/statement2009/A;_haji.htm.

had been sentenced by the State Security Court on 18 November 2006 for spreading false information, which is punishable according to Article 286 of the penal code. He has not yet been freed, and his situation and fate remain unknown.³³

III – Dissolution of an Association

The Ministry dissolved a number of associations in the past. This included the Social Initiative Association, which had been licensed for four years, but was dissolved on 24 January 2007 after it conducted an opinion poll on gender equality and violence against women that angered some conservative religious figures. The Ministry also dissolved the Syrian Women's Alliance, although it had been operating under Ministerial Decree 5424 of 1957 and had already existed when Law 93 governing associations was issued in 1958.³⁴

³³ Al-Sawt magazine, issued by the CDF, 24 June 2009, p.4.

³⁴ Summary, 2007 Annual Report by Committees for the Defence of Democratic Freedoms and Human Rights (CDF), p.15.

RECOMMENDATIONS

A. GENERAL RECOMMENDATIONS

1. End the state of emergency declared by Military Decree No. 2 of 8 March 1963.
2. Abolish the special tribunals of any kind and transfer cases that have been brought before them to the relevant regular courts.
3. Introduce major constitutional reform and:
 - a- Revoke Article 8 of the Constitution, which defines the ruling Baath Party as the leader of the state and of society.
 - b- Ensure the principle of separation of powers and the independence of the judiciary.
4. Revoke Presidential Decree No. 64 of 30 July 2008, which does not hold security agencies accountable for crimes committed in the line of duty.

B. SPECIAL RECOMMENDATIONS WITH REGARD TO FREEDOM OF ASSOCIATION

Abolish Law 93 of 1958 on Associations and Private Societies, and draft a law conforming to international treaties on human rights in order to ensure:

1. The right to establish an association through simple notification without the need for a prior license.
2. Associations' freedom from ministerial or government interference in their meetings and operations. Revoke the Ministry of Social Affairs and Labour's ability to dismiss boards of directors or temporarily appoint boards.
3. Associations can only be dissolved by internal bodies according to their own regulations, or by a judicial court.
4. The right to receive local and foreign funding.

Put an end to police surveillance and intimidation of civil society activists and human rights defenders, and provide legal protections to allow them to conduct their activities without interference.

1. Release immediately and unconditionally the lawyer Mohannad Al Hassani, Head of the Syrian Organisation for Human Rights (Sawasiah).
2. Release immediately and unconditionally the Damascus Declaration detainees.
3. Put an end to persecution and harassment and the policy of exclusion and censorship against independent associations.
4. Dismiss the case brought against the National Organisation for Human Rights by the Ministry of Social Affairs and Labour, and grant all human rights organisations the necessary license to work without any interference by the authorities.
5. Establish a new institutional relationship with civil society associations that is founded on transparency, the impartiality of the state and the amended legislation on associations.

PALESTINIAN TERRITORIES

Despite the existence of a modern legal framework governing the registration and operation of associations, political and security considerations currently prevail over this system of rights and public freedoms. The exercise of the right to form and join associations is obstructed. Moreover, orders and regulations have turned the registration process stipulated by law into a licensing process. The replacement of associations' elected governing and administrative bodies has become the norm, even though the law allows for such measures only in exceptional cases. Similarly, a policy aiming at the dissolution of associations has been adopted. This policy is not motivated by substantial legal reasons, but rather by political and "security" considerations, and its form and content do not comply with the provisions of the existing laws and regulations. Overall, the role of civil society organisations has declined in 2009 due to the political divisions between the West Bank and the Gaza Strip, which were already noted last year, and the recommendations issued in 2008 continue to be relevant.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

In Palestinian national legislation, freedom of association is addressed by Article 26/2 of the Basic Law¹ and by the Law of Charitable Associations and Community Organisations No. 1 of 2000,² whose objective is to regulate the exercise of this right in the territory under the control of the Palestinian National Authority (PNA).³ The formation of associations in the Palestinian-controlled territories has become increasingly politicised since

1 "Palestinians, as individuals and groups, have the right to participate in political life and the following rights in particular: the right to form trade unions, societies, associations, clubs and popular institutions in accordance with the law."

2 "Palestinians have the right to freely pursue social, cultural, professional and scientific activities, including the formation and operation of societies and organisations in accordance with the law."

3 It should be noted here that the Palestinian National Authority (PNA) does not enjoy the status of a "state". It therefore cannot officially sign any international conventions and treaties. Nevertheless, Article 10/2 of the Palestinian Basic Law expressed the PNA's commitment to becoming a state party to the international covenants and declarations that aim to protect human rights.

Hamas took control over the Gaza Strip by military force on 14 June 2007, and this paper sheds light on violations of the right to association by both political parties in the West Bank and Gaza.⁴

I - Formation of Associations

The Law of Charitable Associations and Community Organisations No. 1 of 2000 guarantees Palestinians' right to form associations and civil society organisations. The law assigns a procedural role to the Ministry of Interior and explicitly outlines the process that should be followed to establish an association. It stipulates that groups do not need to obtain authorities' prior permission to register as an association.⁵ The registration process should only serve to notify the Ministry of Interior (Mol) and relevant authorities that the charitable association exists and that it will begin to carry out its activities as soon as it acquires legal personality.

At the end of the August 2009, the total number of registered associations in the West Bank was 2,100. Since the beginning of 2009, the Mol in the West Bank had received 170 applications for registration and issued 100 registration certificates, while 70 other applications were still being reviewed.⁶ By comparison, 136 associations submitted applications to the Mol in 2008 and none of them were officially registered,⁷ in

spite of the expiry of the two-month time limit for the processing of applications specified by law.⁸

According to Majdi Daraghme, the Legal Advisor on Association Affairs at the Mol in Ramallah, the Mol's workload has not allowed it to process all applications within the sixty days specified by law.⁹ Ahmed Abu Zaid, the Director of Association Affairs at the Mol of the Caretaker Government, has also noted that the Ministry forwards copies of all registration applications to the security agencies for security clearance in accordance with instructions contained in Ministry of Interior Resolution No. 20 of 2007.¹⁰

In the Gaza Strip, the number of registered and functional associations reached 899 in 2008, while a total of 101 registration applications have so far been submitted to the Mol of the Deposed Government in 2009. At the time of writing, the Mol had approved 44 applications and rejected 35. The Ministry had not yet responded to 22 applications, even though two months or more had already passed after the submission of the applications to the relevant departments at the Mol.¹¹

Articles 4/4 and 38 permit associations to take legal action to appeal administrative decisions by the Minister to deny registration, dissolve an association or replace its governing body. In the West Bank, in the case of the Al-Worood Charitable Organisation, the Supreme Court ruled that the Mol must reopen the association's bank account at the Arab Bank.

A multitude of decrees, decisions and instructions have been issued by the PNA and the Deposed Government that are entirely contradictory to the provisions of the Basic Law, and to the regulations of the Law of Charitable Associations and Community Organisations

4 It is worth noting the closure of organisations and/or confiscation of their properties by Israeli authorities, the freezing of their financial resources and the frequent detention of their personnel under the pretext of fighting terrorism. In March 2008, the Israeli High Court issued a decision that allows the Israeli military commander in the West Bank to close and confiscate the properties of any charitable society working in the Palestinian territories under the pretext of fighting terrorism. Following this decision, the Israeli army closed and confiscated the properties of several associations, such as the Young Men Moslem Association, the Islamic Charitable Organization in Hebron. This amounts to a grave violation of the legal status based on the Oslo Agreements, which bestowed on the PNA the right to regulate such rights. For more information on this topic, visit the website of the Israeli ministry of Foreign Affairs <http://www.altawasul.com/MFAAR>.

5 Article 4/1 states that: "The founders of the association or organisation shall submit a written request to the relevant department of the Ministry of Interior that satisfies the requirements and is signed by at least three founding members who are authorised to sign on behalf of the association or community organisation. The application for registration shall include three copies of the association's statutes, signed by the members of its founding committee."

6 Statistics provided to ICHR by the Mol of the Caretaker Government on 13 August 2009.

7 For further information, please consult ICHR's "Report on Freedom of Association in the Palestinian-Controlled Territory During 2008"; www.ichr.ps.

8 Paragraph 3 of Article 4 of the Charitable Associations Law states that an association is considered legal and registered in accordance with the law in the event that a two-month period has passed after submission of the application and no official response has been received from the Ministry.

9 Interview on 12 August 2009 with Majdi Daraghme, the Legal Advisor on Associations' Affairs at the Mol in Ramallah.

10 Interview on 13 August 2009 with Ahmed Abu Zaid, the Director of Associations' Affairs at the Mol in Ramallah.

11 Interview on 3 August 2009 with Abdul Khaliq Badwan, the Deputy Director of Public Affairs at the Mol of the Deposed Government in the Gaza Strip.

in particular. For instance, the Presidential Decree No. 16 of 2007 granting the Minister of Interior the power to review all licensing certificates, Council of Ministers Resolution No. 8 of 2007 regarding associations engaged in activities that are against the law, and the Minister of Interior's Decision No. 20 of 2007, according to which associations are obliged to refer to security agencies for the completion of registration procedures. Registered associations in Gaza are subject to security checks and must present a certificate of good conduct and a clean criminal record for all their members; this has become a prerequisite for registration at the Mol of the Deposed Government.

II - Life of Associations

1. Raids and Confiscation of Associations' Property

On 1 August 2008, the Palestinian General Intelligence used force to enter an association's prosthesis factory in Qalqilia in the West Bank. The same security agency also raided the premises of the Tafouh Organisation for Culture and Arts on 6 August 2008. Moreover, Preventive Security broke into the premises of the Althaheryeh Charitable Organisation and confiscated their property. During the raid of the latter organisation's premises - which also took place on 6 August - valuable assets such as a photocopier, a fax machine, plastic chairs and stationary were confiscated. Similarly, the Forum of the Faith association in Nablus was raided on 8 August 2008 and all its furniture was confiscated by the Palestinian General Intelligence.

In 2009, it was also reported that the Preventive Security had stormed the premises of the Medical Organisation in Qublan. The building was searched and Mol appointed a new body to replace the organisation's board of trustees.

Fadwa Shaer, the Director of the Non-Governmental Organisation at the Mol, claimed that some cases had required rapid intervention by the security agencies, which had made it difficult to obtain a court order allowing them to enter associations' headquarters.

Similarly, security agencies of the Deposed Government in the Gaza Strip raided a number of associations in 2008-2009. Some of the premises that had belonged to

associations were converted into offices for the public administration and police stations. On 26 July 2008, masked men belonging to Al-Qassam attacked Al-Maghazi Community and confiscated its property, while the Ajjal Al-Mustaqbal Charitable Society was attacked by Internal Security Police on 28 July 2008.

Moreover, on 6 May 2009, the five-storey headquarters of the Palestinian Commission for University Students were converted into the new offices of the Financial and Administrative Monitoring Bureau of the Deposed Government. The Palestinian Al-Tahir Organisation in Beit Hanoun was also converted into a police station, while the Internal Security in the Gaza Strip is currently using the Young Scientist Forum's premises, in spite of a decision by the Mol to reopen this organisation and to allow it to resume its operations.

Both parties in the Palestinian territories have thus violated Article 41 of the Law on Charitable Associations and Community Organisations, which stipulates that "closure, inspection and seizure of funds of any organisation or commission or its branches or affiliated centres are prohibited unless authorised by a prior decision issued by a competent judicial body." Article 41 of the Law of Charitable Associations and Community Organisations and Article 39 of the Palestinian Procedural Law state that associations' premises should be considered as being equivalent to private homes, which may not be entered or searched unless judicial authorisation is received from the competent authority.

2. Dissolution of Associations and Interference in their Management

In the West Bank, the appointment of interim committees has continued in 2009 and 11 interim committees¹² were appointed to run associations. In most of these cases, the appointments were not in line with Article 22 of the Law of Charitable Associations and Community Organisations No. 1 of 2000. "It should be noted that 28 such interim committees were appointed in 2008."¹³

¹² Interview with Majdi Daraghmeah at the Mol in Ramallah/West Bank on 12 August 2009.

¹³ Article 22 of the Law of Charitable Associations and Community Organisations explicitly addresses the issue of associations' governance

The Supreme Court of Justice has set a negative precedent by affirming the decision of the Minister of Interior to appoint an interim committee to replace the board of directors of the Palestinian Housing Council, even though this was in violation of Article 22 of the Law of Charitable Associations and Community Organisations, which does not allow for the replacement of governing bodies without legal justification. The Supreme Court of Justice declined to issue an injunction to enable the elected body to assume its functions and decided to proceed with the case and not to revoke the decision of the Minister of the Interior.

In the Gaza Strip, Abdul-Khaliq Badwan, the Deputy Director General of Public Affairs, maintained that the Ministry had only interfered in the affairs of three associations: Ishraqat Al-Khair Organisation, the Patients' Friends Organisation, and Al-Huda Development Organisation in Bani Suhaila. New governing bodies were formed for these associations.

3. Freezing of Associations' Bank Accounts, Exercise of Financial Scrutiny, and Financial and Administrative Reporting Measures by the Ministry of Interior

The Law of Charitable Associations and Community Organisations also addresses the issue of oversight of the performance of civil society organisations, and Article 6 places the monitoring of the functioning of each association under the jurisdiction of the Ministry responsible for the sector on which the association's work focuses.

Nevertheless, by August 2009, the Mol had inspected the work of 210 associations in the West Bank, while a total of 200 financial and administrative reviews had been conducted in 2008.¹⁴ In the Gaza Strip, the Mol

and dissolution. The aforementioned article specifically states that: "1- In the event that the Governing Body has not been able to convene, due to resignation or death of members, the remainder of the Governing Body's members (as an interim committee) should assume the function of the Governing Body for a maximum period of one month, a period during which the General Assembly is invited to the selection of a new Governing Body. 2- In the event of mass resignations from the Governing Body, or in case the interim committee has not fulfilled its functions referred to in Paragraph 1 of this Article, the minister shall appoint an interim committee from amongst the General Assembly members to assume the responsibilities of the Governing Body for a maximum of one month during which the General Assembly shall be invited for a meeting to elect a new Governing Body"

14 According to information obtained by ICHR during a face-to-face inter-

view of the Deposed Government exercised control over 170 associations by August 2009, compared to a total of 375 associations in 2008. Moreover, the Monetary Authority issued instructions to banks operating in the West Bank and the Gaza Strip to restrict the opening of bank accounts for civil society organisations; every association is required to obtain a document from the Mol of the Caretaker/Deposed Government to certify its legal registration status. Many organisations never received such documents or did not receive any rejection notice.¹⁵

The Interior Ministries of the Deposed and Caretaker Governments thus have exercised administrative and financial control over Palestinian associations in stark violation of the provisions of Articles 6 and 13 of the Law of Charitable Associations and Community Organisations.

4. Harassment and Detention of Directors of Associations and Members of Governing Bodies

The security agencies in the West Bank and Gaza continued to harass the directors and members of governing bodies of certain associations.

In the West Bank in 2008, the General Intelligence has arrested Mohammed Ahmed Izraiqaq and Harb Izraiqaq, the President and Treasurer of the Tafouh Center for Culture and Arts, respectively. The General Intelligence also detained a number of staff members of the Islamic Charitable Organisation in Ramallah, and, in 2009, arrested Dr. Raed Na'irat, who is the president of the governing body of the Palestinian Centre for Democracy Studies.

In 2009, the General Director of Palestinian Police filed a criminal lawsuit against Ms. Maha Abu-Dayyeh, Director of the Women's Center for Legal Aid and Counselling (WCLAC), for "public defamation". The lawsuit was a reaction to a conference held on 1-2 December 2008, which had called for the adoption of a law to protect

view with the Director General of the Non-Governmental Organisation at the Ministry of Interior of the Caretaker Government.

15 These instructions thus violate the law and particularly Article 4/3, which asserts that an association acquires legal personality if the two-month period after submission of the registration application has passed and no rejection notice has been received from the Ministry. This theoretically entails that the association can proceed in carrying out its activities.

families from violence, and where a participant had described her personal experience of being harassed by the police. It should be noted that the police have not investigated the alleged incidents of harassment.

In the Gaza Strip, Internal Security forces arrested Jamal Shwaiki, the President of the Palestinian Civil Organisation, and detained Abdul-Latif Abu Odeh, the Deputy President of the Palestinian al-Tahir Organisation in 2008.

III - Dissolution of Associations

In addition, a total of 22 associations were dissolved in the West Bank before August 2009, compared to a total of 59 in 2008. These associations were dissolved in accordance with the provisions of the law, due to their governing bodies' failure to convene or the associations' failure to function during their first year of registration. However, Fadwa Shaer, the Director General of the Department of Non-Governmental Organisations at the Mol in the West Bank, stated that the closure of some associations had been the result of political decisions based on "national security" considerations.¹⁶ The Association Officer at the Mol in Nablus similarly stated that associations were dissolved due to their political affiliations. Thus, the Society for the Promotion of the Virtue and Suppression of Vice and the Iqra' Society were dissolved in May 2008, and the Rabe'a Al-Adawiyya Society for Development and Education was dissolved in July 2008.

In addition, by August 2009, the Mol had ordered the dissolution of 40 associations in the Gaza Strip.¹⁷ The total number for 2008 was 171.¹⁸ In the Gaza Strip, there were

10 lawsuits against the Ministry of Interior regarding the dissolution of associations. Two of these lawsuits were rejected by the courts, while the remaining eight are still pending.

Although the Mol of the Caretaker and Deposed Governments issued a series of warnings (in accordance with Article 37) prior to the initiation of dissolution procedures (in accordance with Article 38 of the law), most of these warnings appeared to be politically motivated and to be a result of the political divide between the PNA and the Deposed Government in the Gaza Strip – although both parties claim otherwise. ICHR documented no cases where associations were dissolved or their boards replaced after the establishment of the PNA, and it was only after the political split in 2007 that such violations against associations were noted.

¹⁶ For more information, please see the 2008 ICHR report on "The Status of Charitable Societies in the Palestinian-controlled Territory in 2008", page 36.

¹⁷ ICHR interview with Abdul-Khaliq Badwan, the Deputy Director General of Public Affairs, in Gaza on 3 August 2009.

¹⁸ The Law of Charitable Associations and Community Organisations clearly specifies situations in which associations can be dissolved. Article 37 stipulates that an "association shall be dissolved if: 1- the General Assembly issues a decision of dissolution, provided that the Ministry is notified immediately. 2- if the association failed to commence its activities within the first year after registration, except where this was due to force majeure and there were compelling circumstances beyond the control of the association. In this case the registration shall be revoked by the ministry after issuing a written warning to the association. 3- if the association is proven to have fundamentally violated its statutes and has not rectified the situation within a period not exceeding three months from the date of being warned in writing by the minister or relevant department".

RECOMMENDATIONS

- **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 restrictions on the freedom of movement imposed on human rights defenders, as this prevents them from implementing their legitimate activities and promoting and protecting human rights.
- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**
 - Implement the provisions of the Charitable Societies and Associations Law No. 1 of 2000 and its regulations.
 - End the practice of forwarding associations' registration applications to the security agencies for security checks.
 - Revoke the decision adopted in the Gaza Strip which allows authorities to demand that associations submit certificates of good conduct for their members as a legally binding condition for their registration applications.
 - Put an end to the interference of the security services in the activities of associations (e.g. authorities' attendance of meetings).
 - Immediately halt the policy of dissolution and replacement of associations' governing bodies, which occurs in a manner inconsistent with the provisions of the law.



On 22 August 2009, the Tunis Court of Cassation rejected the appeal made by the lawyers of 38 persons charged with taking part in the Redeyef social movement in the Gafsa mining belt, thus confirming the activists' sentences, which range from two-year suspended sentences to eight years' imprisonment.¹ Sparked by a citizenship initiative, the social protest movement denounced corruption, poverty and unemployment in the region. The movement, brutally repressed by Tunisian authorities in 2008, resulted in the deaths of at least three persons while legal actions were taken against hundreds of others. The trial held on 22 August, where movement leaders were accused of "criminal proceedings in view of terrorist attacks against persons and goods, organised and armed rebellion with at least ten persons, and disturbance of public order", disregarded their legal right to a fair trial. This verdict, pronounced with no speech for the defence, no questioning of the accused parties, no witnesses for the defence, no proof of the material evidence "confiscated" by the police, and no medical examinations of prisoners despite allegations of acts of torture, confirmed that the situation of freedom of association in Tunisia had worsened in 2008-2009.

On the eve of the October 2009 presidential and legislative elections, harassment and acts of intimidation against civil society activists, in particular those who voice opinions contrary to the ruling party, have increased, making the implementation of the recommendations put forward in 2008 more necessary than ever.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and General Framework of Democracy and Human Rights

1) Is there any specific legislation that affects freedom of association? Which related laws (e.g., anti-terrorism law, emergency law, criminal law, publications law) negatively affect freedom of association? How?

¹ Update (November 2009): On 5 November 2009, the movement's leaders were released from prison. See http://fr.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3603.html

Tunisian legislation on the war against terrorism is based on a particularly broad definition of terrorist acts² which is liable to infringe on individual and public liberties. Indeed, the law condemns “acts of incitement to [...] fanaticism, regardless of the means used”. Article 4 of Law No. 2003-75 of 10 December 2003 concerning support for international efforts to combat terrorism and the prevention of money-laundering provides that an “offence committed by a group or an individual, regardless of the motives, will be classified as an act of terrorism if it is capable of terrorizing a person or a group of persons [...] with the intention of influencing the policy of the State [...] of disturbing public order”. This definition is broad enough to include a simple opinion – without any violence – as a crime. This new legislation, which also aims at strictly controlling association financing, makes it a crime to provide financial assistance, or any other type of support, to persons, organisations or sectors related to terrorism or other illegal activities (Article 68), and forbids associations to accept cash donations equal to or greater than 5,000 dinars. Lastly, no funds from abroad may be received without the intervention of an authorized intermediary.³

2) How do international and regional legal bodies (such as UN Committees, the UN Human Rights Council Universal Periodic Review or the African Commission on Human and Peoples’ Rights) rate the situation with regard to freedom of association? If any such bodies have made recommendations, have they been implemented by the authorities? If yes, how? (Legislative amendments, repealing of laws, etc.) If no, how do you explain the non-implementation of the recommendations?

Within the framework of the Universal Periodic Review, the United Nations Human Rights Council (UNHRC) examined the report on Tunisia during its first session

2 According to Article 52bis of the 1993 Penal Code: “Any person who commits an act which may be qualified as a terrorist act shall be sentenced in accordance with the crime itself, and such sentences may not be reduced by less than half” while the terrorist act itself is defined as “any offence relating to an individual or collective undertaking whose goal is to undermine persons or property by means of intimidation or terror. Also dealt with in the same manner are acts of incitement to hatred or to racial or religious fanaticism, whatever the means employed”.

3 Amnesty International report, “In the Name of Security: Routine Abuses in Tunisia”, 2008, <http://www.amnesty.org/fr/library/asset/MDE30/007/2008/fr/812865ef-5802-11dd-be62-3f7ba2157024/mde300072008fra.html>

in 2008. The UNHRC encouraged “the facilitation of the registration of civil society, unions and political parties [and] the reinforcement of freedom of expression and assembly in particular through the revision of article 51 of the Press Code”⁴.

These recommendations echo the United Nations Human Rights Committee’s concluding observations within the framework of the fifth periodic report on Tunisia, whereby the Committee expressed its concern over “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)”. The Committee went on to recommend 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”⁵.

Unfortunately, more than one year after these recommendations were adopted, no new independent associations have been able to register, while many other independent human rights associations are still not officially recognised, including the National Council for Liberties in Tunisia (CNLT), the Observatory for the Freedom of Press, Publishing and Creation (OLPEC), the International Association for the Support of Political Prisoners (AISPP) and the Tunisian Association Against Torture (ALTT).

In the conclusions of the 2009 annual report, the United Nations Human Rights Special Rapporteur remained “concerned at the reported restrictions on the right of freedom of assembly” and wished to “remind the Government of article 5 paragraph (a) of the Declaration on human rights defenders, which establishes that ‘for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or

4 Human Rights Council A/HRC/8/2, 22 May 2008, http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/TN/A_HRC_8_21_Tunisia_F.pdf

5 Human Rights Committee, CCPR/C/TUN/CO/5, 23 March 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/414/26/PDF/G0841426.pdf?OpenElement>

assemble peacefully; (b) To form, join and participate in non-governmental organizations, associations or groups; (c) To communicate with non-governmental or intergovernmental organizations”⁶

I - Formation of Associations

1) Does the law require prior authorisation for an association to register?

Article 3 of Law No. 59-154 of 7 November 1959 on associations states that “a receipt shall be issued” upon the declaration of an association to the concerned authority. Article 4 continues by affirming that, “at the end of a three-month period, starting from the date of the declaration mentioned in Article 3 above, and subject to the measures of Article 5 of the same law, the association shall be legally incorporated and allowed to commence its activities”. In practice, however, the administration twists the procedure into a prior authorisation system: either no declaration receipt is issued (the law sets no time limit for the issuance of such receipts), or the Ministry of the Interior objects to its creation.

2) During the past year (September 2008 - September 2009), how many groups (including women’s groups) have tried to register as associations? Has this figure increased or decreased compared to the previous year? Did any groups encounter delays or were they refused authorisation? If so, on what grounds? Are there effective remedies in cases where registration is denied/delayed? Please provide examples.

The Centre for Information, Training, Studies, and Documentation on Associations (a governmental body) affirms that there were 9,350 associations in 2009⁷, however only a dozen of these are truly independent. The 17 August 2009 issue of the daily “La Presse” is a very clear example. In an article entitled “Civil society voices its absolute support to President Ben Ali’s civilizational project”⁸, the paper reported that

hundreds of associations expressed their support for the president in office in view of the upcoming October 2009 presidential elections. According to the paper, scientific, humanitarian, amateur sports, charity, cultural and development organisations had joined forces to back the candidacy of President Ben Ali, judging his programme to be the “sole guarantor of Tunisia’s invulnerability and the future of its young generations” (according to the National Union of Tunisian Women) and “the safeguard of Tunisia’s progress on the path to expansion and sovereignty” (according to the Internet and Multimedia Tunisian Society, the Tunisian Association of Young Lawyers, the Tunisian Consumer Defence Organisation and the Tunisian Organisation of Education and Family). Of the 9,300 existing associations, 8,500 voiced their support for President Ben Ali, ranging from the Tunisian General Union of Labour (UGTT) to employers’ organisations to the... Sports Association for the Mentally Handicapped!⁹

Over the past few years, various associations which have filed for registration have been refused the right to freedom of association. By way of example, the National Council for Liberties in Tunisia (CNLT), created on 10 December 1998, was issued a receipt confirming its registration request on 26 February 1999, then rejected by the Ministry of Interior on 2 March 1999 on no grounds. As of today, it has still not obtained legal recognition. Likewise, the Tunisian Association for the Defence of Secularism, founded by 56 intellectuals, filed for incorporation in February 2008, but the administration has refused to acknowledge its request, despite the fact that the founding members sent a file by mail in the presence of an official (huissier). And since 2003, the members of the Tunisian Association Against Torture (ALTT) have filed various requests with the proper authorities for the creation of their association, but to this day have never been issued a legal receipt.¹⁰

6 A/HRC/10/12/Add.1, 4 March 2009, p.512 <http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.10.12.Add.1.pdf>

7 <http://www.ifeda.org.tn/francais/statistiques.php>

8 <http://www.lapresse.tn/index.php?opt=15&categ=1&news=99333>

9 http://www.lemonde.fr/afrique/article/2009/10/01/en-tunisie-le-pouvoir-mene-une-politique-demagogique-dangereuse_1247809_3212.html#ens_id=1245377

10 CRLDHT/ALTT/EMHRN, Torture in Tunisia, October 2001. Paris: Les temps de Cerises publishing house.

3) What is the average time to register an association, according to its objectives?

The registration timeframe varies remarkably from one request to another. The procedure can take 24 hours, as was the case for some dozen governmental associations formed on the eve of the preparatory process of the World Summit on the Information Society (WSIS). For others, it can take several weeks, as was the case for the Tunisian Association of Democratic Women, or simply go unheeded (cf. example above).

4) Did the authorities take any positive steps to register organisations that have been waiting for a long time?

As regards truly independent associations, no positive measures have been brought to our attention.

II - Life of Associations

1) During the past year (September 2008 - September 2009), were members of associations free to carry out their activities or did they face specific difficulties (e.g., in opening bank accounts, organising meetings, etc.) or harassment by the authorities (restrictions on free expression and assembly, restrictions on movement, arrests, etc.)? Were men and women treated differently in this regard?

In addition to the problems related to registering an independent association, the members of such associations face a number of restrictions which have sharply increased over these past few months.

In May 2009, four members of the executive committee of the National Union of Tunisian Journalists (SNJT) resigned within a short period of time, which, in compliance with the rules and regulations of the union, resulted in the dissolution of the executive committee. Following this event, Mr Néji B'ghouri, president of the legal executive committee, announced that new elections would be held on 12 September during an extraordinary congress. However, union members and partisans of the ruling party took advantage of their majority in the "greater executive committee" (a deliberative body composed of

the union's executive committee, internal commission presidents and regional section presidents) to organise an extraordinary congress on 15 August, whereby a new executive committee was appointed. In a press release, Mr Néji B'ghouri – supported by the International Federation of Journalists, the Committee to Protect Journalists and SFR – denounced a "putsch" and recalled that according to the union's by-laws and regulations, only the Executive Committee president is entitled to call for a meeting of the greater committee.¹¹ Created on 13 January 2008, the SNJT has been subjected to repeated harassment ever since the publication of its first annual report in May 2008 on the situation of freedom of press in Tunisia. On top of this, the legal ruling committee refused to support the candidature of the current Tunisian president in the October 2009 presidential elections.

This associative "putsch" was unfortunately only the latest of many similar cases. For example, the Tunisian League for Human Rights (LTDH) and the Association of Tunisian Judges (AMT) also attracted press attention these past years.

On that subject, on 11 June 2009 the Court of Cassation upheld the 2001 ruling of the Tunis Court of Appeal, which cancelled the 5th Congress in October 2000 of the Tunisian League for Human Rights (LTDH). Legal proceedings were started further to a complaint lodged by four activists close to the ruling party; they presented candidatures at the 5th Congress in order to sit on the ruling bodies of the LTDH but were not elected. This decision by the Court of Cassation, pronounced more than 8 years after the events, is the latest in a long series of legal proceedings against the LTDH. The continual harassment the organisation is subjected to – including a permanent police blockade at its Tunis headquarters that prevented the May 2006 congress from being held – has resulted in the freezing of the activities of the oldest human rights league in the Arab and African world.¹² The League's Board recently tried to renew

¹¹ Euro-Mediterranean Human Rights Network, "Prise de contrôle du Syndicat National des Journalistes Tunisiens par le pouvoir", 9 September 2009, http://fr.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3517.html

¹² Euro-Mediterranean Human Rights Network, "La ligue Tunisienne des droits de l'Homme à nouveau visée", <http://fr.emhrn.net/pages/560/news/focus/70563>

discussions with activists in order to seek consensual solutions and organise a new Congress. Yet there has been no indication that the association will be allowed to organise this meeting – both its central and regional offices remain either partially or totally cut off.

Generally speaking, independent associations face many difficulties when they wish to organise meetings. Even Amnesty International was unable to hold a meeting to debate one of its reports entitled “Challenging Repression: Human Rights Defenders in the Middle East and North Africa”, which had been published that same day.¹³ Similarly, authorities have continued to prevent the organisation of the general meeting of the National Council for Liberties in Tunisia (CNLT), obliging its members to celebrate their tenth anniversary in Morocco. In addition, the CNLT publishes a periodical paper entitled “Kalima” and in 2008 launched its own radio station. On 27 January 2009, the day on which Radio Kalima was to be broadcast by satellite, the police cordoned off the offices. After three days of blockades, the offices were shut down and put under seal, and all of the equipment confiscated.¹⁴

2) Do the government's policies create an enabling environment? Has civil society's (including women's NGOs') involvement in public debate increased or decreased this year? Please provide examples.

In view of the October 2009 presidential elections, public authorities stepped up measures to weaken opposition leaders and association members, in particular human rights defenders who voiced opinions contrary to the official line. Police surveillance in front of their homes continues, while telephone and electronic communications are monitored (Internet sites screened, electronic mail surveyed). Such tactics are part of a strategy to harass and intimidate these persons, as well as to further isolate them by making it impossible to hold a private conversation at home or with persons abroad.

13 Amnesty International, “Al Tunisia prevented from holding a meeting”, 16 March 2009, <http://www.amnesty.org/en/library/asset/MDE30/001/2009/en/1a577675-5026-4282-86f2-774b5d93810c/mde300012009en.html>

14 Euro-Mediterranean Human Rights Network, “The headquarters of radio Kalima and the CNLT surrounded and looted”, 3 February 2009, http://fr.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3417.html

Since the start of the year, the comings and goings at the residence of Mr Khémaïs Chammari have been constantly surveyed; he is no longer free to receive the guests of his choice in his own home.¹⁵ In June, he lodged a complaint when the civil police physically blocked off the entrance to his home again.¹⁶

Ms Radhia Nasraoui, a lawyer and member of the ALTT, was the victim of similar methods. On the night of 24 April 2009, her residence was broken into while she was attending the All-Africa Human Rights Defenders' Conference in Kampala¹⁷. Ms Nasraoui lodged a complaint for the theft of the keys to her house, car and office; a complaint which has gone unheeded.

For having voiced opposition to the support expressed by the Tunisian Association of Young Lawyers (essentially composed of members close to the ruling party) in favour of the re-election of Ben Ali in the upcoming presidential elections, the car of Ms Krichi, a member of the association's executive committee, was wrecked in front of her home in Hammam Chott.

Since the beginning of 2009, we have witnessed a fresh outburst of physical assaults against dissident civil society voices. On 23 June 2009, Ms Radhia Nasraoui, Mr Raouf Ayadi and Mr Samir Dilou were assailed by the Tunisian police upon their return to the country after attending an international conference held by Tunisian exiles to denounce human rights violations in Tunisia. After being physically searched, their luggage and documents were inspected. Mr Abdelraouf Ayadi was manhandled, hit and brutally kicked by the police while he was on the ground, then policemen pulled him to his feet and took him into an office where he was searched again and his luggage inspected. On

15 Euro-Mediterranean Human Rights Network - Observatory for the Protection of Human Rights Defenders, “Défenseurs et politiques sous surveillance”, 16 April 2009, <http://fr.emhrn.net/pages/560/news/focus/69803>; Euro-Mediterranean Human Rights Network - Observatory for the Protection of Human Rights Defenders, “Multiplication des mesures vexatoires à l'encontre des défenseurs des droits de l'Homme”, 25 June 2009, http://fr.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3436.html

16 Observatory for the Protection of Human Rights Defenders, “New acts of harassment against Mr Khémaïs Chammari”, 8 July 2009, <http://www.omct.org/index.php?id=OBS&lang=fr&articleSet=Appeal&articleId=8639>

17 Observatory for the Protection of Human Rights Defenders, “New acts of harassment against Ms Radhia Nasraoui”, 15 May 2009, <http://www.omct.org/index.php?id=&lang=fr&articleSet=Appeal&articleId=8539>

Tuesday, 29 September 2009, Hama Al Hammami, a member of the executive committee of the Collectif du 18 octobre, was fiercely assaulted upon his arrival at the Tunis airport. After emptying the arrivals hall where Mr Al Hammami's supporters had gathered, the police attacked Mr Al Hammami; they ripped his clothing, broke his glasses and brutally beat him. This assault was in response to Mr. Al Hammami's participation on the television programme "Live With..." broadcast on Al Jazeera on 25 September.

In addition, smear campaigns have been carried out against human rights activists over the past months. On 11 December 2008, United Press International published the accusations made by a former Kalima journalist, who had been pressured into trying to destabilise Kalima and the CNLT. In this article, Mrs Sihem Bensedrine is accused of "using human rights for purposes of extortion and speculation" and having received sums of money exceeding half a million euros from various foreign sources. She is also accused of heading a "group of opportunists who are dirtying the image of human rights in Tunisia". These accusations were repeated in Tunisian, Arab and European papers.¹⁸ Certain persons consider that this new campaign against Mrs Bensedrine was carried out in retaliation for her participation as a witness at the trial of Mr Khaled Ben Saïd, former Deputy Consul in Strasbourg and former police superintendent in Jendouba, who was pronounced guilty by the Lower Rhine Court of Assizes for having given orders to commit acts of torture and barbarity, and sentenced to eight years of prison in absentia on 15 December 2008.

3) Is prior authorisation required to obtain domestic or foreign funding? How much control did the authorities exercise in this respect between September 2008 and September 2009?

Article 68 of Law No. 2003-75 of 10 December 2003 makes it a crime to provide financial assistance, or any other type of support, to persons, organisations or sectors related to terrorism or other illegal activities. This particularly vague measure, placed side by side with the very broad definition of terrorism, leads to

¹⁸ Frontline, Smear campaign against human rights defender Sihem Bensedrine, 9 January 2009, <http://www.frontlinedefenders.org/node/1751>

obvious confusion between pacific civil activities and acts commonly qualified as terrorist. In these conditions, there is a great risk that the funds of independent associations simply run dry because they are cut off at the source. It is important to note that even European Union financing for the LTDH remains frozen to this day by the public authorities.

4) Are there any discriminatory measures or (social) practices that prevent women from getting involved in associations?

No.

III – Dissolution of Associations

1) Which authorities are legally competent to dissolve an association?

Article 29 of the law on associations provides for a six-month prison sentence or a fine of 50 to 500 dinars for anyone who encourages the assembly of members of an association which has been recognised as nonexistent or dissolved. Article 24 of this same law gives county courts jurisdiction to disband any association whose activities violate the law on associations.

2) Have any associations been dissolved during the past year? If so, on what grounds? Were these cases taken to court, and if so, what was the outcome?

No information available.

3) Does national legislation provide for measures that are less extreme than dissolution? (E.g., measures to suspend associations' activities.) If yes, are such measures implemented? Please provide examples.

No.

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**

- Implement the recommendations of the Human Rights Council concerning the respect of civil liberties.
- Modify the provisions of the 10 December 2003 law against terrorism and money laundering to ensure that pacific activities and civil society are not considered terrorist activities.
- Guarantee the separation of executive, legislative and judicial powers, and guarantee the independence of the judicial system, the cornerstone of human rights.

- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**

Creation and registration:

- Ensure the right to establish an association through simple notification without the need for a prior licence.
- Guarantee effective recourse within a reasonable timeframe to associations whose registration requests have been refused by administrative authorities.
- Abolish prison sentences for leaders of dissolved associations who pursue their activities (Art. 29), for such measures are contrary to the very foundations of the declaratory system.

Organisation and actions:

- Put an immediate end to the harassment and intimidation of association members, as well as to the police surveillance of their telecommunications (telephone and Internet).
- Guarantee the right to privacy for association members and forbid and punish any interference in their correspondence and communication.
- Guarantee effective legal recourse within a reasonable timeframe in case of breaches of human rights and fundamental liberties of association members and human rights supporters.
- Put an immediate end to the unsolicited replacement of association board members.
- Punish by law the violation of the right to assembly with no legitimate motive by any person or civil servant who is not legally mandated for this purpose.
- Carry out independent and impartial investigations on allegations of human rights violations, publish the results and bring the accused parties before a court of law.

- **ENVIRONMENT REQUIRED FOR THE SUSTAINABLE DEVELOPMENT OF CIVIL SOCIETY:**

- Implement public policies which encourage a dynamic and efficient civil society, which favour women's participation on the social and political scenes (in accordance with the 2006 Istanbul Action Plan recommendations), and which enable dialogue between public authorities and civil society actors.



TURKEY

Turkish legislation governing the right to associate generally respects international standards for freedom of association. However, the political situation in Turkey prevents the emergence of associations promoting cultural and linguistic minorities and entails serious restrictions on the rights of certain associations, and particularly those that defend the rights of Kurds. Some of these associations are faced with restrictions on their freedom of assembly and their members are subject to harassment, including by the courts. The recommendations set out in last year’s Review therefore remain highly relevant.

2009 INDICATORS

Registration of associations	Dissolution	Interference /harassment	Access to foreign funds	Other elements

INTRODUCTION

The Political Situation and the General Framework of Democracy and Human Rights

1) Is there any specific legislation that affects freedom of association? Which related laws (e.g., anti-terrorism law, emergency law, criminal law, publications law) negatively affect freedom of association? How?

Freedom of association in Turkey is regulated by three laws: the Law on Associations (No. 5253), the Law on Foundations (No. 5737) and the Law on Trade Unions (No. 2821).

Some laws negatively affect freedom of association. For example, the Law on Radio and Television and Their Broadcasts (No. 3984) stipulates in Article 9 (changed on 15 May 2002 – Article 4756 S.K./5) that members of the Radio and Television Supreme Council cannot derive benefits from their membership and cannot be members of any political party. Exceptions are made for positions within associations, foundations or cooperatives that work in the field of social aid and education.¹

Similarly, the Law on Political Parties (No. 2820) stipulates in Article 11 (changed on 12 August 1999 – Article 4445/4) that “Any Turkish citizen above the age of 18 who has the ability to exercise his or her civil and political rights can be a member of a political party.” However, judges and public prosecutors, members of the high

¹ <http://www.mevzuat.adalet.gov.tr/html/844.html>

judiciary – including the High Supreme Court (Yargıtay), Council of State (Danıştay), Constitutional Court (Anayasa Mahkemesi) and the Turkish Court Accounts –, public servants who work in government administration and organisations, members of the Turkish Armed Forces, and high school, primary and middle school students cannot join political parties.

Article 81 of the Law provides that: “i) Political parties cannot argue that there are minorities based on differences of national culture, religious culture, denomination, race or language in the Republic of Turkey. ii) [...] b) Political parties cannot be geared towards or promote activities designed to corrupt the unity of the nation, neither through the protection, development, or propagation of languages and cultures other than the Turkish language and culture, nor through the creation of minority groups in the Turkish Republic.” Although about 26 different local languages are used in Turkey today, sub-clause C of Article 81 limits the use of these languages in political parties’ activities, as Turkish is the sole official language. The law also discourages minorities from participating in political life; in other words, it discourages them from exercising their right to freedom of association.

2) How do international and regional legal bodies (such as UN Committees, the UN Human Rights Council Universal Periodic Review or the African Commission on Human and Peoples’ Rights) rate the situation with regard to freedom of association? If any such bodies have made recommendations, have they been implemented by the authorities? If yes, how? (Legislative amendments, repealing of laws, etc.) If no, how do you explain the non-implementation of the recommendations?

International legal bodies do have an influence on Turkey with regard to all human rights issues, including freedom of association. Some of these conventions and declarations include the European Convention on Human Rights, the ILO Convention No. 87, the European Social Charter, and the Universal Declaration of Human Rights. By signing and ratifying these conventions, Turkey has committed itself to ensuring freedom of association. However, while the last two EU Progress Reports (2007 and 2008) concluded that there had been improvements in Turkey with regard to freedom of association, implementation problems continue to exist

that hinder the exercise of some rights. Turkey’s non-implementation (or unsatisfactory implementation) of international standards is evidence of a lack of democratisation and insufficient respect for human rights.

I – Formation of an Association

1) Does the law require prior authorisation for an association to register?

The Law on Associations does not require prior authorisation for an association to register and provides a detailed list of issues that must be specified in the statutes of any association. As associations cannot carry out activities that are contrary to their statutes, the Law effectively prevents them from reacting to incidents or problems that may be related to their fields of work but are not specifically mentioned in their statutes. To deal with the currently existing restrictions, associations define their objectives broadly and provide long lists of activities which they intend to implement. Another difficulty relates to the fact that “seven people are required to establish an association”.

According to Article 31 of the Regulations on Associations, “Associations shall use Turkish in their records and correspondence with official institutions of the Republic of Turkey”. Limitations on the languages that can be used in internal records restrict associations’ freedom and do not respect the rights of associations that promote linguistic rights. As mentioned above, about 26 different minority and local languages are used in Turkey today.

In accordance with Article 93 of the Civil Law, foreigners who have residence permits can establish associations or become members of associations in Turkey. However, paragraphs d and e of Article 5 of the Regulation on the Formation of Associations state: “Except for foreign associations or foundations, all organisations whose founders include nationals of countries other than Turkey must obtain permission from the Ministry of Interior Affairs to be established in Turkey, and the foreign nationals must prove that they are legally resident in Turkey”. Interestingly, the Law on Foundations in fact does not require such permission and says that “the

majority of the founders should reside in Turkey”.

2) During the past year (September 2008 - September 2009), how many groups (including women’s groups) have tried to register as associations? Has this figure increased or decreased compared to the previous year? Did any groups encounter delays or were they refused authorisation? If so, on what grounds? Are there effective remedies in cases where registration is denied/delayed? Please provide examples.

The number of associations has increased from 77,849 in 2007 to 80,200 in 2008. This means that there has been a considerable increase since last year. The Confederation of the Farmers Union (“Ciftci-Sen”), which was established in 2008 and consisted of seven trade unions and 22,000 members, was refused authorisation during this period. The Governor of Ankara filed a lawsuit claiming that “farmers cannot establish a trade union because farmers are neither workers nor employers”. The Governor used the Law on Trade Unions (No. 2821) as the basis for his claim. The case was brought before the 8th Labour Court of Ankara, which, in its decision on 4 May 2009, decided to close the Confederation of the Farmers Union.²

3) What is the average time to register an association, according to its objectives?

Unless information is missing or anything is found to be contrary to the law, the civil administration approves the establishment of an association within 30 days. However, if errors or omissions are not rectified within 30 days, the civil administration notifies the Public Prosecution Office in order to take legal action to close the association.

4) Did the authorities take any positive steps to register organisations that have been waiting for a long time?

The authorities took one positive step with regard to international human rights standards during the period under review. A court case had been brought against the Communist Party of Turkey (TKP) in 2002, as the Office of the Public Prosecutor considered the party’s

name to be in violation of the Law on Political Parties of 22 April 1983, which states that “No political party can use the following words in its name: communist, anarchist, fascist, theocratic, national socialist, or the name of a religion, language, race, sect and region, and names that have a similar meaning to these words.”³ The Constitutional Court decided to dismiss the case on 9 July 2009.

II – Life of an Association

1) During the past year (September 2008 - September 2009), were members of associations free to carry out their activities or did they face specific difficulties (e.g., in opening bank accounts, organising meetings, etc.) or harassment by the authorities (restrictions on free expression and assembly, restrictions on movement, arrests, etc.)? Were men and women treated differently in this regard?

Members of associations are not sufficiently free to carry out their activities. They still face some difficulties and, for example, are sometimes prevented from organising events. According to the annual Balance Sheet of Human Rights Violations for 2008,⁴ 22 activities – 5 meetings, 4 theatrical productions, 2 press conferences, 2 Newroz (Kurdish festival) celebrations, 1 panel discussion, 1 concert, 1 feast, 1 exhibition, 1 meeting, 1 film screening, 1 award ceremony, 1 training activity and 1 solidarity event – were banned in Turkey in 2008.

For example, the Governor of the province of Diyarbakir did not allow the Diyarbakir Democracy Platform to organise a May Day demonstration in Istasyon Square on 1 May. Necdet Atalay, the Provincial Chairman of the Democratic Society Party (DTP), said that the group had applied to the Governor to obtain permission for the demonstration. He added that individuals and groups in Diyarbakir had applied, in vain, for permission to hold May Day demonstrations in Istasyon Square since 1980. Atalay further stated that the Governor had allowed them to hold the demonstration in the Fair Square

³ <http://www.mevzuat.adalet.gov.tr/html/608.html>

⁴ Available online at http://www.ihd.org.tr/images/pdf/IHD_2008_Turkey_Human_Rights_Violations_Balance_Sheet.pdf.

² For more information, please visit <http://bianet.org/bianet/siyaset/111217-sendika-ciftcilerin-hakki-kapatma-davasi-yasal-degil>.

area (formerly called “Newroz”) rather than in Istasyon Square. No reason was provided for the refusal and the DTP consequently did not file a complaint.

Secondly, 34 members of the Confederation of Public Employees Trade Unions (KESK) were arrested on 28 May 2009. It is not known what they are accused of, as the authorities have kept their files sealed. A date for a hearing has yet to be set. The 10th Heavy Penalty Court in İzmir (in decision no. 2009/567 D.İş, dated 26 May 2009) had approved formal letter no. İSTH:20004364-09 of the Bergama District Gendarmerie Headquarters, dated 25 May 2009, which requested that 34 members and executives of KESK and its affiliate trade unions be taken into custody, that their houses and workplaces be searched, and that their belongings be seized. Among the confiscated items were computers, CDs, disks and USB sticks, and information contained on them was assessed and registered. Moreover, the headquarters of the Confederation and of the İzmir branch of Eğitim Sen were searched, the detained individuals’ contact with their lawyers and defenders was restricted, and lawyers were prevented from making copies and examining relevant documents. Thirty-three of the 34 people who were arrested are members and executives of the Confederation and affiliated trade unions. (The 34th person is Yüksel Mutlu, who is a member of the Secretariat of the Turkey Peace Assembly.)⁵

On 22 August 2008, Prime Minister Recep Tayyip Erdogan called environmentalists “people who waste their energy”⁶ and said that no one could be a better environmentalist than him. One day after the Prime Minister’s statement, security forces started to attack environmentalists.⁷ On 23 August 2008, 200 environmentalists who had been protesting against nuclear energy, including 70 foreigners, were expelled from their camp in the province of Sinop. The Governor claimed that the protests against nuclear energy harmed the city’s image and that they were disturbing the peace. After the activists’ expulsion from the camp, Life without Nuclear Association (SINYAD)⁸ and

Ekotopya held a press conference and protested the decision of the Governor. Police forces broke up the press conference and detained 32 people.

In addition, the lawyer Filiz Kalayci, who is one of the board members of the Human Rights Association (İHD), was arrested on 27 May 2009 and taken to an F-type prison (a maximum security prison) in Ankara. The authorities have not disclosed of what she is accused, but she seems to have been targeted in an attempt to suppress human rights activities related to prisoners’ rights. No hearing date has been set yet.

2) Do the government’s policies create an enabling environment? Has civil society’s (including women’s NGOs’) involvement in public debate increased or decreased this year? Please provide examples.

Civil society was less involved in public debate this year. For example, the Government plans to establish a national human rights institution,⁹ but human rights organisations heard of this through the media, rather than from the Government itself. The Government regrettably did not consult human rights organisations for their views on the issue.

However, the recent speech of President Abdullah Gül, who stressed that a modern state should “preserve social and political diversity”, certainly represents an encouraging development for associations promoting the rights of minorities, including the Kurdish minority.

3) Is prior authorisation required to obtain domestic or foreign funding? How much control did the authorities exercise in this respect between September 2008 and September 2009?

Prior authorisation is required to obtain funding from both domestic and foreign sources. Article 21 of the Law on Associations stipulates that associations can receive funding from foreign individuals, organisations or institutions, but only if they notify the civil administration in advance. In reality, the process

without nuclear energy.

5 For more information, please visit <http://kesk.toplumsal.org>.

6 <http://arsiv.ntvmsnbc.com/news/457078.asp>

7 <http://www.radikal.com.tr/Default.aspx?aType=Detay&ArticleID=895259&Date=25.08.2008&CategoryID=85>

8 SINYAD is a non-governmental organisation whose objective is a world

9 For more information, please visit http://www.ihd.org.tr/english/index.php?option=com_content&view=article&id=518.

imposes a de facto requirement for prior authorisation. Unless an association notifies the General Directorate of Associations of its projects, it is subject to a fine.

4) Are there any discriminatory measures or (social) practices that prevent women from getting involved in associations?

There are no discriminatory measures in legislation that prevent women from getting involved in associations. However, while this is a positive aspect of the legislation, it is not satisfactorily reflected in practice. Women's participation and representation in associations, political parties and professional organisations remains very low.

III – Dissolution of an Association

1) Which authorities are legally competent to dissolve an association?

If missing elements of the registration documents are not provided and aspects that are considered to be contrary to the law are not corrected within 30 days, the civil administration notifies the Public Prosecution Office, which, in turn, will file a court case to achieve the closure of the association. Associations may be dissolved and their activities may be suspended by a judge in cases where this is prescribed by law. In cases where delays would endanger national security or public order, and in cases where it is necessary to prevent the perpetration or the continuation of a crime, an authority designated by law may be vested with the power to suspend an association's activities.

2) Have any associations been dissolved during the past year? If so, on what grounds? Was the case taken to court, and if so, what was the outcome?

As mentioned above, the Confederation of the Farmers Trade Union was dissolved on 4 May 2009. The administrators of the Confederation appealed against the decision of the court, and the case is now pending in the High Court, which has yet to reach a verdict. When an organisation submits its documents to the relevant authorities (General Directorate of Associations, Ministry of Interior Affairs, etc.), it is technically established. Then either the General Directorate of Associations or

other relevant authorities (province, district, security directorate, etc.) can file a complaint against the association, trade union or foundation. In the case of the Confederation of the Farmers Trade Union, the Governor of Ankara had filed the complaint which prompted the 8th Labour Court of Ankara to dissolve the association.

Although only one organisation was dissolved in Turkey during the past year, there are many ongoing court cases against civil society organisations. For instance, a court case was brought against the Democratic Society Party (DTP). The Chief Public Prosecutor of the Court of Appeal claimed that "the DTP [had] become a focal point of actions that were against the unity of the state in terms of its country and people", and has used past statements and documents showing the participation of DTP members and administrators in demonstrations as evidence to support the indictment. The case is still ongoing and a hearing was most recently held on 16 September 2009.

The province of Istanbul filed a case with the Chief of Public Prosecutions Office of Beyoglu on 17 October 2008, and the office began court proceedings against the IHD Istanbul Branch in accordance with the Law on Associations (No. 5253). The Governor claimed that the IHD Istanbul Branch had carried out activities that were contrary to its objectives. Specifically, the Governor claimed that the IHD Istanbul Branch had acted in a way contrary to its objectives when it allowed the Mothers For Peace Initiative to hold a press conference in its conference room. However, the IHD is known for showing its solidarity with other organisations by supporting such activities.

There is also an ongoing court case against the IHD Mersin Branch, which is based on claims that the association acted in a way contrary to its objectives when it joined the Platform against Privatisation and the Democracy Platform in Mersin. This was despite the fact that Article 23 of the IHD statutes states that the "Executive Committee carries out activities to establish platforms with other associations, foundations, trade unions and other NGOs, to join or leave platforms that carry out activities in the field of human rights, democracy and other similar topics."¹⁰

¹⁰ http://www.ihd.org.tr/index.php?option=com_content&view=article&id=25&Itemid=68

3) Does national legislation provide for measures that are less extreme than dissolution? (E.g., measures to suspend associations' activities.) If yes, are such measures implemented? Please provide examples.

National legislation includes measures that are less extreme than dissolution, such as fines and judicial investigations of associations' staff. These measures are widely implemented.

For instance, a court case was brought against the Youth Union, which is the first trade union of university students in Turkey. The Ministry of Labour and Social Security claimed that university students could not establish a trade union in accordance with the Law on Trade Unions (No. 2821), the Law on Trade Unions of Public Servants (No. 4857), and the Law on Collective Bargaining, Strikes and Lockouts (No. 2822), as "people and groups that are not considered either as employees or employers and are not employed under the security of a contract and are in the labour-capital relationship, cannot establish a trade union" (the Law on Collective Bargaining, Strikes and Lockouts). The authorities claim that the student union's chosen sector of work does not exist. The Ministry therefore returned the application documents to Genc-Sen (original name of the students' Youth Union) and suggested that the university students establish an association.¹¹ A first hearing was held in the 6th Labour Court of Istanbul on 15 December 2007. After two years, the Court reached a judgement of nolle prosequi¹² and the file was sent to the High Court, which approved the decision. The first hearing in the case was then held by the Court of First Instance on 16 June 2009. The next hearing will be held on 17 November 2009.

¹¹ For more information, please visit <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=5&ArsivAnalID=45318>.

¹² nolle prosequi: An entry on the record of a legal action denoting that the prosecutor or plaintiff will proceed no further in an action or suit either as a whole or as to some count or as to one or more of several defendants. (Source: <http://www.merriam-webster.com/dictionary/nolle%20prosequi>)

RECOMMENDATIONS

- **WITH REGARD TO THE POLITICAL SITUATION AND THE GENERAL FRAMEWORK OF DEMOCRACY AND HUMAN RIGHTS:**

- Sign, ratify and implement all international human rights treaties and agreements.
- Endorse the additional protocols pertaining to individual complaints as a basic insurance for the protection of human rights.
- Eliminate all forms of discrimination based on, inter alia, gender, race, language, religion, political opinions, sexual orientation or membership in a national minority, in all matters pertaining to the organisations of civil society.

- **WITH REGARD TO THE LEGISLATION AND PRACTICE RELATED TO FREEDOM OF ASSOCIATION:**

ESTABLISHING OF ASSOCIATIONS

- Reduce from seven to two the number of founding members required to form an association.
- Amend laws which prevent some professional groups from enjoying their right to freedom of association.
- Abolish prohibitions on the use of local languages.

ORGANISATION AND ACTION

- Put an end to all forms of harassment against human rights defenders.
- Terminate the investigation into / prosecution of the Human Rights Association (IHD) and Genc-Sen.

FUNDS

- Acknowledge associations' right to receive both domestic and foreign funding in accordance with provisions that guarantee a commitment to transparency and respect for the law. Associations should provide annual reports and budgets that are publicly available.

- **CONCERNING THE ENVIRONMENT REQUIRED FOR SUSTAINABLE DEVELOPMENT OF CIVIL SOCIETY**

- Ensure associations' participation in the decision-making process for public interest policies.



EUROPE

by JEREMY McBRIDE

Apart from being generally assured in constitutions and instruments of a constitutional character¹, freedom of association in Europe² has the benefit of acceptance by most of its states 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 Minorities³ and, within the European Union, it is also guaranteed by Article 12 of the Charter of Fundamental Rights of the European Union⁴.

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 Organisations⁵ 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 Union countries⁶.

However, the recession has affected the ability of associations and other non-governmental organisations to operate in the period under review, particularly as a result of cutbacks in

1 E.g., the United Kingdom has no written constitution but, 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 For the purpose of this chapter “Europe” is primarily taken as embracing the 27 countries in the European Union but, as the standards applicable in them are also elaborated by two larger groupings of states, the Council of Europe and the Organisation for Security and Cooperation in Europe, some illustrations of those standards and problems in their implementation concern European countries outside the European Union.

3 Of the Council of Europe’s 47 member states, only Andorra, Belgium, France, Iceland, Luxembourg, Monaco and Turkey have yet to ratify this treaty.

4 This only becomes binding when the Lisbon Treaty enters into force but is already considered by the European Court of Justice in reviewing the validity of measures adopted within the European Union.

5 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.

6 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.

both public and private funding, and this may lead to a fall in their numbers in the longer term⁷.

Although much of the activity undertaken by associations relies on the voluntary involvement of their members and supporters, these associations are also significant employers in many of these countries; for instance in the United Kingdom some 600,000 persons - 2.2% of the total workforce - are employed by voluntary organisations⁸. 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 clubs⁹.

In the period under review no significant enhancements have been made to the standards applicable to freedom of association - although a Code of Good Practice for Civil Participation in the Decision-making Process designed to facilitate the activities of civil society organisations was adopted on 1 October 2009 by the Council of Europe's Conference of INGOs¹⁰ - but there have been some useful developments in certain areas of case law. In addition the first set of recommendations of the Expert Council on NGO Law have been formally adopted by the Conference of INGOs of the Council of Europe and the provisional version of those in its second annual report are available. Furthermore a review of the implementation of Recommendation CM/Rec(2007)14 on the legal status of NGOs in Europe has been launched by the Council of Europe¹¹. This is particularly welcome since, as the reports of the Expert Council and developments in individual countries underline, the effective implementation of international and regional standards governing freedom of association is

still far from universally realised. The problematic issues continue to relate especially to the ability to form and belong to associations, their freedom to manage their affairs and their enforced dissolution and prohibition, as well as the harassment to which some are subjected for pursuing their legitimate objectives.

Formation and Membership

The Conference of INGOs of the Council of Europe has adopted a number of recommendations with respect to the establishment of NGOs based on those made in the first annual report of its Expert Council on NGO Law in 2008. These recommendations - indicating a number of problematic issues - were that: (a) legislative restrictions on the establishment of informal groupings should be repealed and their legitimacy should be clearly recognised as a matter of law; (b) the requirement 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; (c) the restrictions on children, convicted persons and non-nationals from being founders of NGOs should be brought into line with the requirements of international standards; (d) formal time limits for decision-making by relevant authorities should be no more than two or three weeks and steps should be taken to ensure their observance, namely the provision of additional staff and of clear consequences for failure to meet them, whether a presumed refusal or positive decision; (e) legal grounds for refusal 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; (f) decision-making with respect to the registration of NGOs or granting them legal personality should be protected from political influence and those charged with this role should be appropriately trained for the task; and (g) 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 personality¹².

7 See, e.g., 'More than half of charities hit by recession', Daily Telegraph, 17 March 2009.

8 Ibid, p 682.

9 Ibid, p 586.

10 CONF/PLE(2009)CODE1. The Code draws upon practical experiences from various countries in Europe concerning relations between NGOs and the authorities, which are based on a principle of independence, transparency and trust. Examples of good practices and tried-and-tested methods for facilitating these relations have therefore been analysed and set out in an operational document.

11 As a first stage questionnaire prepared for the European Committee on Legal Co-operation will be sent to member states in Autumn 2009.

12 Recommendation adopted on 28 January 2009, CONF/PLE(2009)REC1.

The need for these recommendations to be acted upon is evident both in elements of national practice reported in the first annual report of the Expert Council of NGO Law noted in the previous review and in the rulings of the European Court of Human Rights (“the European Court”). While the former show only the existence of problems, the latter continue to provide important elaboration as to what is entailed by the right to freedom of association.

Thus in *Demir and Baykara v Turkey*¹³, a case concerned with the formation of trade unions, the European Court confirmed not only that restrictions on the exercise of the right to freedom of association by public servants should be strictly construed but also that there are positive obligations inherent in that right.

Turkey had sought to have the application by municipal servants - who had complained that the domestic courts had denied them the right to form trade unions and to enter into collective agreements - declared inadmissible because the guarantee in Article 11 of the European Convention was not applicable to “members of the administration of the state” since that provision’s second paragraph authorised restrictions on the exercise of freedom of association by such persons. The European Court did not, however, see this authorisation as open-ended, considering instead that any restrictions must not impair the very essence of the right to organise and that it was incumbent on the state concerned to show the legitimacy of any restrictions to such persons’ right to organise. Furthermore it considered that municipal civil servants, who are not engaged in the administration of the state as such, could not in principle be treated as “members of the administration of the state” and, accordingly, be subjected on that basis to a limitation of their right to organise and to form trade unions and, a fortiori, to formation of other forms of association. In reaching this conclusion the European Court attached considerable importance to European practice concerning membership of trades unions by public servants and in particular to the fact that the density of trade-union membership was generally higher in the public sector than in the private sector, which it treated as a manifest indication of a favourable legal and administrative environment created by

member states. It found that in the majority of member states, the few restrictions that can be found are limited to judicial offices, to the police and to the fire services, with the most stringent restrictions, culminating in the prohibition of union membership, being reserved for members of the armed forces. In the present case the attempt to claim that even restrictions on - rather than a total exclusion of - the freedom of association of the applicants could not succeed because the government had failed to show how the nature of the duties performed by the applicants, as municipal civil servants, requires them to be regarded as “members of the administration of the state” subject to such restrictions.

The failure to recognise the right of the applicants, as municipal civil servants, to form a trade union stemmed from (a) a lengthy delay in adopting a law to regulate the formation of trades unions by civil servants after Turkey had ratified ILO Convention No. 87, the fundamental text securing, internationally, the right of public officials to form trade unions and (b) the refusal during this transitional period of the Court of Cassation to follow the solution proposed by a District Court, which had been guided by developments in international law, and had instead given a restrictive and formalistic interpretation of the domestic legislation concerning the forming of legal entities. This interpretation prevented the combined civil divisions from assessing the specific circumstances of the case and from ascertaining whether a fair balance had been struck between the respective interests of the applicants and of the employing authority. The resulting failure of recognition was seen as a breach of Turkey’s positive obligation to secure the effective enjoyment of the essential object of Article 11, namely, to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, since it was not necessary in a democratic society. The ruling thus underscores the need for states to put in place an appropriate legal framework to ensure the enjoyment of freedom of association, whether in the context of trade union activities or generally.

In *Demir and Baykara v Turkey*¹⁴ the European Court also reaffirmed its view that the ability of an association to act in a particular way may have to be safeguarded by law if it is to be in a position to pursue its objectives. This

13 [GC], no 34503/97, 12 November 2008

14 [GC], no 34503/97, 12 November 2008

case law has so far been directed to the ability of a trade union to protect its members' interests, requiring that this freedom should not become devoid of substance. Thus a trade union should be able to seek to persuade the employer to hear what it has to say on behalf of its members¹⁵, even if particular means of so doing may not be required. In the present case the European Court considered that, having regard to the developments in labour law, both international and national, and to the practice of states the right to bargain collectively had, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the European Convention, it being understood that states remain free to organise their system so as, if appropriate, to grant special status to representative trade unions. In the European Court's view the government had failed to adduce evidence of any specific circumstances that could have justified the exclusion of the applicants, as municipal civil servants, from the right, inherent in their trade-union freedom, to bargain collectively in order to enter into the agreement in question. The explanation that civil servants, without distinction, enjoy a privileged position in relation to other workers was not regarded as sufficient in this context. As a result the annulment *ex tunc* of the collective agreement entered into by the applicants' union following collective bargaining with the authority was not "necessary in a democratic society", within the meaning of Article 11(2) of the European Convention. It remains to be seen how this case law can be used to protect the pursuit of objectives by associations generally but it is evident that the European Court is laying some important foundations that could also be of benefit them.

Despite the clear and very positive nature of the European Court's case law for the formation of associations, there continue to be instances of it being flouted at the national level. Thus the Fourth Political Division of the Greek Supreme Court has rejected the request for cassation by the "Home of Macedonian Civilization" against Decision 243/2005 of the Court of Appeal of Western Macedonia in which the Macedonian minority association's appeal against

its appeal for recognition was rejected¹⁶. In so doing the Supreme Court treated the association as disputing the Greek identity of Macedonia and its inhabitants and undermine Greece's territorial integrity, which had previously been held by the European Court to be a disproportionate response in pursuing any legitimate aim when refusing registration to the same association as there was no evidence of improper objectives lying behind those set out in its statute¹⁷.

Management

The provisional conclusions in the second annual report of the Expert Council on NGO Law point to a number of problems of undue interference with the internal governance of NGOs in a number of European countries¹⁸. Thus concern was expressed in these conclusions about (a) the appropriateness of the detailed requirements relating to internal governance for all forms of NGOs and the existence of a discretion to impose additional ones at the registration stage; (b) the lack of clarity as to the entitlement of all persons and in particular children and non-citizens to participate fully in the decision-making of NGOs; (c) undue controls over the freedom of NGOs to adapt their internal rules and structures and to establish and close branches which do not have a discrete legal personality; (d) the width of the basis for challenges to the decision-making of NGOs by public authorities; (e) the scope in a few instances for enforced attendance of public officials at internal meetings of NGO decision-making bodies; (f) the lack of clarity and possible inappropriateness of obligations with respect to the auditing of accounts and reporting on activities; and (g) the significant influence exercised over NGO decision-making through the power of authorities to grant or withdraw public funding and through the participation of officials as board members. These conclusions were accompanied by corresponding recommendations designed to remedy the problems identified and it is expected that these will be adopted by the Conference of INGOs in January 2010.

¹⁶ Judgment 1448/2009 of 30 September 2009.

¹⁷ No 26695/95, *Sidiropoulos and Others v Greece*, 10 July 1998. See also 'Dissolution and Prohibition' below.

¹⁸ OING Conf/Exp (2009), 30 September 2009. The provisional conclusions are available at http://www.coe.int/t/ngo/expert_council_en.asp

¹⁵ *Wilson, National Union of Journalists and Others v United Kingdom*, nos 30668/96, 30671/96 and 30678/96, 7 February 2002.

The limits that should exist on the ability of public bodies to interfere in the internal management of a non-governmental organisation were also underlined in the ruling of the European Court in *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*¹⁹. This case concerned the state's response to a conflict between members of the Church but the ruling would be equally applicable to a dispute within the membership of an association.

The European Court accepted that the Bulgarian authorities had legitimate reasons to consider some form of action with the aim of helping to overcome the conflict in the Church, if possible, or limiting its negative effect on public order and legal certainty. However, the European Court considered that the need to restore legality in the leadership of the Church, relied upon by the government, could only justify neutral measures ensuring legal certainty and foreseeable procedures for the settling of disputes, whereas the authorities had in fact gone far beyond the restoration of justice and undertaken actions directly forcing the community under one of the two rival leaderships and suppressing the other. The European Court understandably regarded such measures as disproportionate since in democratic societies it was not for the state to take measures to ensure that religious communities remain or are brought under a unified leadership. It considered that in taking these measures the authorities had disregarded the position of numerous Christian Orthodox believers in Bulgaria who supported the alternative leadership provided by the applicant organisation. There was thus an interference with the organisational autonomy of the Church and the applicants' right to freedom of religion which could not be accepted as lawful and necessary in a democratic society, despite the wide margin of appreciation left to the national authorities. It followed that there had been a violation of Article 9 of the European Convention, interpreted in the light of the right to freedom of association under Article 11.

Dissolution and Prohibition

The legitimacy of the enforced dissolution of associations connected with terrorism was recognised in the ruling

¹⁹ Nos 412/03 and 35677/04, 22 January 2009

of the European Court in *Herri Batasuna and Batasuna v Spain*²⁰, which concerned the dissolution of the political parties *Herri Batasuna* and *Batasuna* pursuant to organic law 6/2002 on political parties ("the LOPP"). The European Court considered that the dissolution of the applicant parties amounted to an interference in the exercise of their right to freedom of association but that it was "prescribed by law" and pursued "a legitimate aim" within the meaning of Article 11 of the European Convention. Moreover, taking account of its previous case law, it considered that the dissolution corresponded to a "pressing social need". In its view the national courts had arrived at reasonable conclusions after a detailed study of the evidence before them, which had allowed them to conclude that there was a link between the applicant parties and ETA. In view of the situation that had existed in Spain for many years with regard to terrorist attacks, those links could objectively be considered as a threat for democracy. In the European Court's opinion, the domestic findings in this regard had to be placed in the context of an international wish to condemn the public defence of terrorism. In consequence, the European Court considered that the acts and speeches imputable to the applicant political parties, taken together, created a clear image of the social model that was envisaged and advocated by the parties, which was in contradiction with the concept of a "democratic society". With regard to the proportionality of the dissolution measure, the fact that the applicants' projects were in contradiction with the concept of "a democratic society" and entailed a considerable threat to Spanish democracy led the European Court to hold that the sanction imposed on the applicants had been proportional to the legitimate aim pursued, within the meaning of Article 11(2) of the European Convention.

The European Court also found in the related cases of *Etxebarria and Others v Spain*²¹, and *Herritarren Zerrenda v Spain*²² that there was no violation of Article 11 as a result of the disqualification of the applicants from standing for election imposed on account of their activities within these political parties.

Although these rulings indicate that some benefit of the

²⁰ Nos 25803/04 and 25817/04

²¹ Nos 35579/03, 35613/03 and 35626/03 and 35634/03

²² No 43518/04

doubt will be given to a state in cases of this kind, they also underline the need for some evidential basis before such a drastic step as dissolution can be taken.

The absence of the latter was significant in the European Court's ruling in *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia*²³, in which the annulment of the Association's Articles and Programme - because its true objectives were found by the constitutional court to be the revival of Ivan Mihajlov-Radko's ideology according to which "... Macedonian ethnicity never existed ..., but belonged to the Bulgarians (Болгари) from Macedonia and its recognition (i.e. that of Macedonian ethnicity) was the biggest crime of the Bolshevik headquarters committed during its existence" - was found to be a violation of Article 11.

The European Court accepted that the Association's dissolution pursued a legitimate aim, namely the protection of "the rights and freedoms of others", in that the national authorities had alleged that real objective violated "the free expression of the national affiliation of the Macedonian people". However, although the European Court recognised that it is possible that tension is created in situations where a community becomes divided, it considered that this is one of the unavoidable consequences of pluralism. and that the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. Moreover it emphasised that the Constitutional Court had made no suggestion that the Association or its members would use illegal or anti-democratic means to pursue their aims. In addition the Constitutional Court had not provided any explanation as to why a negation of Macedonian ethnicity is tantamount to violence, especially to violent destruction of the constitutional order and there was nothing in the Association's constitutive acts to indicate that it advocated hostility. The European Court thus concluded that the crucial issue in declaring the Association's constitutive acts null and void was the name of the Association and the teaching which Ivan Mihajlov-Radko pursued during his lifetime. While the European Court accepted that the name "Radko" and his or his followers' ideas were liable

to arouse hostile sentiments among the population, given that they had connotations likely to offend the views of the majority of the population, the naming of the Association after an individual who was negatively perceived by the majority of population could not in itself be considered reprehensible or to constitute in itself a present and imminent threat to public order. In the absence of any concrete evidence to demonstrate that in choosing to call itself "Radko" the Association had opted for a policy that represented a real threat to the Macedonian society or the state, the European Court considers that the submission based on the Association's name could not, by itself, justify its dissolution

In its judgment the European Court was at pains to reiterate its case-law to the effect that, while a state cannot be required to wait, before intervening, until an association had begun to take concrete steps to implement a policy incompatible with the standards of the European Convention and democracy, sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. It emphasised that one of the principal characteristics of democracy is the possibility it offers of resolving problems through dialogue, without recourse to violence, even when those problems are irksome. As a consequence there could be no justification for hindering a group solely because it seeks to debate in public certain issues and to find, according to democratic rules, solutions To judge by its constitutive acts, the European Court considered that that was indeed the Association's objective. In addition, the Association had confined itself to realising these objectives by means of publications, conferences and cooperation with similar associations. The Association's choice of means could hardly have been belied by any practical action it took, since it was dissolved soon after being formed and accordingly did not even have time to take any action. It was thus being penalised for conduct relating solely to the exercise of freedom of expression. It was also without relevance that the applicants did not distance themselves explicitly from what the Constitutional Court established as the Association's

23 No 74651/01, 15 January 2009

real aim. Against this background, the European Court considered that the reasons invoked by the authorities to dissolve the Association were not relevant and sufficient. The restrictions applied in the present case, accordingly, did not pursue a “pressing social need”. Being so, the interference cannot be deemed necessary in a democratic society. It followed that that the measure infringed Article 11 of the European Convention.

Both these rulings reinforce the legal safeguards against associations caught up in the so-called “war against terror” and the need for such safeguards was also underlined in the Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, an initiative of the International Commission of Jurists²⁴. The Panel recognised the need for governments to impose certain restrictions on freedom of association when there is a fear of violence but considered that the flexibility allowed to them was being abused. It reported that the ambiguity surrounding the meaning of “support” for a terrorist organisation was having a chilling effect upon the public discourse around conflict resolution. Although the Panel accepted that sometimes public debate, or charitable work, can be subverted for terrorist propaganda or terrorist purposes, and that some legal provisions to counter such abuses are necessary, it noted that it had been told of a wide range of related offences, including: associating with or providing material support to terrorists; receiving or giving training to a terrorist organisation; and failure to report information relating to a terrorist act. The Panel appreciated that valid arguments could be made for pursuing such offences but reported that it had been provided with examples of their chilling effect and of serious abuse. It also stated that states had to ensure appropriate safeguards against such human rights violations, and must take precautions not to destroy the lives and reputations of individuals who might come to be publicly portrayed as dangerous terrorist associates, despite having no actual involvement in terrorist activities. The Panel saw it as particularly incumbent on states to avoid casting the net of “association” so widely that the media, defence lawyers, human rights groups, and family members (especially children) are wrongly penalised. Furthermore the Panel considered that safeguards were also needed when declaring an

organisation to be terrorist, particularly as there was no internationally shared consensus on the definition of “terrorism”. Thus the Panel reported hearing of instances where organisations could be labelled “terrorist” by the executive without notice to the organisation concerned, and with little, if any, room for judicial review. It agreed with the recommendation of the UN Special Rapporteur on Human Rights and Terrorism that a minimal safeguard against unjustified penalties being imposed would be the need for a judicial determination of the nature of the organisation concerned to ensure that, before anyone could be punished for membership in, support of, or association with a terrorist organisation, there must be a judicial determination of the nature of the organisation²⁵.

It is worth noting that in *Hyde Park and Others v Moldova* (no 4)²⁶ the fact that an entity had ceased to exist as a registered non-governmental organisation - following alleged pressure and intimidation by the state - and continued to exist only as an unincorporated association was not regarded as an obstacle to it bringing proceedings before the European Court about the policing of a demonstration that it had organised since being incorporated is not a requirement for this purpose. This is an important practical safeguard for associations seeking a remedy for enforced dissolution and an important reaffirmation of the protection extended to informal associations by the European Convention.

Harassment of Human Rights Defenders

Significant difficulties continue to be faced by at least some of those working for or with NGOs that seek to defend human rights in European Union countries. These difficulties range from action based on the assumption that such NGOs are a threat to public order, through the use of the criminal law to sanction action taken to defend the rights of certain persons to outright physical attacks.

The assumption that associations pose a threat to public order can be seen in the decree adopted by the

²⁵ Report of the Special Rapporteur on Human Rights and Terrorism, UN Doc. A/61/267, 16 August 2006, p. 11.

²⁶ No 18491/07, 7 April 2009

²⁴ Assessing Damage, Urging Action (2009).

French Ministry of the Interior to create a new police file for Documentary Exploitation and Utilisation of General Information (Exploitation documentaire et valorisation de l'information générale - EDVIGE)²⁷. The decree allowed the police to "centralise and analyse information – including, originally, sexual orientation of individuals – relating to natural or legal persons who apply for or exercise a political, trade union, or economic mandate, or play an institutional role of economic, social or religious significance, provided that such information is necessary for the government or its representatives to exercise their responsibilities" and to "centralise and analyse information relating to individuals, groups, organisations and legal persons who, because of their individual or collective activity, are likely to prejudice public order". It thus gave the authorities the power to create files on those belonging to vaguely and broadly defined categories, which could have included human rights defenders, and to gather any personal information concerning them. The decree was withdrawn²⁸ following the mobilisation of several civil society and political organisations and was replaced by two new decrees on 16 October 2009²⁹. Although these decrees show include some improvements on the vis-à-vis the previous draft (bill EDVIGE), they can still be used retain the possibility to identify the people's geographic origin as well as the and political, philosophical, religious and union activities of individuals under the vague ground reason that their "individual or collective activities may undermine harm the public security".

The increasing propensity to use particularly strong criminal measures against human rights defenders can be seen in the prosecution in France of Andre Barthélemy - President of the non-governmental organisation AGIR Ensemble pour les Droits de l'Homme - for attempting to stop the deportation of citizens of the Republic of Congo who were claiming that they would be ill-treated on their return. For this protest action M Barthélemy was convicted of the very serious offences of inciting rebellion and interfering with the movement

of an aircraft, for which penalties involving both fines and imprisonment could be imposed, although in the event he was fined 1,500 euros³⁰.

The institution and outcome of these proceedings also underlines the growing concern about the potential impact on human rights defenders of provisions in immigration legislation adopted in both France and Spain that makes it an offence to assist persons who are illegally present in these countries, which would potentially cover the giving to them of advice and basic humanitarian aid. In France, the risk of such prosecution, the increased number of activists placed into police custody and the ongoing surveillance of activists add to the difficulties of those organizations and their members when they try to provide humanitarian or legal assistance to migrants. There is evidence that there is an attempt to destabilize the CIMADE, one of the largest organizations upholding the rights of refugees and other detainees in detention centres. The government, by dividing those centres into eight groups and by establishing a form of competition between organizations through a tender system, is attempting to reduce the effectiveness of both their activities and their criticism. The so-called reform project is still ongoing since new versions are regularly invalidated by administrative courts.³¹

An instance of the continuing problem of physical attacks on human rights activists can be seen in the throwing of sulphuric acid on Constantina Kuneva, a trade union general secretary in Athens, resulting in her being seriously wounded and losing the use of one eye and of her vocal chords³². Subsequent to this attack there has been concern expressed as to the lack of an effective investigation into the attack by the police and attempts by them to suggest that it occurred because of an inappropriate relationship with the Bulgarian mafia³³.

It is not surprising, therefore, that both the Council

27 Decree of 27 June 2008.

28 On 20 November 2008.

29 <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021163904>
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021163879>

30 See <http://www.elunet.org/spip.php?article8528>.

31 See Observatoire pour la protection des défenseurs des droits de l'homme, un programme de la FIDH et l'OMCT, Délit de solidarité, Stigmatisation, répression et intimidation des défenseurs des droits des migrants (2009).

32 See <http://www.protectionline.org/spip.php?page=recherche&lang=en&recherche=kuneva>.

33 Press release by Greek Helsinki Monitor, 13 February 2009.

of Europe's Commissioner for Human Rights and the Organization for Security and Co-operation in Europe ("OSCE") have both voiced concern about the position of human rights defenders.

Thus the Commissioner for Human Rights, at the end of a week-long visit to the Russian Federation called for better protection of human rights defenders and highlighted the necessity to carry out effective investigations into the recent killings of human rights activists³⁴. His remarks were particularly related to the situation in the Russian Federation, including the Chechen Republic and the Republic of Ingushetia, but they are generally applicable, as the case of Constantina Kuneva, noted above, and a report of a round-table on the situation of human rights defenders in Council of Europe member states organised by the Commissioner³⁵ illustrate.

A particular problem noted in the latter report was the denigration, stigmatisation or smear campaigns that are faced by many human rights activists, especially those dealing with migrant rights, the rights of victims of trafficking of human beings or fighting corruption, those benefiting from foreign support and those undertaking critical analysis or independent monitoring was associated with illegal or extremist activity. This treatment comes not only from extremist groups but also from the media and the highest state representatives. The report also noted practical problems in these activists being able to perform their role as a result of denial of access to places of detention, intimidation and physical assaults by state officials and others, death threats and even assassinations in connection with their investigations and the subsequent publication of reports. Furthermore such action against human rights activists was reported often not to be followed by public condemnation or effective criminal investigations. Another source of danger for human rights activists working on combating torture, impunity and promoting Roma and LGBT rights was seen as arising from the circulation on the Internet of their names and addresses. It was suggested that the monitoring of criminal proceedings being brought

against human rights activists was needed as a deterrent against them being improperly treated. In addition it was suggested that some international arrangements to provide relocation for activists and support for their family members could be needed where they faced serious or imminent threats.

The Commissioner underlined that one of his priorities was protecting and enabling human rights activism. This included the encouragement of coordination and cooperation between human rights organisations inside the various countries and within the regions of Europe. He considered that more systematic monitoring of the conditions for human rights work and registering of hate speeches, hate crimes and statements by public authorities was needed and that another challenge to be tackled was the use of the Internet against human rights NGOs and activists. The Commissioner highlighted the need for a study on how countries are developing legislation to regulate NGO activities, and noted with concern the use of extremism legislation against those who peacefully promote human rights. He further suggested looking into protective interim measures by the European Court to end further harassment of applicants and their lawyers.

A report prepared by the OSCE reaches similar conclusions about the situation of human rights defenders³⁶. Thus, on the basis of an overview of a number of specific cases, the report identified four areas of continued concern with respect to human rights defenders: (a) threats to, and attacks on, their physical integrity; (b) restrictions on their right to liberty and freedom of movement; (c) curtailment of their freedom of association; and (d) failure to respect and protect their freedom of peaceful assembly. However, it also highlights some good practices based on a questionnaire sent to participating states and input from international organisations, NGOs, OSCE field operations and institutions, and national human rights institutions. These relate to (i) respecting the rights of human rights defenders and in particular creating an open space for action; (ii) protecting the rights of defenders; (iii) creating an enabling environment for defenders; and (iv) listening to, and addressing the concerns of, defenders. Particularly notable amongst these practices

³⁴ 10 September 2009.

³⁵ Report of the Round-Table on the situation of Human Rights Defenders in the member states of the Council of Europe, organised by the Office of the Commissioner for Human Rights (Strasbourg, 3-4 November 2008), CommDH(2009)15, 20 March 2009.

is physical protection provided for defenders who are at risk of physical harm and the active prosecution of those using violence against defenders. The report also highlights cases of authorities publicly speaking out in favour of defenders and the issuing of emergency visas or residence permits to defenders in trouble.

Although specifically concerned with the adequacy of protection for members of trade unions, the ruling of the European Court in *Danilenkov and Others v. Russia*³⁷ is potentially important for all who are penalised because of their membership of an association and particularly those belonging to ones seeking to protect human rights. Various techniques had been used by an employer to encourage its employees to relinquish their union membership, including their re-assignment to special work teams with limited opportunities, dismissals subsequently found unlawful by the courts, decrease of earnings, disciplinary sanctions, refusal to reinstate following the court's judgment etc. This resulted in a dramatic shrinking of the union's membership and the clear negative effects that membership of the union had on the applicant members were sufficient to constitute a prima facie case of discrimination in enjoyment of the rights guaranteed by Article 11 of the European Convention.

Although Russian law at the material time contained a blanket prohibition on all discrimination on the ground of trade union membership or non-membership, the domestic judicial authorities, in two sets of civil proceedings, refused to entertain the applicants' discrimination complaints, having held that the existence of discrimination could be established in criminal proceedings only and that therefore the applicants' claims could not be determined via a civil action. However, the principal deficiency of the criminal remedy was that, being based on the principle of personal liability, it requires proof "beyond reasonable doubts" of direct intent on the part of one of the company's key managers to discriminate against the trade-union members. Failure to establish such intent led to decisions not to institute criminal proceedings. Furthermore, victims of discrimination had only a minor role in the institution and conduct of

criminal proceedings. The European Court was thus not persuaded that a criminal prosecution, which depended on the ability of the prosecuting authorities to unmask and prove direct intent to discriminate against the trade union members, could have provided adequate and practicable redress in respect of the alleged anti-union discrimination. On the other hand in the civil proceedings it should have been possible to pursue the far more delicate task of examining all elements of relationship between the applicants and their employer, including combined effect of various techniques used by the latter to induce workers to relinquish their union membership, and granting appropriate redress.

The European Court, while not prepared to speculate on whether the effective protection of the applicants' right not to be discriminated against could prevent future unfavourable actions against them from the part of their employer, considered that given an objective effect of the employer's conduct, the lack of such protection could entail fear of potential discrimination and discourage other persons from joining the trade union, which may lead to its disappearance, thus negatively affecting the enjoyment of the freedom of association. As a consequence it considered that the state had failed to fulfil its positive obligations to adopt effective and clear judicial protection against discrimination on the ground of trade union membership and there had, therefore, been a violation of Article 14 of the European Convention taken together with Article 11.

Conclusion

Although the general position regarding freedom of association within European Union countries continues to be generally positive and there have been useful elaborations of standards through the case law of the European Court and the recommendations of the Expert Council on NGO Law, there is still no room for complacency as some significant difficulties do exist regarding key aspects of this freedom. Furthermore there is also an ever-present risk of fresh encroachments being made upon it. The availability of the European Court as a means of challenging both existing difficulties and

³⁷ No 67336/01, 30 July 2009.

future encroachments is, in particular, of fundamental importance for securing the exercise of the right to freedom of association. It would, however, be better if this right were more effectively implemented and then properly respected by national authorities and courts.

This requires not only the adoption of an appropriate legal framework for the formation and operation of associations pursuant to the conclusions and recommendations of the Expert Council on NGO Law but also a truly evidence-based approach to all decision-making concerned with dissolution and implementation of the measures noted above that have been proposed by the Council of Europe Commissioner for Human Rights and the OSCE.

ETHNIC, LINGUISTIC, CULTURAL & RELIGIOUS DIVERSITY & THE RIGHT TO FREEDOM OF ASSOCIATION IN THE EURO-MEDITERRANEAN REGION

International law guarantees the full enjoyment of human rights and freedoms by all individuals without discrimination and irrespective of language, race, colour, sex, political opinion, religion or belief. The Human Rights Committee (HRC) stated in its general comment 18 on non-discrimination that the term “discrimination” as used in the International Covenant on Civil and Political Rights (ICCPR) “should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms,”¹

No definition of the term ‘minority’ is universally accepted. At the Council of Europe level, there is an unofficial but widely used definition by the Parliamentary Assembly of the Council of Europe that partially fills this legal vacuum. For the purposes of this Convention, the expression “national minority” refers to a group of persons in a state who : a) reside on the territory of that state and are citizens thereof ; b) maintain longstanding, firm and lasting ties with that state ; c) display distinctive ethnic, cultural, religious or linguistic characteristics ; d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state ; e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.²

Even though the ICCPR provisions related to non-discrimination have not been listed among the non-derogable provisions in article 4, paragraph 2, the HRC stated that “there are elements or dimensions of the right to non-

1 United Nations Human Rights Committee, General Comment No.18: Non-discrimination: CCPR/C/21/Rev.1/Add.5 para. 7

2 Parliamentary Assembly of the Council of Europe, Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights. Available at: <http://assembly.coe.int/Documents/AdoptedText/ta93/erec1201.htm#1>

discrimination that cannot be derogated from in any circumstances. In particular, this provision of article 4, paragraph 1, must be complied with if any distinctions between persons are made when resorting to measures that derogate from the Covenant.³ The HRC concluded that “the international protection of the rights of persons belonging to minorities includes elements that must be respected in all circumstances. This is reflected in the prohibition against genocide in international law, in the inclusion of a non-discrimination clause in article 4 itself (paragraph 1), as well as in the non-derogable nature of article 18.”⁴

These principles serve to internationally delegitimise any legislative, administrative or judicial act authorizing discrimination. However, in practice, persisting discrimination, marginalization, and political and social exclusion continue to be imposed on persons belonging to minorities on the basis of, inter alia, ethnicity, religion and language, leading some States to adopt measures in favour of underprivileged or disadvantaged groups with a view to mitigating or eliminating conditions that contribute to protracted discrimination. The principle of equality before the law is, therefore, substituted temporarily by the principle of the equality within the law, or through the law. The HRC concluded in its General Comment 18 that “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant (...) Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.”⁵

In order to guarantee both the rights to equality before and within the law and to preserve, express, develop and promote identities of different minorities, it is particularly important for persons belonging to these minorities to enjoy the right to freedom of association. By establishing and joining associations that aim to manifest and promote their identities, persons belonging to minorities contribute also to combat discriminations against them, and to advocate for more recognition for their rights. In the euro-Mediterranean region, however, several obstacles continue to prevent, in law and in practice, persons belonging to minorities from exercising their right to the freedom of association.

1. LEGAL FRAMEWORK

The ICCPR is the most explicit international legal instrument that addresses minorities’ rights and the principle of nondiscrimination. Article 27 of the ICCPR provides that, “*in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*” Although article 27 doesn’t refer to the rights of people belonging to minorities to the freedom of association, the HRC concludes in its general comment 23 on the rights of minorities that “*article 27 relates to rights whose protection imposes specific obligations on States parties. The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole.*”⁶ One of these specific States obligations is to guarantee the enjoyment of the right to the freedom of association, which constitutes a sine qua non condition for persons belonging to minorities to practice, in community with the other members of their groups, their own culture, religion or language.

3 United Nations Human Rights Committee, General Comment No.29: States of Emergency (Article 4) para.8

4 Ibid., para.13

5 General Comment No.18. para 10

6 General Comment No. 23: The rights of minorities (Art. 27): 08/04/94. CCPR/C/21/Rev.1/Add.5 para.9

Under the framework of the Council of Europe, the European Charter for Regional or Minority Languages does not expressly refer to the right of persons belonging to minorities to the freedom of association.⁷ Nonetheless, the Framework Convention for the Protection of National Minorities does specifically call on the Parties, respectively in its Article 7 and 8, to “*ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion,*” and “*to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.*”⁸

Other declaratory and non-binding international norms refer to the right of persons belonging to minorities to the freedom of association, including the United Nations Declaration of 1992 on Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM),⁹ which specifically stipulates in its Article 2.4 that “*persons belonging to minorities have the right to establish and maintain their own associations.*”

However, in most countries of the Euro-Mediterranean region, the very *raison d'état* does not recognise any minorities at all. Minorities are seen as a threat to the national and territorial indivisible integrity of the State.

In the North of the Mediterranean, in France, the Constitutional Council considered that the European Charter for Regional or Minority Languages contains provisions contrary to the French constitution since it contradicts the principles of the unity of the French people and the equality before the law:

“As Article 1 of the Constitution states: France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs; (...) the principle of the indivisibility of France, according to which no part may claim the right to exercise national sovereignty (...) is constitutionally binding.”

The Council concluded that:

*“these fundamental principles prohibit the recognition of collective rights to any group whatsoever, be they based on distinctions of origin, culture, language or creed.”*¹⁰

This way of thinking, based on the belief that the French people are one and indivisible, could on other occasions lead to restrictions on some rights, including the right of association of individuals who consider that they belong to minority groups.

In the South and East Mediterranean, the rights of persons belonging to minorities to manifest their identities, establish their own associations and political parties, and to participate effectively in decisions on the national level have been seriously undermined. Governments have argued that the exercise of such rights would endanger the indivisibility of the States and violate the right to equality before the law.

In Turkey, for example, Article 81 of the Political Parties' Law No. 2820 provides that: “*i) Political parties cannot argue that there are minorities based on differences of national culture, religious culture, denomination, race or*

7 Treaty open for signature by the member States and for accession by non-member States on 5/11/1992 Entry into force on 1/3/1998 after 5 Ratifications.

8 Opening for signature on 1/2/1995. Entry into force after 12 Ratifications on 1/2/1998

9 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted on the 92nd plenary meeting, 18 December 1992. A/RES/47/135

10 Décision n° 99-412 DC, 15 June 1999, available at: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-par-date/1999/99-412-dc/decision-n-99-412-dc-du-15-juin-1999.11825.html>

*language in the Republic of Turkey. ii) b) Political parties cannot be geared towards or promote activities designed to corrupt the unity of the nation, neither through the protection, development, or propagation of languages and cultures other than the Turkish language and culture, nor through the creation of minority groups in the Turkish Republic.*¹¹ In addition, Article 83 specifically provides: *“Political parties cannot be geared towards and cannot promote activities against the principles of equality before the law.”*

However, the HRC concluded in its General Comment on the rights of minorities that *“the enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party.”*¹² It is also to be highlighted that in the absence of a legal and formal recognition by States of minorities, the legal framework within which persons belonging to these minorities can operate is the one provided for by the principles of equality and non-discrimination.

These principles have been stated in several international instruments to which East and South Mediterranean countries are parties, including, amongst other instruments, the ICCPR (Articles 2 (1) and 26), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 2 (2)), and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5).

For example, although Egypt has joined these instruments, the Coptic Christians minority, estimated at 5–10 per cent of the overall population, remained vulnerable to discrimination, harassment and intimidation of the Egyptian authorities and Islamic groups.

In Israel, discriminations against the Arab minority have also increased over the past years. In clear violation of Article 2 of the ICCPR, the Israeli Government has exacerbated these discriminations by adopting a new controversial citizenship law that imposes a blanket ban on granting residency or citizenship status to Palestinians who are married to Israeli citizens.¹³ Persons belonging to the Arab minority in Israel are also facing a blatant racial profiling policy at the airports routinely subjected to lengthy, humiliating interrogations, bag checks and invasive body searches at Israeli airports and land crossings.

This analysis does not intend to tackle all the issues related to minorities in the Euro-Mediterranean region. However, regarding the right to freedom of association of persons belonging to minorities, and due to the diversity of the legal and political frameworks in the region (presidential systems and monarchies; democratic and autocratic regimes; and Islamic, civil and common-law traditions), the focus of this analysis will be on four specific countries that represent the diversity of the legal and political systems in the region. We will therefore assess the guarantees of the right to freedom of association for persons belonging to minorities, in law and practice, in Greece, Turkey, Morocco and Syria.¹⁴

2. The Right of Persons Belonging to Minorities to Freedom of Association in Law and Practice

The enjoyment and exercise of the right to the freedom of association by persons belonging to minorities in East and South Mediterranean countries are in general very restricted, although the situation differs from one country to another.

11 Political Parties Law/ Siyasi Partiler Kanunu (No.2820, adopted April 26, 1983) in Kocahanoglu, p.68 and pp.100-101.

12 General Comment No. 23: The rights of minorities (Art. 27): .08/04/94. CCPR/C/21/Rev.1/Add.5 para3.2

13 Passed by the Knesset (Israeli Parliament) on 21 March 2007

14 These countries have also been chosen as they represent a geographical balance of the region

Although the Syrian constitution, for example, does refer to the freedom of association, and devotes several articles to specific associations, such as the ruling Baath Party (art. 8), Syrian authorities ban other parties or associations, including associations that aim to promote the rights of minorities. This is especially true with regard to members of the Kurdish minority, who comprise up to ten percent of the population. Tens of thousands of them remained effectively stateless, and so have been denied the enjoyment of their civil, political, social, economic and cultural rights.

The Kurdish minority in Syria has suffered from persistent identity-based discrimination, including restrictions on the use of the Kurdish language and culture. Kurdish associations and political parties, including, amongst others, Yekiti Kurdish Party, Azaday Kurdish Party, Democratic Union Party, and the Kurdish Association for Human Rights, are not officially authorized and therefore are considered to be formally illegal. Not only do the Syrian authorities ban these associations and organisations, but they also subject their activists and leaders to increasing and undue pressure in retribution for carrying out the legitimate work of defending the rights of persons belonging to the Kurdish minority. Members of the Kurdish associations and political parties have been subjected to travel bans, arbitrary arrests, and their offices, telephone communications and e-mails have also been under constant surveillance by Syrian security forces.

Of particular concern is the continuing use of special and military courts to try Kurdish leaders and activists. These courts operate within the framework of the emergency law of 1963 and the numerous vague and restrictive articles of the Syrian Penal Law that severely impact the enjoyment and exercise of the right to freedom of association by persons belonging to minorities in Syria.

These articles include:

Article 267 provides that: "i) Any Syrian who attempts, through acts or speeches or writings, to undercut a part of the Syrian territory and/or to annex it to a foreign country, is liable to being condemned to up to 5 years imprisonment; ii) Any Syrian who was, at the time of committing such acts, a member of one or more of the associations and organisations referred to in articles 288 and 308 is liable to be imprisoned for life."

Article 288 provides that: "Any Syrian who joins a political or social association with an international character is liable to be condemned to between three months and three years imprisonment or house arrest."

Article 307 provides that: "Any act, writing and/or statement, that aims or that results in racial or doctrinal prejudices, or in the incitement of conflict between communities and different components of the nation, is punishable with between 6 months and 2 years imprisonment."

Article 308 provides that: "Any Syrian belonging to one or more associations established with the aims mentioned in article 307 is liable to the same sanctions provided by this Article."

The provisions mentioned above are overly broad and vague, and therefore in contravention of the principle of legality of offences, *nullum crimen sine lege*, which is one of the cornerstones of the contemporary criminal law, as well as a principle of the international human rights law. The *nullum crimen sine lege* principle requires that, in order to be considered a criminal offence, a specific type of conduct must be established in law as a crime and the

definition of any criminal offence should be precise and free of ambiguity.¹⁵

The Inter-American Court for Human Rights considered *“that crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offence, thus giving full meaning to the principle of nullum crimen nulla poena sine lege praevia in criminal law. This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behaviour with penalties that exact their toll on the things that are most precious, such as life and liberty”*.¹⁶

Both the Supreme State Security Court (SSSC) and Military Courts have used these overly broad articles as basis for the persecution of Kurdish activists and leaders, and have sentenced most of them to imprisonment after grossly and blatantly unfair trials.

On April, 14 2009, the SSSC in Damascus condemned Mohammed Habchi Rachou and Ibrahim Sheikhou Alouch to 7 years of imprisonment; Mohammed Ibn Salih Mastou, Nouri Mostafa Hussein and Rachad Ibrahim to 6 years; and Latifa Morad and Zaynab Horso Mohamad to 5 years. All of them have been sentenced for their presumed activities as members of the Kurdish Democratic Union in Syria and for conspiring to annex a part of the Syrian territory to a foreign State. The same day, a Judge of the Individual Military Court in Damascus sentenced Fouad Aliko and Hassan Saleh, from the Yekiti Kurdish Party, to one-year imprisonment for belonging to an illegal organisation and incitement to riot.¹⁷

On 20 June 2009, Jakarkhon Sheikho ‘Ali was arrested by Syrian Military Security in Aleppo. The reported grounds for his arrest were his activities as a senior member of the Kurdish Democratic al-Wifaq Party, an unauthorized Kurdish Syrian political party¹⁸.

On 26 July 2009, the SSSC sentenced Ezzat Ibrahim Sidou to 10 years imprisonment for contributing to the establishment of the Democratic Union Party.¹⁹

On 9 August 2009, the military judge in Kachemely formally charged Ibrahim Khalil Berrou, one of the leaders of the Yekiti Kurdish Party, for belonging to a secret, non-authorized association. For the same charges and during the same day, the military judge sentenced three other Kurdish activists to three months imprisonment.²⁰

Concerns continue to be raised about the objective and reasonable justification for the existence the SSSC and the continuing use of military courts to try human and minority rights defenders, not only with regard to the principle of equality before the law and the courts, but also with regard to the courts’ independence and impartiality. The Human Rights Committee has stressed that *“the trial of civilians in military or special courts may raise serious*

15 Human Rights Committee, General Comment N° 29, States of Emergency (Article 4), UN document CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 7.

16 Judgment of 30 May 1999, Case of Castillo Petruzzi et al v. Peru, para. 121.

17 Kurdish Association for Human Rights, at: <http://www.pdksp.net/article1492.html> (In Arabic)

18 Amnesty International: Kurdish activist at risk of torture, available at: <http://www.amnesty.org/en/library/asset/MDE24/017/2009/en/91fb5e49-8dfd-42db-8f99-e2f3455d8c0f/mde240172009eng.htm>

19 Kurdish Association for Human Rights, at: <http://dadkurd.co.cc/?p=533#more-533> (In Arabic)

20 Yekiti Kurdish Party in Syria, at <http://yekitimedia.org/ar/index.php/2009-07-21-21-35-24/40-2009-07-21-21-33-15/729-2009-09-06-17-44-55>

*problems as far as the equitable, impartial and independent administration of justice is concerned.*²¹ The European Court of Human Rights and the Inter-American Commission on Human Rights have both said that military judges cannot be considered independent and impartial because they are part of the hierarchy of the army.²²

Yet, Syrian authorities continue to prosecute in particular minority rights defenders through this parallel judicial system, which falls short of the international standards of independence, impartiality, and the guarantees of fair trial.

In Greece, persons belonging to minorities have faced major obstacles to exercise their right to the freedom of association in ways that recognise and promote their identities. This is the case for example of members of the Macedonian and Turkish minorities.

Article 78 of the Greek Civil Code provides *“A union of persons pursuing a non-profit-making aim shall acquire legal personality as soon as it has been entered in a special public register (of associations) held at the Court of First Instance for the place where it has its headquarters.”* However, the Greek courts have refused to register, since 1990, the organisation *“Home of Macedonian Culture”* in Florina /Lerin on the grounds that its objective was to promote the idea that *“there is a Macedonian minority in Greece, which is contrary to the national interest and subsequently contrary to law”*. In 1998, the European Court of Human Rights (ECtHR) found that Greece violated its obligations under European Convention of Human Rights (ECHR), specifically Article 11 of the Convention,²³ which provides:

“everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”

The Court considered that the Greek courts’ refusal to register the applicants’ association *“amounts to an interference by the authorities with the applicants’ exercise of their right to freedom of association; the refusal deprived the applicants of any possibility of jointly or individually pursuing the aims they had laid down in the association’s memorandum of association and of thus exercising the right in question.”*²⁴

Yet, eleven years after this ruling, Greece’s courts continue to refuse registering *“Home of Macedonian Culture”*.

Persons belonging to the Turkish minority in Greece have also faced the same obstacles in exercising their right to the freedom of association. Several Turkish minority associations have ceased to function or function without official recognition, mainly because of the 1987 Greek High Court decision that an association bearing the name *“Turkish”* must be dissolved. In February 2005, the Turkish Xanthi Union, established in 1927, was dissolved.

The ECtHR has consistently rejected the Greek Government’s attempts to justify these restrictions by arguing that

21 Human Rights Committee, General Comment No. 32, Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/V/GC/2 (2007).

22 European Court of Human Rights, see *Findlay v. The United Kingdom*, judgment of the European Court of Human Rights of 25 February 1997, Series 1997-I and *Incal v. Turkey*, judgment of 9 June 1998, Series 1998-IV. Re Inter-American system, see Annual Report of Inter-American Commission on Human Rights 1997, OAS document OEA/Ser.L/V/II.98, Doc. 6, Chapter VII, Recommendation No. 1.

23 Case of *Sidiropoulos and Others vs. Greece* (ECtHR, 57/1997/841/1047)

24 *Ibid.* para.32

use of the word “Turkish” in the names of associations constitutes a threat to public order and territorial integrity²⁵, concluding that Greece has violated Article 11 of the ECHR. In its *Bekir-Ousta and Others v. Greece* Judgment of 11 October 2007, the Court first noted that the refusal to register the applicants’ association was mainly motivated by the wish to put a stop to the applicants’ suspected intention of promoting the idea that there was an ethnic minority in Greece and that the rights of the members of this minority were not being fully respected. The Court stated that *“even if the actual aim of the association was to promote the idea that there is an ethnic minority in Greece, that in itself could not be considered to be a threat to a democratic society; moreover, there was nothing in the association’s statutes to suggest that its members advocated the use of violence or anti-democratic or anti-constitutional method.”*²⁶ The Court concluded, therefore, that there had been a violation of Article 11.

On 6 June 2001, the Greek courts dismissed a request for registration of the *“Cultural Association of Turkish Women of the Region of Rodopi”* on the ground that its title might mislead the public regarding the origin of its members. The Court of Appeal upheld that decision in January 2003, reiterating that the title of the association, combined with the terms of its statute, was contrary to public policy. The Court used similar logic in the *Ermin and Others v. Greece* Judgment of 27 March 2008: *“even supposing that the real aim of the 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. There was nothing in the statute to indicate that its members advocated the use of violence or of undemocratic or unconstitutional means.”*²⁷

In its concluding observations on Greece, the HRC noted with concerns *“the apparent unwillingness of the Government to allow any private groups or associations to use associational names that include the appellation “Turk” or “Macedonian”, based upon the State party’s assertion that there are no ethnic, religious or linguistic minorities in Greece other than the Muslims in Thrace.”* The HRC concluded that *“individuals belonging to such minorities have a right under the Covenant to the enjoyment of their own culture, the profession and practise of their own religion, and the use of their own language in community with other members of their group (art. 27).”*²⁸ In its follow up report on Greece of March 2006, the Commissioner for Human Rights of the Council of Europe expressed concerns about the fact that *“it is not possible today in Greece for those who claim they are members of a minority to use any word they wish in the denominations by which they would like to identify themselves collectively, for instance when registering associations.”*²⁹

The United Nations Independent Expert on Minority issues, Ms. Gay J. McDougall, has also urged the Government of Greece, in her report of 18 February 2009, *“to withdraw from the dispute over whether there is a Macedonian or a Turkish minority in Greece and focus on protecting the rights to self-identification, freedom of expression and freedom of association of those communities.”*³⁰

In **Turkey**, the Constitution guarantees the right to the freedom of association and peaceful assembly. Article 33 provides that *“i) everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission; ii) no one shall be compelled to become or remain a member of an association, and that iii) freedom of association may only be restricted by law on the grounds of protecting national*

25 *Bekir-Ousta and others v. Greece*, application no. 35151/05, No. 101. Judgment of 11/10/2007; *Ermin and Others v. Greece*, Judgment of 27/03/2008; *Tourkiki Enosi Xanthis and others*, Judgment 27/02/2008, final on 29/09/2008.

26 *Bekir-Ousta and others v. Greece*. para.45

27 *Ermin and Others v. Greece*, application no. 34144/05. Judgment of 27/03/2008.

28 Concluding observations of the Human Rights Committee: Greece. UN document. CCPR/CO/83/GRC, 25 April 2005. para.20.

29 Council of Europe: Commissioner for Human Rights. Follow up report on the Hellenic Republic (2002 – 2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights. CommDH (2006)13. Strasbourg, 29 March 2006. para 44

30 Report of the United Nations independent expert on minority issues: Mission to Greece. UN document. A/HRC/10/11/Add.3. 18 February 2009

*security and public order, or prevention of crime commitment, or protecting public morals, public health.*³¹

However, Article 30 (b) of the Law on Associations (No. 5253), which entered into force in 2004, provides that associations shall not be established to realise objectives expressly prohibited by the Constitution and the laws. As mentioned above, Article 81 of the Political Parties' Law No. 2820 prohibits political parties from arguing *“that there are minorities based on differences of national culture, religious culture, denomination, race or language in the Republic of Turkey.”*

Under the framework of these Articles, significant limitations continue to be imposed on the establishment of associations that aim to promote the rights of minorities. This is especially true with regard to the Kurdish minority in Turkey. The ECtHR did not hesitate, for example, in the case of the *Turkish Communist Party*, to make a clear link between the freedom of association and expression of a political party and the demands of a clearly defined ethnic or national minority. When the constitutional Court of Turkey ordered the dissolution of this Party on the basis that its programme called for rectifying the grievances of the Kurdish Minority in Turkey and therefore constituted threat to the unity of the Turkish State, the ECtHR stated in its judgment that *“there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State’s population and to take part in the nation’s political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned.”*³²

The European Court has confirmed this jurisprudence in the *Demokratik Kitle Partisi and Elçi v. Turkey* Judgment of 3 May 2007. In June 1997, the Principal State Counsel at the Turkish Court of Cassation applied to the Constitutional Court seeking to have the *“Demokratik Kitle Partisi”* (Democratic People’s Party-DKP) dissolved, on the ground that the party had undermined the integrity of the State. On 26 February 1999, the Constitutional Court made an order dissolving the DKP. It noted, in particular, that the party’s programme alleged the existence, within Turkish territory, of minorities founded on differences in national culture, membership of a race or language. The court considered that the DKP was seeking to destroy the integrity of the nation.

The ECtHR noted that the disputed sections of the DKP’s programme contained an analysis of the Kurdish question in Turkey and criticism of the manner in which the Government was fighting against separatist activities. It accepted that the principles defended by the DKP were not, as such, contrary to the fundamental principles of democracy. As the DKP did not advocate any policy that could have undermined the democratic regime in Turkey and did not urge or seek to justify the use of force for political ends, its dissolution could not reasonably be said to have met a *“pressing social need”* and thus be *“necessary in a democratic society”*. Accordingly, the Court concluded unanimously that there had been a violation of Article 11.³³

In **Morocco**, Article 9 of the 1996 Constitution guarantees all citizens the right to the *“freedom of association, and the freedom to belong to any union or political group of their choice. No limitation, except by law, shall be put to the exercise of such freedoms.”*

However, the Moroccan Law on Associations³⁴, last amended in 2002, prohibits, in its Article 3, associations that have *“an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, the integrity of national territory, or the monarchical regime, or that calls for discrimination.”*

31 Adopted in 1982 and last amended in 2007

32 European Court for Human Rights, *United Communist Party of Turkey and Others v. Turkey*. Judgment of 30 January 1998, para 57.

33 *Demokratik Kitle Partisi and Elçi v. Turkey* (application no. 51290/99). Judgment of 3 May 2007.

34 Dahir n° 1-58-376 du 3 jomada I 1378 réglementant le droit d’association. Bulletin Officiel du 27 novembre 1958 et Bulletin Officiel du 9 janvier 1959

Associations that aim to promote the Sahraoui and Amazigh identities have faced severe restrictions under this Article.

In April 2003, the prosecutor petitioned the El-Ayoun Court of First Instance to order the legal dissolution of Sahara Section of the Forum of Truth and Justice (Forum de vérité et de justice-FVJ). The main evidence against FVJ-Sahara was a report by the judicial police of El-Ayoun alleging that the section's members used human rights as a cover to pursue both violent and diplomatic "separatist" activities.³⁵ On June 18, 2003, the El-Ayoun Court of First Instance ruled to dissolve the section.

The Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State (Association Sahraouie des victimes de violations graves commises par l'état marocain, ASVDH) has been denied registration according to the procedures established by the Moroccan Association Law. The ASVDH was founded by former victims of enforced disappearances in Sahara, with the stated objective to ensure a level of accountability commensurate with the grave violations that Morocco had committed.

On 25 May 2005, the ASVDH brought a case against the local administration at the Administrative Tribunal of Agadir. The Tribunal ruled in favour of the ASVDH on 21 September 2006, declaring the administration's refusal to issue a receipt to be illegal:

*"According to the system in force, the formation of associations is not conditioned by an approval from the administrative authorities. Administrative authorities have no authority to refuse or amend wording they deem contrary to law; only the caselaw is legally empowered to decide on this matter."*³⁶

Despite this court ruling, the Moroccan authorities continue to refuse to recognise the ASVDH.

The case of the *"Amazigh Network for Citizenship"* (Réseau Amazigh pour la Citoyenneté-RAC) is also relevant in this regard. The stated objective of the RAC has been to defend and promote the Amazigh language and identity. Founders of the RAC sought legal status following the procedures provided for by the Association law and informed the local administration (Wilaya) in Rabat. The RAC submitted its declaration papers first in July 2002 and for the third time in August 2008. Yet, Moroccan authorities have refused to issue a receipt for the RAC submissions.

3. Conclusions and Recommendations

The cases mentioned above concerning the enjoyment and the exercise of the right to the freedom of association by persons belonging to minorities in some countries of the Euro-Mediterranean region reflect the severe restrictions that prevent these minorities from preserving, expressing, and promoting their identities.

Both democratic and non-democratic governments sometimes view these associations as threats to the indivisibility and security of the states. National Courts, in general, on the basis of overly broad provisions of the Constitution, Penal Code and the Law of Association, maintain these suspicions against minorities.

³⁵ Procédure de la dissolution de la section Sahara du Forum Vérité et Justice, available at: www.arso.org/docu/fvjsdiss.htm

³⁶ Tribunal Administratif d'Agadir, Arrêté n° 176/2006 du 21 septembre 2006. Jugement d'annulation: Dossier n°041-2006 R

RECOMMENDATIONS

The EMHRN therefore calls upon the governments of East and South Mediterranean countries to:

- i. Guarantee, through constitutional, legislative and administrative measures, the right of persons belonging to all minorities to the freedom of association.**
- ii. Abolish all restrictions on the establishment of associations that promote the rights of minorities, and ensure that persons belonging to these minorities can exercise and enjoy their rights individually as well as in community with other members of their group.**
- iii. Comply with their legal obligations under international law, including Article 27 of the ICCPR, to protect the rights of minorities, including the rights to the freedom of association.**
- iv. Comply with the relevant recommendations of the United Nations mechanisms, including the HRC, the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Elimination of Discrimination against Women (CEDAW).**
- v. Remove all the declarations and reservations with regard to Article 27 of the ICCPR.**
- vi. Fully collaborate with the relevant United Nations mechanisms, especially the Independent Expert on minority issues.**
- vii. Reestablish associations that have been dissolved on the basis of their legitimate aims and work in promoting the rights of minorities.**
- viii. Ensure that minority rights defenders are not harassed or persecuted for exercising their right to the freedom of association.**
- ix. Immediately and unconditionally release all minority rights defenders, leaders and activists that have been arbitrarily arrested for carrying out their legitimate work in promoting the rights of minorities.**
- x. Abolish exceptional and special courts, and ensure that minority rights defenders, leaders and activists, when they are charged with a legal and recognisable criminal offence, are tried before ordinary civilian courts using established procedures in line with international standards.**

The EMHRN also calls upon Turkey and the European Union Member States to:

- xi. Ratify the European Charter for Regional or Minority Languages;**
- xii. Ratify the Framework Convention for the Protection of National Minorities;**
- xiii. Comply with the Judgments of the ECtHR.**

RECOMMENDATIONS

The EMHRN calls upon the European Union (EU) to:

- xiv. Respect and promote the rights of minorities in Europe, including the right to freedom of association;
- xv. Encourage the member states to guarantee the rights of all minorities to freedom of association;
- xvi. Ensure that all member states and candidate countries ratify the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities;
- xvii. Ensure that candidate countries fully respect the rights of minorities, including the right to freedom of association;
- xviii. Pay particular attention to the protection of the rights of persons belonging to minorities, especially the right to freedom of association, not only in relation to external policy, but also in the member states;
- xix. Establish a regular monitoring mechanism on the protection of minority rights, including the right to freedom of association;
- xx. Ensure that no EU legislations, policies or other measures are adopted or applied in ways that violate the rights of minorities, especially the right to freedom of association.

NOTE ON FREEDOM OF ASSOCIATION & GONGOs

by **CAROLINE NANZER,**

with the contribution of **KHÉMAIS CHAMMARI**

Independent Civil Society **VERSUS** Servile Society

INTRODUCTION

1- If associative freedom is an indicator of the proper functioning of democracy, the objective of this paper is to underline the fact that quantity alone, that is to say, measuring the democratisation of a country in relation to the number of associations in that country, is insufficient to analyse the “good health” of its civil society. Indeed, over the past few years, human rights activists have observed the emergence within civil society of associations posing as non-governmental organisations (NGOs), which in reality are directly or indirectly linked to their governments and whose political affinity with their public authorities is no secret. These pro-governmental organisations are known as GONGOs (“Government-Organised NGOs” or “Government-Oriented NGOs”), or, in certain French-speaking countries, as OVGs (Organisations Véritablement Gouvernementales). In practice, GONGOs are organisations which answer to their public authorities, and which are expected by their governments to support social policies and the official line on civil liberties. Though they gladly present themselves as “civil society organisations”, they deliberately neglect the notion of independence, an essential foundation of any civil society organisation worthy of that name.

2- GONGOs exist in many realms, particularly in the cultural and charity sectors, and as such do not have a single profile. However, certain common characteristics enable many of them to be identified: 1) their management or executive committees are primarily composed of government representatives or persons close to power; 2) their sources of financing – though oftentimes opaque – are primarily governmental; and 3) their goal is not only to support the implementation of policies initiated by their governments, but to legitimate them without voicing any criticism. In certain cases, these associations actively take part in smear campaigns targeted at other (independent) NGOs in order to undermine their work. This situation is particularly common when it comes to organisations that support human rights and rule of law. Moreover, this development has been indirectly favoured these past years by a growing trend within international and bilateral cooperation bodies to prefer partnerships and relations with development associations who distinguish themselves (or who are encouraged to distinguish themselves) from NGOs that act in favour of human rights and rule of law, the latter often presented or perceived as politically oriented and

preoccupied with so-called sensitive issues.

3- Although the programmes and actions of governmental associations are for the most part confined to the regional and national levels, the phenomenon has been increasingly observed at the international level as well. Acting as a democratic foil, they intervene within UN institutions and at major international conferences to legitimise the policies implemented by their states and praise the ensuing advances and benefits. These eulogistic – even characteristically extravagant – positions are particularly present within the United Nations Human Rights Council, where their aim is to minimise critiques voiced by independent NGOs. Thus it is their ends and lack of independent views vis-à-vis their governments – a fundamental characteristic of an NGO – that set these associations apart.

4- The precise number of GONGOs is difficult to evaluate, but for the time being it is clear that they do not represent the overwhelming majority of civil society in southern and eastern Mediterranean countries. Nonetheless, due to the repercussions on human rights in the states concerned, their importance is significant enough to raise the alarm. The objective of this paper is not to establish a list of GONGOs in each Mediterranean country, rather to illustrate, via specific examples that occurred in 2008 and 2009, the methods used by governmental associations to achieve their ends, their aim being to undermine the credibility and lessen the impact of NGOs in the countries they act in.

I – The Control of Civil Society at the National Level

Certain governments in the southern and eastern regions of the Mediterranean can use various means to control civil society. The first means is to use local legislative frameworks to facilitate (or refuse) the registration of a certain group; the second is to interfere within the activities of associations; while the third concerns access to state financing and subsidies, which tends to encourage clientelism. GONGOs are also characterised by the smear campaigns they perpetrate against certain personalities, in particular human rights supporters who dare criticise government initiatives.

The Legal Framework: The Discretionary Granting of Registration

In the southern and eastern Mediterranean, the right of freedom of association remains a right which, at least for the time being, is not guaranteed. In the majority of cases, laws ruling freedom of association generate numerous restrictions. Indeed, of the 11 countries that make up this region, only three have adopted what is known as a “declaratory system”, whereby an association may be created upon simple declaration. However, please note that in this paper, we will consider not only the established legal provisions, but the real practices of administrations, which in certain cases impose authorisation de facto, sometimes in violation of the law.¹ Outside of Libya, where civil society associations are quite simply forbidden, most of the other countries have adopted a registration system that requires prior authorisation. Besides the fact that this system entails many administrative procedures prior to the granting of registration, it contributes above all to the discretionary granting of registrations.

The direct outcome of such laws and practices has been to restrict the possibility of creating independent associations, in particular NGOs which actively fight for the promotion and defence of human rights, as their creation is entirely up to the discretion of the ministries in charge of granting such authorisation. In Syria, a number of human rights organisations, such as the Society for Human Rights in Syria, the Syrian Human Rights Organisation, and the National Human Rights Organisation, have waited in vain for years for the Ministry of Social Affairs and Labour to

¹ Amongst the 11 countries in question, only Morocco, Turkey and Lebanon have adopted a genuine declaratory registration system for associations.

grant them legal licences.² In Tunisia, not a single independent human rights association has been granted registration authorisation for almost 20 years now.

Government Interference within the Activities of Associations

In May 2009, four members of the executive committee of the National Union of Tunisian Journalists (SNJT) resigned within a short period of time, which, in compliance with the rules and regulations of the union, resulted in the dissolution of the executive committee. The president of the legal executive committee announced that new elections would be held on 12 September during an extraordinary congress. However before this occurred, union members who were ruling party partisans took advantage of their majority in the “greater executive committee” (a strictly limited and supervised deliberative body composed of the union’s executive committee, internal commission presidents and regional section presidents) to organise an extraordinary congress on 15 August, whereby a new executive committee was automatically appointed. In a press release, Mr Néji B’ghouri, president of the legitimate SNJT, denounced a “putsch”, recalling that according to the union’s by-laws and regulations, only the Executive Committee President is entitled to call for a meeting of the greater committee. Created on 13 January 2008, the SNJT was subjected to repeated harassment ever since its legal ruling committee refused to support the candidature of the Tunisian president in the October 2009 presidential elections and because of its militant stand for press freedom in Tunisia.³ This situation is nonetheless not uncommon in Tunisia, where similar cases concerning the Tunisian League for Human Rights (LTDH) and the Association of Tunisian Judges (AMT) have attracted the attention of the press over the past years.

Similarly, various Syrian organisations were recently ordered to modify their boards of directors. On 25 October 2008, the charity associations Al-Ansar, Al-Furqan, Al-Gharra’, Al-Tamadun Al-Islami and Hifz Al-Ni’ma were summoned by the public authorities⁴ who commanded the election of new boards.⁵ On 6 June 2009, the Ministry of Social Affairs ordered the dissolution of the Board of Directors of the Union of Charity Organisations in Aleppo, whose national committee was scheduled to elect a new board the following day. The Minister of Social Affairs ordered the creation of a temporary board, thus cancelling the meeting and the election of a new board de facto.

State Subsidies and Tax Exonerations Encourage Clientelism

In Tunisia, the granting of state subsidies is governed by the Law of 1959, which states that “if an association pursues activities related to aid or charity, it is entitled to receive liberalities (donations and legacies) further to approval from the Secretary of State to the Minister of the Interior”. Since 1987, another legal means exists for an association to receive subsidies: that is, being granted “national interest” status. However, the means of obtaining such status remains vague (there are no official criteria) and proves to what extent the granting of subsidies is discretionary. Law No. 30 of 21 December 1988 relative to tax exemption states that “donations and subsidies granted to organisations, projects and social works are fully deductible from the income tax of natural persons and from company taxes”. The result of this law has been the increase of confusion between the state institutions and the ruling Constitutional

2 Syrian Human Rights Committee (SHRC), 2009 Report, *The State of Human Rights*, p.45. <http://www.shrc.org/data/aspx/20NEWSEN.aspx>

3 See EMHRN, “Prise de contrôle du Syndicat National des Journalistes Tunisiens par le pouvoir”, 9 September 2009, http://fr.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/3517.html.

4 Syrian Human Rights Committee (SHRC), *Op. cit.*, <http://www.shrc.org/data/aspx/20NEWSEN.aspx>.

5 Dr. Salah Ahmed Kiftaro, Dr. Bassam A’jak, Dr. Abdusalam Rajih and Sheik Rajab Deeb of the Al-Ansar Association, Sheik Osama Abudlkareem Al-Rifa’i of the Al-Furqan Association; Sheik Sariah Abdulkareem Al-Rifa’i of the Hifz Al-Ni’ma Society; Sheik Abdurazzaq Al-Halabi, Sheik Hussam Saleh Farfoor and Sheik Abdulfattah Al-Buzum of the Al-Fateh Association; Sheik Abdurazzaq Al-Shurafa of the Al-Muath Al-Khateeb Al-Hasani Association; and Sheik Suleiman Zabibi and Sheik Mujeer Al-Khateeb Al-Hasani of the Al-Tamadun Society.

Democratic Rally (RDC), for it has reinforced the allegiance of civil society to the RDC. According to human rights advocates in Tunisia, "observations prove that the 'reforms' begun in 1987 have insidiously accentuated the weight of the State within society and strengthened authoritarianism through the intervention of the ruling party's instruments".

Methods Used by Governmental Organisations

Close to the ruling powers, governmental organisations act as intermediaries whose role it is to pass on the official position of the state to the various levels of society.

Thus, on 17 August 2009, the second-page headlines of the Tunisian daily "La Presse" read, "Civil society voices its absolute support to President Ben Ali's civilizational project".⁶ The article went on to report the number of associations that supported the president in office in view of the upcoming presidential elections in October 2009. According to the daily, over a dozen scientific, humanitarian, amateur sports, charity, cultural and development organisations had joined forces to support the candidacy of President Ben Ali, judging his programme to be the "sole guarantor of Tunisia's invulnerability and the future of its young generations" (National Union of Tunisian Women) and "the safeguard of Tunisia's progress on the path to expansion and sovereignty" (Internet and Multimedia Tunisian Society, Tunisian Association of Young Lawyers, Tunisian Consumer Defence Organisation and Tunisian Organisation of Education and Family).

In Jordan, the Hashemite Fund for Human Development run by Princess Basma Bint Talal stated in its 2004 National Human Development Report that amongst the population covered in the study, "the poorest of the poor" represented 30-40% of the population; whereas for the same period the World Bank estimated this population at 3%. To explain this discrepancy, the Fund put forward two hypotheses: the first being that the populations studied by the Fund represented extreme "pockets of poverty"; the second being that the poor do not have a proper conception of what extreme poverty is and thus exaggerate their social destitution.⁷ The recommendations formulated by the Fund suggested that the government "may need to engage more regularly in awareness-raising initiatives in order to demonstrate ways in which its interventions have been successful and to help dispel the 'myth' of abject and entrenched poverty in communities where it does not in fact exist". Though the Fund does not deny the existence of extreme poverty, it suggests that such poverty is due to the fact that the poor are unable to access, or simply do not know about government poverty-alleviation services. In this regard, the report recommends that "stimulating open discussion on these issues may help reduce [poor people's] perceptions of social deprivation and contribute to greater national cohesion"⁸.

Smear Campaigns Carried Out by Governmental Associations

In certain Mediterranean countries, smear campaigns are regularly carried out against human rights supporters in order to discredit their actions.

In December 2008, Sihem Bensedrine, spokeswoman of the National Council for Liberties in Tunisia (CNLT) and editor of the on-line newspaper Kalima, was accused of opportunism by Sahbi Smara, a former Kalima journalist who claimed that "Mrs Bensedrine used allegations of harassment to receive foreign funds". Sahbi Smara went on

6 <http://www.lapresse.tn/index.php?opt=15&categ=1&news=99333>

7 The Jordan Hashemite Fund for Human Development, National Human Development Report 2004, p.53, available online at <http://www.johud.org.jo/Publications.html>.

8 Op. cit.

to accuse her of having collected over half a million euros annually from various foreign sources “on the pretence of promoting human rights and an alternative press”.⁹ These accusations were repeated by the press in Tunisia and other Arab countries, as well as in Europe. According to United Press International, this campaign was orchestrated by the government via the Tunisian External Communication Agency (ATCE), which had put pressure on Mr Smara to make these accusations.¹⁰ And according to Front Line, the campaign had been organised “in retaliation to Sihem Bensedrine’s participation as a witness in the trial of Khaled Ben Said, former Tunisian deputy consul in Strasbourg”, sentenced on 15 December 2008 by the European Court of Human Rights for charges of torture.

In December 2008, the Egyptian daily “Rosa al-Yousef” published a slanderous article about Mrs Bensedrine, and that very same month, the same paper made vulgar remarks about the Director of the Arabic Network for Human Rights Information, Gamal Eid.¹¹ Likewise, a slanderous and hateful press campaign was started up in the editorial column of the weekly “Al Hadath” (7-14 October 2009 issue) against Khémaïs Chammari, a honorary member of the Euro-Mediterranean Human Rights Network.

II – The Role of Gongos within International Institutions

Non-governmental organisations play a very active role in preliminary meetings and during the principal human rights sessions held by United Nations bodies. By way of recommendations, NGOs have the possibility of informing the UN of the human rights situation in states under review and influencing the content of the final recommendations. However, such interventions are supervised and not all NGOs are represented. Since 1996, the admittance of NGOs into the UN has depended upon a specific Economic and Social Council (ECOSOC) status, the conditions of which are defined in the resolution on “Consultative relationship between the United Nations and non-governmental organizations”.¹²

Since the 1996 reform, national NGOs have been able to request consultative status from the ECOSOC. Indeed, the 23 May 1968 resolution did not offer this possibility to national organisations – except in exceptional circumstances – for only international NGO’s were admitted into official UN bodies.¹³ If this reform seemed necessary (in large part due to the increase in number of national associations following the collapse of the communist block in Europe), it nonetheless contains a major paradox: the granting of consultative status depends partially upon the recommendation of the member state concerned. In an article on GONGOs and the United Nations, Olivier de Frouville insists that the automatic outcome has been, “in effect, in the instance of certain cases, [that the country in question] grants access to servile NGOs and denies access to truly independent ones”.¹⁴

An analysis of the views supported by various NGOs in the above-named UN bodies backs up this argument. Thus, the new clause allows certain states to get “their” GONGOs into official UN bodies by “manipulating” the rules of the ECOSOC committee.

9 Front Line, Smear Campaign against Human Rights Defender Sihem Bensedrine, 2 February 2009, <http://www.awid.org/fre/Enjeux-et-Analyses/Library/Tunisie-campagne-de-diffamation-contre-la-defenseuse-des-droits-humains-Sihem-Bensedrine>.

10 Op. cit.

11 International Freedom of Expression Exchange (IFEX), 21 January 2009, http://www.ifex.org/international/2009/01/21/governments_resort_to_new_type.

12 See <http://www.whatconvention.org/fr/conv/0737.htm>

13 Article 9 of Resolution 1296 (XLIV) dated 23 May 1968 provided that: “National organizations shall normally present their views through international non-governmental organizations to which they belong.”

14 De Frouville Olivier, “Une société servile à l’ONU?” - *Revue Générale du Droit International Public*, 2006/2, p. 400.

In 2008, independent observers sharply criticised the first session of the Universal Periodic Review (UPR) in which the human rights policies of the Tunisian, Moroccan and Algerian governments were examined.

During the review of Tunisia, both the Tunisian Association for Communication and the Tunisian Association for Scientific Research Assistance over the Net praised “the efforts of the Tunisian State to promote freedom of expression” and ensure “the modernisation and promotion of the press in order to guarantee the plurality of opinions”.¹⁵ Yet at the same time, the report drafted by the UN Office of the High Commissioner for Human Rights working group, based upon findings of conventional organs and other special proceedings (including reports by UN Special Rapporteurs and the Committees on the Elimination of Discrimination against Women, the Rights of the Child, etc.), evoked its “profound preoccupation regarding this subject”.¹⁶ Amongst the 39 interventions made by NGOs during the examination of Tunisia, nine praised the policies implemented by the government in various realms such as children’s rights, the fight against AIDS, women’s rights, handicapped persons and unemployment amongst young people.¹⁷ Yet this praise contained no reservations vis-à-vis the accomplishments made or any recommendations on how to make further progress.

If the presence of governmental associations within the Human Rights Council has had no direct impact on the resolutions adopted within the framework of the UPR (insofar as the status granted by the ECOSOC is purely advisory), the spokespersons of governmental associations tend to minimise, and even undermine, the credibility of real NGOs which denounce a country’s non-respect of international commitments. This terrible situation is in total contradiction with the spirit of independence vis-à-vis public authorities provided for in Article 12 of the 1996 ECOSOC Resolution, whereby an NGO is defined as “any such organization that is not established by a governmental entity or intergovernmental agreement (...) including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization”.

Article 13 of the same resolution also guarantees the independence of NGOs towards their sponsors: “The basic resources of the organization shall be derived in the main part from contributions of the national affiliates or other components or from individual members.” Financial contributions or other support, direct or indirect, from a government are not forbidden by the resolution, but shall be openly declared to the Committee and “devoted to purposes in accordance with the aims of the United Nations”. Nonetheless, it is important to note that funds which come from purely private sources are not without risk of having pro-governmental connections. For example, the Qaddafi Development Foundation was the first Libyan NGO to be accorded ECOSOC status on 18 January 2009.¹⁸ The objective of this foundation, run by Saif al-Islam, the son of the Libyan leader, is “the implementation of development programmes in Libya in vital realms such as education, health, environment, agriculture, information, as well as in all other development areas and charities at home and abroad”.¹⁹ But the Foundation also has a purely political agenda which, even when addressing legitimate questions, is often directly linked to the ruling powers: in its 2007-2008 Annual Report, the Foundation mentioned, amongst other activities undertaken during the year, two open letters which were sent in February 2008: one to the Australian Prime Minister, in which the Foundation

15 Human Rights Council, summary drafted by the Office of the High Commissioner for Human Rights, A/HRC/WG.6/1/TUN/3, 11 March 2008, p. 7, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/115/52/PDF/G0811552.pdf?OpenElement>

16 Universal Periodic Review Working Group, compilation drafted by the Office of the High Commissioner for Human Rights, A/HRC/WG.6/1/TUN/2, paragraph 25, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G08/118/20/PDF/G0811820.pdf?OpenElement>

17 Human Rights Council, summary drafted by the Office of the High Commissioner for Human Rights, Op. cit. For further information, see declarations made by the ATDE (\$2), ATM (\$3 and \$35), ATSIDA (\$4), the Tunisian Union for Aid to the Mentally Handicapped (\$6), and the Tunisian Association for the Protection of Nature and Environment (\$36).

18 “Afrique en ligne”, article dated 18 January 2009, <http://www.afriquejet.com/afrique-du-nord/libye/fondation-kadhafi-pour-le-developpement-accreditee-comme-ong-aupres-de-l%27onu-2009011819850.html>.

19 Op. cit.

recommended that the Australian government withdraw its troops from Iraq; and two, that same month, to German Chancellor Angela Merkel on the occasion of her meeting with Israeli Prime Minister Ehud Olmert, whereby the Foundation expressed its concern over Israel's desire to step up the construction of a submarine capable of transporting two nuclear missiles.²⁰

Another recent phenomenon has been noted, whereby certain governments call upon the support of "friendly" national organisations in other countries when their country is being reviewed by the Human Rights Council. By way of example, on 31 August 2008, the Revolution Youth Union (UJR), a pro-governmental Syrian organisation active at the international level, sent a letter to the Human Rights Council concerning human rights policies in the Republic of Cuba. In this letter, the UJR reported that, within the framework of the UJR's relations with Cuban youth, it had discovered that "the Cuban people have many achievements in the realm of human rights. They have equal rights in gender, they have free education and they have free access to hospitals, universities and many other services."²¹

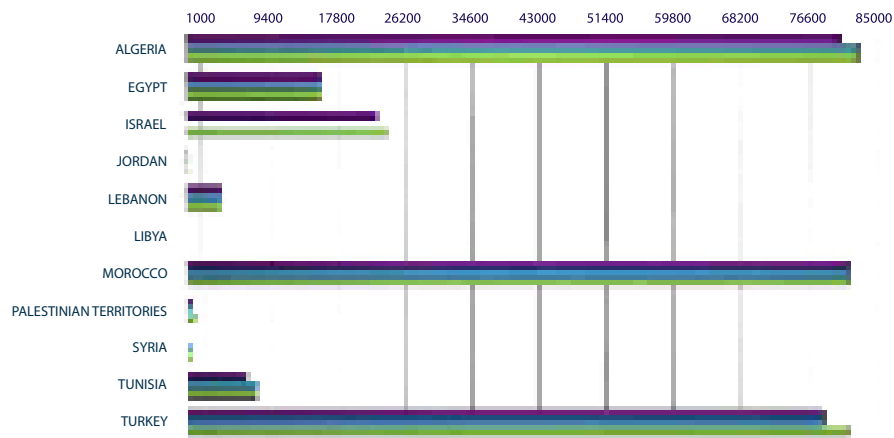
Yet the corridors of the United Nations are not the only place where this new phenomenon has been observed. At the national level, GONGOs often endorse the social and political control and supervision of their people by the state; in return, they are actively defended by their governments when it comes to obtaining consultative status within the United Nations, as well as in the Arab League and African Union. Indeed, the states concerned have cleverly made good use of the broadening of consultative status to regional and national NGOs – initially a positive advance – which was established by the United Nations World Conference on Human Rights held in Vienna in June 1993. The African Union (AU) Economic and Social Council (ECOSOC), created in 2004, has been virtually invested by openly government partisan (one might even say courtesan) associations. Tunisia, with the "Tunisian Association of Mothers", Egypt and Algeria (though in a less conspicuous manner), rank high amongst the southern and eastern Mediterranean countries which systematically have recourse – for propagandist purposes – to these "neighbourhood" associations which enjoy consultative status within the AU. On occasion, certain African GONGOs even make deals with their respective diplomatic services for sporadic "interventions". Libya has systematized the use of such false NGOs that are often reduced to one or two people responsible for relaying in Geneva, New York, Brussels, Addis Ababa or Dakar, the initiatives of Libyan diplomacy. This abuse, encouraged by the mechanisms of the AU-ECOSOC, was illustrated once again during the first human rights meeting held between African and European civil society in Brussels, on 16-17 April 2009. This meeting, which resulted in rich exchanges and recommendations regarding two main themes (the right of association and prevention of torture), was marked by the indiscreet and arrogant presence of several such GONGOs. This latest example obviously raises the question as to what criteria are actually used to designate civil society representatives to European Union dialogue groups, and indicates a need for increased vigilance at this level.

Within the United Nations itself, the role of governmental organisations has not been seriously explored for the time being. But as the United Nations reflects upon the reform of its system "for a stronger Organization worldwide", it would seem essential to review the criteria used to grant ECOSOC consultative status in order to hinder the development of pro-governmental associations, so that the UN does not become, as Olivier de Frouville fears, "a servile society" at the service of organisations exploited by their governments.

20 Qaddafi Development Foundation, Annual Report 200-2008, p.40, <http://gdf.org.ly/attachments/en/13f3cf8c531952d72e5847c4183e6910.pdf>; Also see: http://gdf.org.ly/index.php?lang=en&CAT_NO=12&MAIN_CAT_NO=9&Page=107&MAIN_CAT_NO=1.

21 http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/SARYU_CUB_UPR_S4_2009_SyrianArabRevoutionYouthUnion.pdf

STATISTICS FOR NUMBER OF ASSOCIATIONS

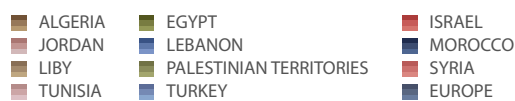
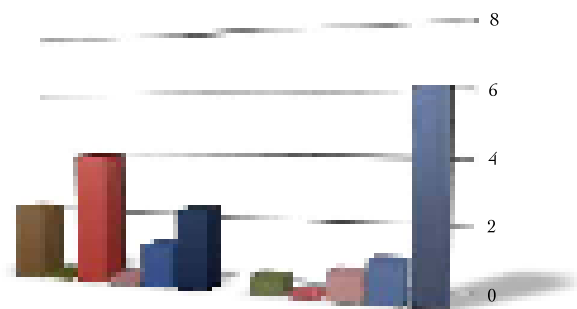


Number of Associations

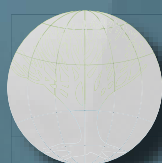
	ALGERIA	EGYPT	ISRAEL	JORDAN	LEBANON	LIBYA	MOROCCO	PALESTINIAN TERRITORIES	SYRIA	TUNISIA
2007	78947	17000	23650	1006	5000	0	80000	1300	600	8000
2008	81000	17000	0	1113	5000	0	80000	1300	1236	9205
2009	81000	17000	25000	1113	5000	0	80000	2100	1400	9205

Number of Associations per 1000 Inhabitant

ALGERIA	2.3
EGYPT	0.2
ISRAEL	4
JORDAN	0.2
LEBANON	1.3
MOROCCO	2.4
LIBY	0
PALESTINIAN TERRITORIES	0.5
SYRIA	0.06
TUNISIA	0.8
TURKEY	1.2
EUROPE	6



FREEDOM OF ASSOCIATION
IN THE EURO-MEDITERRANEAN REGION
MONITORING REPORT
2009



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK

RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

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