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Freedom of Association

in the Euro-Mediterranean region



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by Khémais CHAMMARI¹

'Man can do good or evil only by associating with others. No armour is more secure against oppression, no tool is more splendid for great achievements'

Pierre WALDECK-ROUSSEAU, promoter of the 1901 French legislation on associations

Preamble

This initial report of the Euro-Mediterranean Human Rights Network (EMHRN) on freedom of association is the culmination of a process launched in September 2006. At its last general assembly, the Network decided to establish thematic working groups linking its various components. The working group on freedom of association was created as part of that process, with the overall goal of contributing to the promotion of *'human rights values and international standards related to freedom of association in the Euro-Med region, in particular in the South Mediterranean area'*.

From its inception in 1997, the EMHRN has taken a great interest in the issue of freedom of association. It noted with satisfaction the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the 'Declaration on Human Rights Defenders'), adopted by the United Nations General Assembly on 9 December 1998. Based on the Barcelona Declaration, which was adopted on 28 November 1995 and launched the Euro-Mediterranean Partnership process guaranteeing 'the effective legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes', the Network then organised, in cooperation with the *Association pour la défense des droits et des libertés au Liban* and the Friedrich Naumann Foundation through the Bunian programme on good governance, a workshop on the 'Legal Framework of Associations in the Arab World', held in Amman on 9-10 May 1999.

Following the adoption on 10 May 1999 of the Declaration of Principles and Criteria Relating to the Freedom of Association in the Arab Countries (the 'Amman Declaration'), cooperation between the EMHRN and the Arab Initiative for Freedom of Association (AIFA) expanded. On 5-7 October 2000, the EMHRN, in partnership with AIFA, organized a seminar on 'Freedom of Association in the Euro-Mediterranean Region' with three Moroccan groups (*Espace associatif du Maroc, Association démocratique des femmes du Maroc and Organisation marocaine des droits de l'Homme*); the event concluded with the adoption of the 'Casablanca Declaration'.

With the assistance of the Danish International Development Agency (DANIDA), the EMHRN then undertook a study on needs and expectations in the area of support for human rights defenders. The resulting feasibility study was approved by the organisation's 2004 general assembly, which authorised the establishment of the Euro-Mediterranean Human Rights Foundation to Support Human Rights Defenders. And finally, as part of the last Euromed Civil Forum, held in Marrakech, Morocco, on 5-7 November 2006, the EMHRN co-chaired a workshop on freedom of association, with the *Fondation René Seydoux pour le monde méditerranéen* focusing on the cultural component.

The current project is the outcome of this series of initiatives, which demonstrates the Network's strong interest in the critical area of freedom of association for the past 10 years. The goal of the project is to foster improvements in the expertise of organisations in matters of freedom of association and to help them acquire follow-up and proposal-drafting capacities so that they may promote, where necessary, substantial legislative changes and a framework of rules applicable to the practices of the regulatory authorities. The strengthening of civil society and its components is an important factor contributing to the process of democratic reform.

¹ Former secretary-general and vice-president of LTDH (Ligue tunisienne des droits de l'Homme) and FIDH (Fédération Internationale des droits de l'Homme), former deputy, Board member of the Euro-Mediterranean Human Rights Foundation (EMHRF).

In addition to preparing regular reports on freedom of association in each of the countries concerned, with involvement by its members and partners, the EMHRN needs to develop a methodology enabling it to define a set of benchmarks aimed at measuring breakthroughs and setbacks experienced with respect to freedom of association from year to year and from country to country.

A steering committee² was established to start the project and find resource persons among non-governmental organisations (NGOs). The committee was asked to prepare, in cooperation with the most active independent NGOs in civil society, a number of country reports focusing on the legal and political dimensions of freedom of association as well as on the rules, the regulations and the practices implemented by the authorities and by the organisations themselves. Broadly speaking, the structure of each report includes an introduction on the general political context and on the legislation in place, followed by four or five sections on the establishment and registration of associations, on their dissolution and suspension, on their organisation and operation, on their funding and taxation regime, and finally on control, governance and transparency (in some cases, the last two sections have been combined). Based on a recommendation by the steering committee, the working group decided not to include trade unions or political parties in this report.

At its first full meeting, held on 3-4 March 2007 in Copenhagen, Denmark, the working group, whose members³ hail from various countries in the Mediterranean region, and the two consultants chosen by the EMHRN - Marie Ghantous (Lebanon) and Khémais Chammari (Tunisia) - selected 20 to 25 questions that were used to structure the country reports, with the same structure being adopted for 11 countries of the southern and eastern Mediterranean. A background report on the exercise of freedom of association in the European Union was also prepared. These reports, which are available on the EMHRN's website, were written after a round of consultation with the Network's members and partners.

The two consultants and the EMHRN secretariat were then charged with summarising the reports while maintaining the structure of the initial documents. Draft recommendations were developed on the basis of this work and of the consultations that were held. They will be discussed at the working group's second meeting in December 2007, and could thus lead to the development of continuous actions at the local level. These actions will centre on indicators that will be selected and will help to identify priorities both for the reforms to be promoted and for the working group's future activities.

This initial study presents a comprehensive review of the legislation and practices pertaining to freedom of association in the Euro-Mediterranean region. The approach adopted here is essentially descriptive and seeks to provide organisations active in the field with a tool that can be used in their actions in the area of freedom of association. For reasons of practicability and feasibility, the first report focuses only on human rights NGOs. The scope of the organisations covered could, however, be broadened in future editions. Regular updates are envisaged, every year if possible, so as to improve and augment the report as the situation of freedom of association evolves in the region.

THE RIGHT TO FREEDOM OF ASSOCIATION, A BAROMETER OF THE STATE OF BASIC FREEDOMS

Freedom of association, which is enshrined in article 20 of the Universal Declaration of Human Rights and in article 22 of the International Covenant on Civil and Political Rights, is inseparable from freedom of opinion, of expression and of information, and it plays a determining role in any democratic reform project. There can be no democracy without freedom of association, which is, in many respects, a barometer of the state of basic freedoms.

The right to freedom of association includes the right to join, create and leave any group, association or society, whatever its legal form of organisation. It requires that the state refrain from interfering when an association is created and carries out its activities. At the same time, it requires that the state contribute to developing and maintaining an environment favourable to the exercise of freedom of association⁴.

The right to join and establish associations is closely linked to the others civil and political rights, which are fundamental prerequisites for the promotion and protection of economic, social and cultural rights. Conversely, the full exercise of civil and political rights depends on the full enjoyment of economic, social and cultural rights.

² The steering committee's members were Iain Byrne, Abdeljalil Laroussi, Birgit Lindsnæs, Ghassan Moukheiber and Jan de Vries.

³ The working group included the following members: Ali Amar, Halil Bayhan, Redouane Boudjema, Lis Dhundale, Panayote Dimitras, Maria Fahmy, Moataz El Fegiry, Yamna Ghabbar, Anouar Kousri, Anne-Laurence Lacroix, Abdeljalil Laroussi, Birgit Lindsnæs, Omar Mestiri, Ghassan Moukheiber, Eva Norström, Jan Ter Laak and Jan de Vries.

⁴ For an overview of developments related to this topic and an international perspective, see Carolina Rodriguez Bello, 'Freedom of Association - October 2003', WHRnet <http://www.whrnet.org/docs/issue-association.html>.



At the same time, freedom of association and the rights related thereto are of crucial importance to women, who play key roles as organisers and motivators. However, the freedom and ability of women to enjoy the right to form and join associations are often undermined by lack of access to and control of economic and political resources. In addition, they are penalised by a variety of cultural standards and social values within their own communities. Governments therefore have a duty to provide an environment that is conducive to the participation of women in the life of associations and to eliminate all forms of discrimination against them.

The right to freedom of association is guaranteed and protected by the Universal Declaration of Human Rights. Article 20 (1) provides that 'everyone has the right to freedom of peaceful assembly and association' while article 23 (4) states that 'everyone has the right to form and to join trade unions for the protection of his interests'. Article 22 (1) of the International Covenant on Civil and Political Rights recognises that '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 8 (1)(a) of the International Covenant on Economic, Social and Cultural Rights provides that 'the States Parties to the present Covenant undertake to ensure the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others'.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the United Nations General Assembly, reaffirms the right of citizens to freely form associations, in particular for the protection and promotion of fundamental rights and freedoms. The Declaration also stresses that the prime responsibility and duty to promote and protect human rights and fundamental freedoms rests with the State.

Article 5 of the Declaration reaffirms that everyone has the right '*(a) to meet or assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organizations*'.

Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) stipulates that women have the right to participate in non-governmental organisations and associations. The conventions of the International Labour Organization (ILO) also protect freedom of association, in particular the Freedom of Association and Protection of the Right to Organise Convention (C87), which protects the rights of workers and employees to join or establish organisations and to operate without interference or prior authorisation by the state.

Regional human rights instruments specific to the Euro-Mediterranean region also protect freedom of association:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols (article 11);
- The European Union Guidelines on Human Rights Defenders;
- The African Charter on Human and Peoples' Rights (article 10).

Finally, the Declaration of Principles and Criteria Relating to the Freedom of Association in the Arab Countries, adopted at the end of a meeting of legal experts, emphasises the importance of freedom of association to 'achieving sustainable human development, promoting citizen interest in public issues ... and enhancing democracy, democratic culture and strengthening civil society'. The Amman Declaration was followed by the Casablanca Declaration⁵ in October 2001.

The review of the state of freedom of association in the northern, southern and eastern Mediterranean will refer to all of these instruments, the most important of which are legally binding for the majority of the countries in the region. However, freedom of association is both 'an authorised freedom coupled with a limited legal capacity' and 'a freedom generally under interference, under surveillance and under the threat of administrative dissolution'.⁶

⁵ *Freedom of Association in the Euro-Mediterranean Region, Casablanca Declaration, October 2000*, a publication of the EMHRN, AMDF, OMDH and Espace associatif.

⁶ See Mohamed Mouaqit '*La liberté d'association dans le droit associatif de la région méditerranéenne*', regional conference co-sponsored by the EMHRN, Casablanca, 5-7 October 2000..



CURRENT SITUATION: FLAGRANT HUMAN RIGHTS VIOLATIONS AND OBSTACLES OF ALL KINDS TO FREEDOM OF ASSOCIATION

Despite repeated official speeches about the safeguarding of human rights and the rule of law, the situation in southern and eastern Mediterranean countries with respect to the effective enjoyment of basic freedoms remains a source of grave concern. Since the September 2001 attacks, most states in the region have been implementing repressive strategies aimed at restricting freedom of association, of assembly and of expression even more. Human rights violations and denials of justice are common practice along with multiple types of harassment, intimidation, abductions and violence towards all demonstrations of protest or dissidence. While some progress has been made, especially in Morocco and Lebanon (despite the Israeli military aggression during the summer of 2006 and Syrian interference), these gains are relative and in many respects uncertain. The worsening conflict in the Middle East, the hardening of Israel's repressive policy and the deterioration of the situation in Gaza and, to a lesser extent, in the rest of the Occupied Palestinian Territories, as well as the repercussions of the war of occupation in Iraq and the increase in terrorist attacks - all these are factors of insecurity for all the peoples in the region. While this picture may seem excessively bleak, it is, in fact, a reflection of the unanimous findings of the major international human rights organisations and institutions.

While the consequences and repercussions of Jihadi terrorism are undoubtedly significant, the systematic use of this more or less effective threat by states creates a situation that raises grave concerns⁷. The enjoyment of individual freedoms is extremely limited if not non-existent in Tunisia and Libya. In Egypt and Syria, the domination exerted by the single-party state or the hegemonic and all-powerful government party gives rise to an all-pervasive state of arbitrariness faced by people who are subjected to the 'strength of obedience'⁸. In Algeria, Egypt and Syria, a state of emergency is still in force (since 1992, 1981 and 1963, respectively) and is used to justify repressive measures and emergency laws.

Given this environment, independent civil society actors, NGO activists, trade unionists, lawyers, judges, feminists and human rights defenders throughout the region are confronted with a variety of forms of repression and are exposed to physical harm and ongoing insecurity. This results in, among other things, violations of their fundamental rights (in their private, professional and public life) and of their right to freedom of movement. The number of associations that are arbitrarily denied recognition continues to grow, and they are forced to adjust to dangerous situations of quasi-clandestineness and dissidence.

In anticipation of a further enlargement of the European Union, Turkey must take EU expectations into account and its situation is therefore different from the conditions that prevail in the southern part of the Mediterranean region. However, the influence of the army and the rejection of Kurdish aspirations are significant risk factors and pose a very real threat to the enjoyment of freedoms in that country. Finally, the democracies on the north side of the Mediterranean are also affected by freedom-curtailling deviations under the pretext of the struggle against terrorist threats, legitimate though that struggle may be, and of an obsessive desire to control migratory inflows from the southern Mediterranean countries and Africa.

Against that background, freedom of association is flouted in most countries of the southern Mediterranean, where the powers-that-be seek to prevent the creation of independent organisations by resorting to legislative means that are in most cases unconstitutional and to arbitrary administrative practices. Legally constituted independent associations are often subjected to various methods of police and judicial harassment, ranging from surveillance to the destruction of their headquarters and to measures prohibiting them from holding general assemblies or meetings.

While this list of challenges and obstacles to the exercise of freedom of association is not exhaustive, it does highlight the following elements:

- The impossibility of promoting an opening and reform of the situation with regard to freedom of association in a context where a state of emergency or emergency laws are allowed to continue indefinitely.
- While the risk of terrorism is real, policies that focus exclusively on security and practices that curtail freedoms do not help to stop extremism and fanaticism. The effects of laws purporting to fight terrorism and money laundering in countries such as Tunisia and Jordan, for example, are likely to be the opposite of those that were anticipated.
- The commingling of the executive and judicial powers and the subservience of the judiciary make it possible, through repression

⁷ See, in particular, the conclusions of the 'sub-regional hearing' on terrorism and human rights organised by the Eminent Jurists Panel of the International Commission of Jurists (ICJ), held in Rabat, Morocco, in July 2006.

⁸ An expression borrowed from the title of a book by the French academic Béatrice Hibou, *La force de l'obéissance: économie politique de la répression en Tunisie*, Paris, Éditions la Découverte.



and fear, to silence and quash any protest or demonstration of dissidence on the part of associations. By suppressing any prospect for peaceful and progressive change, this institutional autism fosters the most egregious aberrations, subverting social peace and the credibility of the very notion of rule of law.

- The deliberate ambiguity of the so-called 'dualist' regime of constitutional guarantees, coupled with legislative changes that systematically limit the enjoyment of freedoms – a combination that is found in most countries of the region – result in a barrier to the exercise of the right of association. Any liberal and democratic reform in that area will therefore require the elimination of the 'prior agreement' system in favour of a 'declarative system'. (If circumstances warranted it, the authorities could launch legal proceedings in opposition to an organisation's registration, with no immediate effect on its activities until a final judgment was rendered.) While legislative reforms in Morocco and Lebanon represent a positive development, harsh laws and practices are the norm in the rest of the region's countries, where registration applications meet with lengthy and difficult bureaucratic procedures intended to discourage the applicants. Pressures, including physical coercion, are in some cases brought to bear for the same purpose, and judicial, civil or administrative appeal procedures are often deliberately slow.
- Direct interference into the management and regulation of associations by the authorities is a common occurrence. It takes various forms, ranging from the more or less discreet presence of security agents to a show of force to remove NGO leaders from their positions and close their offices, to legal proceedings instigated through militant supporters of the single-party state. In an attempt to circumvent the difficulties and obstruction forced upon organisations, activists must, when legislation allows it, establish commercial structures to carry out their activities. However, this does not necessarily shelter them against interference by the authorities, especially since the judiciary often approves interventions by the bureaucratic and political authorities.
- Throughout the region, obstacles to the enjoyment of freedom of association are accompanied by clampdowns on the press, audiovisual media and communications (through the internet, in particular).
- A number of countries in the region deliberately maintain confusion between the legislations on associations and on political parties in order to impede the evolution towards a genuinely pluralistic society. The threat posed by the ban on political activities by associations and on the establishment of political organisations is all the greater because the concept of 'political activity' is far from being defined clearly in these legislations. In Syria, for example, abusive interpretations of the notion of 'political activity' are compounded by spurious and serious charges of 'involvement in an illegal organisation of an international nature'. In a different vein, but similar in its restrictive purpose, is the allegation made against the Centre for Trade Union and Workers' Services (CTUWS) in Egypt that it is interfering illegally in the area of trade union action⁹.
- Beyond a loosening of the legislation on the right to form associations, the strengthening of civil society implies the development of coordinating bodies, coalitions and networks between entities working on common issues. This approach makes it possible for organisations to diversify their field of activity, to rise above political or ideological differences and encourage the development of innovative civic behaviours. In some countries - Tunisia, Egypt and Syria, for example - this approach has been rejected by the authorities, which impose the obligation to obtain prior approval. In those countries, it is therefore impossible to establish coalitions between legally recognised organisations (against capital punishment or for the ratification of the Rome Statute of the International Criminal Court, for example). The formation of such coalitions requires that an application for prior approval be submitted; the outcome of such requests is always uncertain.
- The possibility for associations to bring legal proceedings and to file a civil suit on behalf of aggrieved third parties is an important element in the evolution of the effective enjoyment of freedom of association. The hostility and even opposition displayed by most states in the region towards this evolution are telling signs of their aversion towards and fear of independent NGO initiatives.
- In autocratic and totalitarian states, the increase in strictly pro-governmental associations and organisations takes place at the expense of NGOs, which face restrictions, non-recognition and exclusion. These so-called 'government-operated non-governmental organisations' (GONGOS) have at their disposal significant resources for mobilising and exerting political and social control over the population. In addition, they are instruments in the development of a policy of propaganda and 'representation' of civil society in international fora.
- In some countries (Jordan, for example), the question of charity organisations is of interest to associations in general because of their large number. While these groups are part of civil society, the majority of them fall into traditional, clan or family types. Thanks to traditional customs and to collusion among notables, they risk being used by government authorities for their own purposes. The challenges facing civil society in those countries include improving and streamlining management methods in associations of this type and ensuring their autonomy and their future involvement in coordinated actions with other types of organisations.

⁹ CTUWS, an organisation that advocates for trade unionism and workers' rights, was closed down following an administrative decision made on 29 March 2007

- The effective enjoyment of the right to freedom of association is crucially linked to the movement in favour of gender equality and to feminist initiatives. These initiatives are often confronted with the extreme caution of government authorities and with the aggressive stance of conservative sectors of society. Advocacy interventions in favour of effective gender equality and genuine citizenship must often deal with practices that have a restraining effect on freedom of association and with hostile and intolerant media campaigns.
- Respect for and the implementation of civil, political, economic, social and cultural rights are seriously jeopardised when one lacks the possibility of joining with others in peaceful associations and expressing one's opinion freely. Other sensitive subjects related to freedom of association involve the situation of political prisoners, condemnations of torture, the fight against impunity and truth-and-justice processes. While progress in this area has been made recently in Morocco, the 'pacts of forgetfulness' in effect in the majority of countries in the region and the deliberate omissions in the Algerian amnesty for 'peace and reconciliation' are evidence of the ambiguous treatment these subjects receive. The same is true of the actions of lawyers and judges who are important actors in the struggle for the independence of the judiciary, the promotion of the interests of vulnerable segments of society and the fight against corruption, as well as environmental issues that cannot be addressed solely by state interventions.
- The issue of the access of organisations to funding, whether from public or private sources, or from domestic or foreign sources, is an integral part of the struggle for an effective exercise of freedom of association. This implies that impartial policies of public subsidies must be in place and that associations must be free to raise funds and receive private donations as long as the sources and uses of the monies received are completely transparent. It also implies that those states which receive financial resources from multilateral and bilateral international cooperation agencies must honour their commitments with respect to freedom of association. This applies particularly to the Euro-Mediterranean Partnership (association agreements and action plans under the Neighbourhood Policy). In Egypt, Syria and Tunisia, in particular, the blocking of funds, the administrative and judicial measures taken to dissolve NGOs and the criminal proceedings brought against NGO leaders and activists must be condemned. Note also that the Israeli authorities tabled a bill that would have imposed severe restrictions on organisations seeking to secure funding from outside sources (the bill was eventually rejected by the Knesset on 3 March 2005).
- International standards have an important role to play in monitoring the situation of freedom of association in the region. Although it is proclaimed with much fanfare, respect for individual and collective rights is routinely flouted by most states in the region, which thus disavow their international and regional obligations. In addition, the reservations accompanying the ratification of international human rights and humanitarian treaties and conventions essentially void the meaning of some of the provisions of these documents. Actions promoting the implementation of states' international commitments with regard to local positive rights are among the priorities of the NGO movement. The same also applies to commitments made in the context of the African Union and the Euro-Mediterranean Partnership (article 2 of the association agreements), and to the jurisprudence of the United Nations Human Rights Committee and of the UN's treaty mechanisms (periodic follow-up reports on human rights treaties and conventions) and non-treaty mechanisms (working groups and special rapporteurs). Finally, one must note the acknowledgment - but not the observance - of the UN Declaration of Human Rights Defenders, adopted on 9 December 1998, and the European Union Guidelines on Human Rights Defenders, adopted on 15 June 2004.

Given these circumstances, our examination is aimed at updating the analysis of legislations and practices related to the enjoyment of freedom of association and at contributing to the development of a tool for monitoring the state of basic freedoms in the southern half of the Euro-Mediterranean region. The authors, as well as the associations and individuals they consulted, hope that this discussion will prompt readers to exercise renewed vigilance, which, as noted by Louise Arbour, the United Nations High Commissioner for Human Rights, is a responsibility that each and every one of us must share.





by Ghassan MOUKHEIBER¹

"There are no countries in which associations are more needed to prevent the despotism of faction or the arbitrary power of a prince than those which are democratically constituted. In aristocratic nations the body of the nobles and the wealthy are in themselves natural associations which check the abuses of power. In countries where such associations do not exist, if private individuals cannot create an artificial and temporary substitute for them I can see no permanent protection against the most galling tyranny; and a great people may be oppressed with impunity by a small faction or by a single individual."

Alexis DE TOCQUEVILLE

It may be helpful to stress the fundamental role that associations² play in the construction of civil society, given that they fulfil the following roles and functions in succession:

- Organised counterweight in the face of state bodies
- Form of democratic participation and instrument for training citizens for civic participation
- Instrument of social and economic development
- Tool for the protection and promotion of collective and public rights

Despite the important role played by associations, but undoubtedly also because of their fundamental position in the democratic construction, freedom of association has been seen with mistrust and even hostility by political regimes. In addition, in many countries of the world, the law of associations is a branch of the legal corpus that has attracted little attention on the part of lawyers and legal experts. Associations of individuals, essentially characterised by the fact that they do not seek to share profits, are, in this context, much less known than the related institution, namely the corporation. It can be seen from the foregoing that while freedom of association is a fundamental freedom, it is a right that is among the least well known in international law³.

Association legislation is used in Mediterranean states as an instrument for controlling civil societies. The true motivations behind this control, seldom spelled out in the eastern Mediterranean, are even more concealed on its southern shore because they are essentially linked to the fear of democratic development and to a form sort of competition in the context of public and social actions that is ill perceived and recognised by many governments. Thus association law is a true reflection of the extent of government control and one of the most relevant indicators of the democratic development of a society or a state.

This overview of association law will review the situation in European countries and in the 11 countries of the eastern and southern Mediterranean (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Territories, Syria, Tunisia and Turkey).

¹ Deputy in the Lebanese Parliament, rapporteur of the parliamentary commission on human rights, lawyer, lecturer at the Law Faculty of Université Saint-Joseph, coordinator of the Arab Initiative for Freedom of Association.

² As used in this report, the word 'association' pertains to the institution known as such in the tradition of French civil law, which has has a profound influence on most legal systems in Mediterranean countries. It refers to any 'body comprised of a number of individuals who, on an ongoing basis, share their knowledge or their activities for a purpose other than sharing profits', whatever purpose or goals the association is pursuing, the purpose serves to characterise the specific type of association. The country reports published in this report do not cover political parties or trade unions.

³ This led the Lawyers' Committee for Human Rights to refer to freedom of association as the 'neglected freedom'.

separately. It is useful, however, to recall the negative assessment of the situation in most of these countries that was made in the Amman Declaration. In the preamble, the Declaration noted that, in varying degrees, Arab countries were characterised by 'the absence of democracy, human rights and fundamental freedoms, the continuity of security as [...] reflected in several exceptional laws, the foremost of which are emergency laws. This is compounded by the widening scope of poverty, unemployment and social disintegration accompanied by a rise in the rate of illiteracy'⁵.

To this socio-political picture must be added the weakness of the rule of law and of the institutional democratic counterweights (parliaments and the judiciary), which gives the executive, as well as security considerations, free rein to restrict freedom of association, even in violation of the law.

Against this background, it is almost easy to understand why political regimes fear the development, through associations, of a democratic counterforce that is capable of criticising them or challenging their legitimacy. In addition to these general concerns, two considerations specific to the region must be mentioned:

- The war against terrorism, the fight against Islamic associations and the fear of organised religious fundamentalism are pretexts used, with or without justification, by several states (including European ones) to legitimise, essentially in the eyes of international public opinion, measures of repression or restrictions against associations.
- Human rights organisations, in many Arab countries the only possible alternative to political opposition, are prohibited. These organisations are perceived by Arab regimes as one of the greatest dangers they face. As evidence of this, it is enough to recall that the Conference of Arab Interior Ministers - one of the most active and most effective pan-Arab bodies - considers the human rights movement as a dangerous movement that it is committed to monitor very closely.

However, several countries in the region are experiencing a period of democratic transition: improvements are taking place in both the legislative and the judicial area, and more attention is being paid to civil society.

In the legislative area :

Association law is undergoing transformation in several countries.

- In Lebanon, the law of associations has survived two attempts at imposing severe restrictions, including a legislative change that sought to replace the unfettered establishment of associations by a regime of prior authorisation.
- Morocco and Palestine have adopted new laws on associations that can be seen as much more liberal than the previous legislation.
- In Jordan, on the other hand, a more restrictive law is under study; preliminary discussions have taken place and numerous criticisms have been made about this proposed law.

In the judicial area:

The judiciary has played a vital role in defining association law and freedom of association, as well as protecting this freedom in the face of administrative and even legislative encroachments. The effectiveness of that role, however, depends on the degree of independence of the judiciary. The situation in that regard is not always ideal in the countries of the southern and eastern Mediterranean, and varies considerably from one country to another⁶.

In Lebanon, for example, the State Council and, at one point, the Court of Cassation, played a very important role in rectifying the faults of administrative practices and clarifying the nature of the receipt for legal documents (the *Ilm wa Khabar*) for purposes of defining and protecting freedom of association.

In Egypt, the very important judgment made by the Supreme Constitutional Court on the subject of association law (referred to above), after many years of hesitation by the Supreme Court, must be highlighted. As well, one must point out the courage displayed in recent years by the State Council, which recently issued an important judgment on the establishment of a human rights association.

⁵ Amman Declaration on freedom of association , 1999. See also *Freedom of Association in the Euro-Mediterranean Region. Casablanca Declaration, October 2001*, a publication of the EMHRN, AMDF, OMDH and Espace associatif.

⁶ See the EMHRN report, *Justice in the South and East of the Mediterranean Region*, 2005.

In the area of civil society :

There has been a growing mobilisation of civil society in various countries in favour of the protection and improvement of association law, and one must note in particular the efforts made by civil society in Lebanon, Morocco and Egypt as well as by the Euro-Mediterranean Human Rights Network.

Also worthy of mention are several doctrinal efforts to define the scope and content of association law in accordance with the principle of freedom of association. In particular, one must note the work of 18 Arab jurists from nine countries who, after two years of study, at the initiative of ADDL (*Association pour la défense des droits et des libertés*) and the Friedrich Naumann Foundation's Bunian programme, developed *the Declaration of Principles and Criteria relating to the Freedom of Association in Arab Countries on 10 July 1999*⁷.

For the purposes of this overview, and while awaiting the development of more accurate indicators to measure the extent of respect for or violation of freedom of association, we propose to measure the degree of respect for the principles of freedom of association by highlighting its main elements, illustrated with examples from the different country chapters, in order to determine the best regulations and practices in the matter (which we will call 'freedom regimes') and the worst (which we will call 'repression regimes'), as well as those which can be placed halfway between freedom and repression (which we will call 'control regimes').

Accordingly, we have structured this preliminary assessment, as in all of the country reports, into five broad streams corresponding to the intervention of law in the life of associations: (i) Formation and incorporation; (ii) Dissolution and suspension; (iii) Organisation and operation; (iv) Funding and taxation; and (v) Control, governance and transparency of the associations.

Part I - FORMATION AND INCORPORATION

The freedom to establish an association without having to obtain a permit or prior administrative authorisation is the principal foundation of freedom of association. In this context, associations are created through the common volition of the founding members. The declaration of the association's existence may be provided by means of a simple statement, but the establishment of the association is not subject to any form of prior intervention by administrative or judicial authorities. In case the existence of this freedom is not established, there is a real risk that the creation of associations will take place on a selective and discretionary basis and become a preserve of 'friends' of the regime as well as a source of political and administrative corruption.

1. Freedom to register the association or not (juristic personality)

a) Freedom regimes (such as embodied in the legislation of several European countries) recognise the right of associations to be created without necessarily having to inform the administrative authorities through a registration system. Naturally, such undeclared associations do not enjoy a juristic personality that is distinct from their members.

b) Repression and control regimes (such as those in place in all countries of the southern and eastern Mediterranean, without exception) force all associations to declare themselves to the authorities or to obtain a prior authorisation. Undeclared associations are prohibited. They are referred to as 'secret associations' by several regimes and may be subject to severe penalties.

2. Freedom to declare and register through a simple information mechanism

a) In freedom regimes (in European states, Lebanon, Morocco and Turkey, for example), the establishment of associations is not contingent upon obtaining a prior administrative authorisation but merely requires that the association inform the competent authority through a written statement containing a number of elements of information defined in the law. The association becomes a legal entity, with all of the effects attached to that status, upon the submission of the written statement. The written statement is not an application, but only a request that the administration record the establishment of the association. This passive role of the authorities is one of the very foundations of freedom of association. The administration may prevent the issuance of a receipt only on limited grounds spelled out in the legislation. These grounds may be more or less numerous and more or less abusive, depending on the country.

⁷ Also referred to as the Arab Declaration or Amman Declaration.



b) In control regimes (in Lebanese administrative practice, for example), there is a marked difference between the principle established in law and administrative practice, which often transforms, de facto, the regime based on a simple statement into a prior authorisation regime.

c) In repression regimes (in Egypt, Syria and Libya, for example), the creation of associations is subject to obtaining prior authorisation, a matter that is left to the discretion of the authorities. In some cases, applications for the creation of an association are not even acknowledged or recorded. The silence of the authorities is then tantamount to a rejection.

3. Cases in which registration may be denied

a) In freedom regimes (European states, Lebanon, Morocco, Turkey), the cases in which the registration of an association may be denied are limited; they are in keeping with conditions of legitimate restriction and in compliance with international standards.

b) In repression and control regimes, the cases in which the registration of an association may be denied are more or less numerous and confer to the competent authority a more or less discretionary power to deny registration (e.g. Tunisia, Egypt, Syria, Libya, etc.).

4. Administrative registration procedure

a) In freedom regimes, administrative registration procedures are simple and not burdensome.

b) In repression and control regimes, the administrative conditions that must be met for registration are complicated, lengthy and burdensome. Several controls are conducted on the background of the founding members as well as on the desirability of or need for the purpose that the association intends to pursue. These controls are often carried out by administrative bodies but also by police agencies (e.g. Lebanon, Egypt, Syria, Libya, etc.).

5. Administrative and judicial remedies in cases of denial of registration or registration delays

a) In freedom regimes, administrative and judicial remedies are efficient.

b) In repression and control regimes, there are cases where the denial of registration or registration delays by the authorities are not subjected to any remedy, and others where a certain balance is sought in the sense that the law contains provisions designed to limit the scope of the administration's discretion or mitigate its dysfunction. For example, some laws stipulate that the reason for rejection must be explained, set a deadline for responding or recognise that a lack of response is equivalent to an approval. A right to appeal to the courts is also available. However, in countries where the independence of the judiciary in its relations with the executive is far from guaranteed, it is not always assured that associations will gain by appealing.

6. Institutional alternatives to the association

a) In freedom regimes (where registration is done through a simple statement), there is no need to seek another type of institutional entity than the association.

b) In repression and control regimes, when the application to form an association is denied, it often becomes necessary to seek viable institutional and procedural alternatives in order to circumvent the abuses of the legal system in place or abusive administrative practices. These alternatives are more or less feasible and more or less tolerated, depending on the efficiency or the degree of repression of the competent authorities.

- When the legislation is in violation of the principle of freedom of association, some groups decide to establish a company instead of an association, despite the fiscal problems that this may entail (Egypt, Jordan and Lebanon). This practice is well known to the authorities and often tolerated by them, as demonstrated by the situation in Egypt, where the association law (which was repealed by the Supreme Constitutional Court) specifically prohibited this type of association disguised as a company.

- When administrative practice is in violation of the law (as in Lebanon), the association's founding members can forward the statement of information to the competent authority through a bailiff, whose minutes confirm the receipt of the documents required by law, thus avoiding the risk that the association could be characterised as secret.

Part II - DISSOLUTION AND SUSPENSION

The threat of dissolution is as important for an association as is the establishment phase. When dissolution is decided upon by the administration or even by the judicial system - when the independence of the judiciary is far from guaranteed - it becomes a sword of Damocles that is used both to keep associations that are being watched by the authorities on a tight leash and to strike when the need arises.

a) In freedom regimes (European states, Lebanon, Morocco, Turkey, Israel), the established principle is that the public authorities do not have the right to dissolve associations. Dissolution must follow a decision by the association's own competent body or a final judgment by a court after the association has been able to defend its case in a public and fair trial, in limited situations that are explicitly defined in the legislation.

b) In control and repression regimes, the competent authority enjoys exorbitant discretionary powers. The causes under which dissolution may be decided are very vague and can often be no more than a benign violation of the law or of the association's own statute. Cases of criminal proceedings against association's members and directors are numerous and often disproportionate in relation to the infractions.

For example, Egyptian law provides that the directors and founding members of an association are liable to six months' imprisonment and a fine for the following infractions: the launch of any activity before prior authorisation has been obtained; the attendance of any third party at the association's meetings; fund-raising before a prior administrative authorisation has been obtained. In case of violation of any kind of the law or of the association's statute, the Ministry of Social Affairs can take one of the following measures:

- Appoint a director or an entire board of directors for a period determined by the minister;
- Prohibit the alleged persons responsible for the infraction from being candidates in the elections;
- Close the association's office for a period determined by the minister until he decides what step should be taken in the case: appoint new directors, merge the association with another, or dissolve the association. When dissolution has occurred, the competent authority seizes the association's property and distributes it among social organisations of its choice.

In theory, the association has a right to appeal to the tribunal. Very often, that right is only available in theory because the documents that the association might need to defend itself against the alleged violations are out of reach because they are sequestered or already in the hands of the competent ministry.

Part III - ORGANISATION AND OPERATION

An association is first and foremost a contract. As such, its mode of operation can and must therefore be decided upon freely by its own members. Any abusive or illegal interference by the authorities in this private entity does not foster the development of an independent civil society but instead runs the risk of creating a series of organisations that are more or less linked to the state, a kind of decentralisation or devolution of social services and sometimes of political services. Clearly, not all associations operate in accordance with the rules and conditions required by internal democracy, transparency and integrity. However, direct intervention by the state, which is not always motivated by an interest in the democratic management of the association itself, cannot be justified in law. Several other types of corrective measure can be adopted while respecting the principle of freedom of association.

1. Freedom to draft and modify the statutes (including the purpose) and bylaws

a) In freedom regimes, the association's purpose and statutes, the identity, opinions or number of its founding members, the areas of activity or category of the association may not be obstacles to its establishment. The members of the association enjoy broad latitude in freely drafting and modifying its statutes and internal bylaws and defining its purpose. Model statutes are provided only for guidance.



b) In control and repression regimes, associations are not free to establish their own statutes and bylaws but must adopt those which have been established by the competent authority. Any deviation from this model or any change to it must first be approved.

Similarly, certain legislations (in Tunisia, for example) and certain practices (as in Lebanon) tend to restrict the activities of each association to a single area. Any activity falling outside the 'authorised' area is seen as an infringement of the law. This practice is a violation of the principle of freedom of association and, in Lebanon, a violation of its own laws. In Egypt, an association must choose a single area of activity among 12 areas predefined by the legislation. Any activity of a political nature is banned. The association wishing to develop its activities in several areas must obtain a special permission from the Ministry of Social Affairs. Similarly, the geographical scope of activity is limited to the governorate where the association is registered. A special administrative authorisation is required to broaden the geographical scope of activity.

2. Freedom to join or leave the association

a) In freedom regimes, there is no legal limit preventing an individual from joining or leaving an association, unless its statutes provide specific stipulations regarding membership.

b) In control and repression regimes, the competent authority can decide who can join an association by putting in place a procedure for prior identity control by the security services (as in Syria).

3. Non-interference in the management and activities of associations

a) In freedom regimes (European states, Lebanon, Morocco, Turkey), the association is managed by the bodies provided for in its own statutes and bylaws. The public authorities may not interfere with its meetings, elections or activities, nor exert any influence thereon.

b) In control and repression regimes, competent authorities interfere in the strangest and most illegitimate ways, encouraged in this by specific repressive laws (rules concerning public or private meetings, the written and audiovisual media and the internet, for example):

- Interference in meetings: Public or private meetings may not be held without prior authorisation. The presence of a representative from the competent authority may be required for the event to be considered valid (e.g. Libya, Syria, Egypt, Algeria). In Syria, the organisers of meetings must first obtain prior authorisation, which may be denied by the competent ministry if it deems that the meeting does not meet the goals of the association.
- Interference in the activities of the association (for example, by demanding that a particular document be forwarded to the competent authority): examples of this are found in Libya, Syria, Algeria, Tunisia and, to a lesser extent, Jordan. In Israel, the Registrar has the authority to control the activities of associations, which can seriously threaten their independence.
- Interference in the travels of association members: in Libya, Syria, Tunisia and Algeria, an association member wishing to travel abroad to take part in an associational event must obtain a special authorisation.
- Interference in the right of associations to join and work with regional and international networks: this type of restriction is found in Libya, Syria and Algeria.
- Interference in the association's publications (including websites): the highest numbers of violations of freedom of expression are found in Libya, Syria, Egypt and Tunisia.

4. Participation in public-interest consultations and decisions

a) In freedom regimes, the involvement of specialised associations in the development of public policy is encouraged, in particular in specific areas (in Lebanon, for example, local human rights organisations were consulted as part of the formulation the national human rights plan).

b) In control and repression regimes, associations are never asked to take part in such consultations.

5. Participation of women in association bodies

No national report has cited specific legal discrimination against the presence of women on association bodies. However, discrimination against women is common, with customs, traditions and respect for public morality being among the reasons invoked for such practices.

Part IV - FUNDING AND TAXATION

The legal capacity and taxation regime that are applied to associations are very effective tools, both to strengthen their effectiveness or, on the contrary, keep them in a position of dependency and weakness. The risk for the associations is that the law may give them only a very small margin to finance their activities from their own resources or from international sources, and that they may find themselves in a situation where their activities and their effectiveness are limited to a small group of volunteers with very limited resources.

a) In freedom regimes, associations have the right to secure their own financial resources through such means as philanthropic donations, membership fees, donations from members, gifts and assistance provided by any local or foreign entity or individual. Associations also have the right to organise activities intended to generate profits that can be used to finance their activities, provided that these proceeds are not redistributed to the members.

From the point of view of legal capacity, most association laws in the Euro-Mediterranean region acknowledge the distinction between associations that are registered through a simply statement and those which serve a public purpose. The former enjoy only partial legal capacity while the latter have more substantial legal capacity, although it remains limited relative to that enjoyed by individuals and corporations.

Associations recognised as serving the public interest have a favourable taxation regime and a preferential access to public funds. In Lebanon, however, although associations registered under ordinary law may not own real estate or receive bequests, their legal capacity does not seem to pose any problems. There are no restrictions on the ability of Lebanese associations to obtain funding from abroad.

b) In control and repression regimes, the finances of associations, regardless of their area of activity, are under the control of the competent authority.

The status of public-interest association is subject to conditions that give the competent authority a broad margin for discretionary power. The same is true with respect to the access of associations to public funds.

Any financial contribution from abroad must receive prior approval, and violations of this rule may attract severe penalties. Prior authorisation by the authorities is also required for private fund-raising activities, regardless of the form they may take (fund-raising from individuals or through the organisation of a charity event, a performance, a sports event, etc.). In Tunisia and Algeria, associations must reveal the source and use of donations. In Libya and Syria, funding from outside sources is banned entirely.

PART V - CONTROL, GOVERNANCE AND TRANSPARENCY

Freedom of association does not imply the absence of good governance or of any controls. Indeed, good internal governance, strengthened by accounting transparency and effective internal and external monitoring, help to strengthen the public credibility of associations as well as their legitimacy in the eyes of their members and of society in general.



1. Supervisory authorities and freedom

a) In freedom regimes, associations are subject to internal and external controls performed by a wide variety of entities. For example, they must be accountable to all interested individuals, within the limits of that interest, which warrants monitoring by the following entities:

- members of the association with respect to all of its affairs;
- public opinion and society where there is a legitimate general interest in the association's activities (for example, the requirement for financial transparency when the association seeks funding through public donations);
- ordinary tribunals;
- public authorities (taxation controls only), within the limits of the special tax privileges and regimes enjoyed by the association.

b) In control and repression regimes, the role of the public authorities is excessive and disproportionate.

2. Sanctions

a) In freedom regimes, the principle of proportionality between the penalty and the infraction must be applied. The ordinary activities of the association and its members must not be subject to criminal sanctions. In all cases, such penalties may only be determined or applied by the judicial authorities after the right to defend oneself has been guaranteed through a fair, public trial.

b) In control and repression regimes, the main feature of the sanction regime is the extreme criminalisation of the smallest violations, with penalties that can go as far as prison sentences (Libya, Algeria, Syria, Tunisia and Egypt), and even a death sentence (Syria and Libya).

Conclusions

This overview clearly reveals the scope of the threats and of the actual consequences that are attached to flawed association laws in countries of the eastern and southern Mediterranean, in violation of the principle of freedom of association. Any attempt to bring these countries to provide a broader democratic regime and to ensure respect for the rule of law and sustainable development, as well as the development of an independent and effective civil society, must be based on improved association laws and freedom of association. The task is urgent – critically so in several countries.

In this context, the first step is to increase awareness-raising efforts aimed at society in general, but also - and especially - at the legal profession, about freedom of association, as well as about its scope and about the principles and standards that must govern association law, as ignorance and indifference as the worst enemies.

Additionally, practical recommendations will have to be developed for each country, and these should serve to define targeted interventions, adapted to the context and needs of each. Some countries remain far from the goal, while others have a greater potential for efforts at improvement to produce some results, small though they may be.

The action we advocate is not an intellectual exercise or a purely legal discussion but it demonstrates the importance of the law as a tool of democratic and social development, rather than as an instrument of repression used by the political authorities.

GENERAL RECOMMENDATIONS FOR THE EUROPEAN UNION AND THE 11 COUNTRIES SOUTH AND EAST OF THE MEDITERRANEAN

THE GOVERNMENT AND AUTHORITIES OF THE 11 COUNTRIES SOUTH AND EAST OF THE MEDITERRANEAN ARE CALLED UPON TO:

- *Abide by the International Covenant on Civil and Political Rights that recognizes the rights to freedom of assembly (article 21) and freedom of association (article 22) and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;*
- *Implement the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the UN General Assembly on December 9, 1998, as well as the December 5, 2005 Resolution of the African Union on human rights defenders in Africa;*
- *Elaborate a regional convention on freedom of association;*
- *When a group wishes to set up an association, ensure that the registration procedure of this type of legal entity is not subjected to prior authorization granted by the government; a simple declaration on the existence of the association made by its founding members should suffice;*
- *Having in mind that almost all the countries of the region prohibit or severely restrict the right of judges to freely create or become members of associations, to recognize and respect the right of judges to enjoy the freedoms of association and expression in accordance with the Universal Declaration of Human Rights, to which article 8 of the Fundamental Principles on the Independence of the Judiciary (1985) expressly refers to;*
- *Reserve to the judicial branch exclusive power to dissolve an association;*
- *Emphasize at the regulatory level and in the practices of the authorities responsible, but also in the approach of the associations, the necessity to widen the access of women to the associative life and encourage their participation and empowerment in the management of associations;*
- *Give to the associations the right to benefit from foreign funding;*
- *Encourage civil society to participate in the decision-making process at the national level.*

THE DECISION-MAKING ORGANS OF THE EUROPEAN UNION ARE CALLED UPON TO:

- *Publicly denounce any repressive measures taken by governments of the Euro-Mediterranean Partnership (EMP) against associations and human rights defenders;*
- *Take all necessary measures to implement article 2 of the Association Agreements and the Guidelines of the EU on human rights defenders as regard to freedom of association;*
- *Take concrete steps to guarantee freedom of association in the implementation of the Action plans of the European Neighbourhood Policy (ENP) with the partner countries;*
- *Give urgent priority to freedom of association in all political and diplomatic discussions with the governments of the EMP, as well as in the discussions of a more technical nature within the sub-committees between the EU and the Mediterranean countries;*
- *Carry out advocacy activities in favour of human rights defenders with the leadership of the EMP;*
- *Give logistical support to human rights activists by means of training and capacity-building programs and activities;*
- *Encourage the leadership of the EMP to stop freezing the funds given to human rights defenders.*



by Marie Ghantous, Khémaïs Chamhari and the EMHRN secretariat ¹

Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - «THE GENERAL SETTING»

1 - Civil society landscape

Algeria, as a French department, was subjected to colonial rule until it gained independence on July 5 1962. During the colonial period, the associative movement was basically restricted to the European elites in urban areas. However, taking advantage of the French Law on associations of 1901, several associations were created and run by Algerians from the 1920s onward. During that period, a number of Muslim, sporting, cultural or musical associations existed and sometimes prospered in the shade of the colonial institutions provisions. A number of them, such as the Muslim Boy Scouts, were even to serve as a springboard to the national liberation movement.

It is in 1964 that the liberal spirit of the Law of 1901 was to be curbed for the first time by the Algerian government. A decree of March 2, 1964, instructs prefects *“to impede the formation of associations that, under the guise of social, cultural or artistic activities, tend to pursue political ends that undermine the internal and external security of the State.”* Authoritarianism was infringing on several decades of liberalism.

Starting with the “Berber Spring” of 1980 and the riots of October 5, 1988, the era of one-party rule was at last to recede into the distance. Hundreds of cultural associations devoted to the defence of Berber culture and/or language were to flourish from the 1980s onward.

At the same time, a liberal wing that was developing within the ruling party, the FLN, called for “less government control for a better future”. In July 1987, the minister of the Interior had to defend the principle of a new legislation on association before a hostile parliament exclusively composed of deputies from the FLN, staunchly opposed to pluralism in the social and cultural sphere. This modest reform was soon followed by Law n° 90-131 of December 4, 1990, still in force.

The Law of 1990 was greeted with enthusiasm, and associations of all types came into being. Aside from the traditional sporting, cultural, social, religious and charitable organizations, others devoted to the environment, sustainable development, ecology, human rights, national identity, were also created.

The first free and pluralistic elections since Independence were to take place in June of the same year. Drawing its popularity in part from the thousands of religious associations dedicated to the construction and management of mosques, the Front islamique du salut won the elections by a large margin.

Following this period of great dynamism, euphoria and conflicting social trends, the associative movement, like the rest of Algerian society, was to experience a long period of hibernation during the civil war that broke out in the aftermath of the victory of the Front islamique du salut (FIS) at the parliamentary elections of 1991, that was to cost more than 200,000 lives¹.

By presidential decree, a state of emergency was declared for a period of 12 months on February 9, 1992, and prolonged for an indefinite period in 1993. This maintenance of the state of emergency, which granted extensive powers to the authorities, in particular the military, had disastrous consequences for the associative movement. In the name of public order, public events and meetings were prohibited and newspapers were suspended or suppressed.

Associations devoted to the defence of human rights were to suffer even more in the aftermath of the adoption, through referendums held in 1999 and 2005, of the Law on civilian concord and the Charter for peace and national reconciliation. The Charter granted amnesty to a large number of individuals responsible for major human rights violations. Furthermore, article 46 of Edict n° 06-01 (February 17, 2006) states that anyone who, by his/her declarations, writings or in any other way exploits the national tragedy to undermine the institutions of Algeria, weaken the state, harm the reputation of its agents who have served the country with dignity, or tarnish the image

¹ Editors of the 11 country-reports

² See estimations of international human rights organizations such as Amnesty International, Human Rights Watch and the International Federation for Human Rights (FIDH)

of Algeria internationally, is liable to a term of imprisonment of 3 to 5 years and a fine of 250,000 to 500,000 dinars.

This law in fact criminalizes to a large extent the activities of human rights organizations and groups who attempt to shed light on the disappearance of their loved ones as the *collectifs des familles de disparus*.

Those who study the associative movement in Algeria draw a pessimistic picture of the present situation and point in particular to the institutional barriers deliberately put in place to prevent civil society from developing its autonomy and competencies.

The existing associations are deemed to be excessively dependent on the government. Instead of looking critically at the shortcomings of Algerian society and institutions, some associations tend to follow the lead of well-known political leaders, thus favouring the strengthening of "institutional clientelism" aimed at the mere allocation of resources.

Those among the associations that have chosen the path of confrontation or the promotion and defence of human rights are few in number and marginalized. For refusing to be mere mouthpieces of the government, they are closely watched by the authorities.

2 - Legislation

The first Constitution of Algeria (1963) proclaimed the determination of the country to enshrine freedoms: freedom of the press, freedom of association, freedom of speech, etc. (Article 19). Yet, the government of the period dissolved associations, prohibited political parties and closed newspapers. Later governments will take their cue from those early abuses. As early as 1964, intellectuals of the FLN were promoting the concept of the one-party state, which was later enshrined in the Charter of Alger.

The Edict of December 3, 1971, states that prior registration is mandatory for all associations. The head of department accepts or refuses registrations and closely oversees the activities of all associations. The reasons behind this authoritarian legislation was the decision to implement an agrarian reform and nationalize private land (the government feared the hostility of the zaouias, religious brotherhoods well entrenched in the countryside), and the growing unrest that took place in 1970 and 1971 on university campuses in Alger and Oran. The government used the pretext of "external threat" and the action of the "irreducible enemies of the Revolution" to launch a systematic assault against the associative movement. All the associations (with the exception of professional associations) were to be treated with

distrust and subjected to permanent, arbitrary administrative control and closely watched by the prefects and the Ministry of the Interior.

The Constitution of 1976, adopted in the aftermath of the proclamation of the National Charter, reflects a much less optimistic outlook than the Constitution of 1963. Freedom of association is recognized but not guaranteed, and the exercise of that freedom is subjected to legislation. Human rights organizations will have to face the structural hostility of the one-party state and the FLN constant interferences in all aspect of associative life.

The present legislation on associations was adopted in December 1990. Another law, regulating associations of a political nature, had been adopted in July 1989.

The Algerian government recently signed the International Convention for the Protection of All Persons from Enforced Disappearance. Adopted by consensus by the General Assembly of the U.N. in December 2006, this new legal instrument could facilitate the work of Algerian associations who wish to air their grievances internationally and give a new life to their action on arbitrary or secret detentions in Algeria.

Part I: FORMATION AND INCORPORATION

1 - Does the system allow for non-declared or unincorporated associations?

Nowhere is it mentioned in Law n° 90-31 (1990)² that associations may be set up without prior authorization and formalities. As a consequence, non-declared or unincorporated associations are not authorized. In practice, restrictions to the freedom to form associations have been institutionalized in Algeria. For instance, SOS Disparu(e)s, has not been able to register despite repeated efforts, including in 2003, when it submitted a request to regularize its situation to the head of the regulatory department of the district of Alger.

2 - Is the registration system based on licensing or simple information /notification?

The Edict of 1971 set forth that an association is legally recognized only once it has been granted accreditation by the prefect or the Ministry. This procedure allows the authorities to refuse accreditation to any association that is deemed "harmful".

² Law n° 90-31 of December 4, 1990, on the freedom of association

Article 7 of Law n° 90-31 (1990) states that the status of an association is "regularized" only once it has fulfilled the following three formalities:

- Deposit of a declaration of incorporation before the authorities;
- Issuance of a receipt of registration within 90 days of the deposit of a declaration;
- Publication of an incorporation notice in a national newspaper.

3 - What are the base upon which registration can be rejected (e.g. race, security, religion, and politics)?

Article 7 of Law n° 90-31 provides that only a "verification of conformity to this Law" is necessary. However, Article 4 states that an association may not be accredited if its founding members:

- are foreign nationals;
- do not enjoy civil rights;
- had a conduct that *was detrimental to the interests of the struggle for national liberation* - an easy way to delay the creation of an association, moreover, most people involved with the associative movement nowadays are less than 30 years old.

In the absence of regulatory norms, government officials act on a case by case basis, often under instructions from the Ministry of the Interior. The Algerian press has often aired the grievances of the founders of associations that were never issued the obligatory receipt of accreditation. A certain number of associations operate under the permanent threat of arbitrary administrative or judicial sanctions provide for by Article 45 of the Law.

4 - How easy or difficult is the registration (e.g. time, cost, number of incorporators)?

Article 9 and 23 of Law n° 90-31 specify the elements that must be included in the statutes of an association, as well as a list of the documents that must be deposited *under pain of nullity*. To this day, the Prefectures still issue ready-made statutes.

The declaration must be submitted to the Prefecture, in the case of local association, or to the Ministry of the Interior, in the case of associations of a national or inter-departmental scope. If, within a 60-day period, the authority responsible considers that the registration is contrary to the law, it must refer the case to the administrative section of the appeal court, at the latest 8 days before the end of the 60-day period. Failing that, the association is deemed duly registered.

In practice, numerous associations have had their registration requests rejected for irregularity despite the fact that their case had not been referred to the appeal court by the prefecture, as the law provide for. Furthermore, local associations that were operating well before the adoption of Law n° 90-31 were nevertheless ordered, for obscure fiscal reasons, to request a new receipt of registration.

A study of 446 associations operating in 24 Prefectures has found that, of 75,000 declared associations accredited by the Ministry of the Interior or local authorities, only 1,500 were active at the national level.³ The study also revealed that many prominent associations were created at the initiative of the authorities and were subservient to the authorities that they served without demur.

5 - Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative)?

There are no remedies others than the one provided for by the law when the authorities (Prefecture or Ministry of the Interior) have decided to refuse a request for registration (see question 4)

6 - Does registration automatically entail obtaining separate legal entity?

The association is deemed to be a legal entity and possess legal capacity the moment it is incorporated (Article 16). It may exercise this legal capacity as long as the legal proceedings initiated are related to the purpose of the association set forth in the statutes, and that the interests of the association or those of its members are at stake. It may also sign contracts that are related to the purpose (*objet*) of the association or acquire moveable or immovable assets by donation or purchase, as long as they are needed for its operations.

7 - Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust, a *Wakf*)

There are not legal alternatives to the association. A number of entities operate under the name foundation, but they are subjected to the same legislation.

³ Onar Derras, Le phénomène associatif à l'ombre des réformes en cours en Algérie : réalités et perspectives, CRASC, Insanyat 28 (April-June 2005).

Part II DISSOLUTION AND SUSPENSION

Up to 1987, the government could suspend an association without having to go through the judicial courts. Since the liberalization of the late 1980s, the government must, to a certain extent, defer to the judiciary.

Article 32 of Law n° 90-31 (1990) states that, *at the request of the authority responsible*, the courts may order an association to suspend its activities if it is deemed that those activities are in breach of the law or are not compatible with the purpose of the association set forth in its statutes. Such conduct may also result in the judicial dissolution of the association (Article 35). Article 5 also states that an association is ipso facto dissolved if it is *founded on goals that contravene the established institutional system, public morality or the law*.

According to the testimony of actors of the associative movement⁴, when an appeal is lodged in a case of judicial suspension, any transfer of assets to the association is suspended. The premises of the association may be shut down the moment the authorities submit a case to the courts. Lastly, foreign associations, and only those, must cease their operations the moment they are advised of the suspension or withdrawal of their accreditation (Article 44).

The law provide for a penalty of three months imprisonment and a fine of from 50,000 to 100,000 dinars for anyone who attempts to reactivate a non-accredited, suspended or dissolved association. In practice, dozens of local or national associations operate without having obtained their accreditation.

Part III ORGANIZATION AND OPERATION

1 - What is the extent of the freedom of members to draft and amend their own structures and by-laws and to determine their own object? (Are such documents imposed? To what extent?)

Article 23 of Law n° 90-31 set forth the elements that the statutes must contain. The founding members may not deviate from this provision.

Since the Edict of 1971, there has been no change in the government's attitude on the issue of the set purpose (*objet*) of the association. Under Article 5 of Law n° 90-31, no association may exist if its purpose contravenes the established institutional system, public order, public morality or existing regulations. This provision gives much leeway to the authorities to reject any incorporation request or to compel it to redefine its purpose.

⁴ Cf. Radio program «*De fil en aiguille*», Algier, Chaîne 3, hosted by Maya Zerrouki.

⁵ Ibid

2 - How strict is the level of freedom of members to adhere to or leave associations?

Article 25 of Law n° 90-31 states that, in order to become a member of an association, one must sign a membership declaration that must be confirmed in a document issued by the association. This may cause a difficulty for associations that lack logistical means or for candidates who are hesitant to sign a document confirming their membership because of the consequences that may result.

The authorities reserve the right to verify that the founding members are Algerian nationals, are in possession of their civil rights and, above all did not have a conduct that was *detrimental to the interests of the struggle for national liberation*.

3 - Is there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies, elections) by "supervisors"?

If one looks at the legislation, there is no interference but, in practice, one cannot fail to notice that the most dynamic associations, those that are well endowed with offices and publications, are those whose membership is more closely linked to the government and ruling party.

4 - Are there any restrictions (legal or de facto) promoting limiting or banning participation of women in associational offices (e.g. Board)?

Article 24 of Law n° 90-31 prohibits the insertion of discriminatory provisions in the statute of associations, as well as discrimination between members. It should be noted however that women account for only 16% of the membership of associations.⁵

5 - Are there any interference in the freedom of association to decide on projects and activities? If yes, how and why?

It seems quite obvious that the authorities, be it at the local or national level, do not hesitate to intervene directly to obtain the overt support of associations for the policies of the government. For instance, the families of victims of "Islamic terrorism" have been strongly pressured to adopt the government line of "national reconciliation" in their resolutions and to refrain from expressing strong anti-Islamic thoughts.

Furthermore, the Charter for peace and national reconciliation and its enabling regulations contravene on many points the fundamental rights guaranteed by the International Covenant on Civil and Political Rights that Algeria has undertaken to respect.

6 - Is the association's right to freely assemble or organize private and public meetings and to move freely (including international travel) restricted in any way?

On February 7, 2007, the government prohibited the holding of the international Seminar on enforced disappearances and transitional justice, organized in Alger by Algerian and international human rights NGOs. This "Seminar for Truth, Peace and Conciliation" was to focus on the various truth and justice commissions established across the world. This attitude exemplifies the determination of government officials such as prefects to prohibit public meetings organized by local NGOs.

According to Farouk Ksentini, president of the CNCPPDH⁶, Algeria still lives under the state of emergency, and therefore, no public meeting or event of any kind may be held without the prior consent of the Ministry of the Interior and the local authorities⁷.

7 - Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, to publish and develop internet sites)?

Article 19 of Law n° 90-31 states that an association may publish and distribute bulletins and brochures "in line with its purpose". The last part of the article is worded in such a way that it gives the authorities the excuse to interfere with the management and activities of an association, under the pretext that a related action of the association is incompatible with its stated purpose (objet social). Thus, an NGO active in the field of domestic violence could be prohibited from publishing a brochure that would be critical of certain provisions of the Family Code.

Moreover, Article 19(2) states that Algerian association must publish their main bulletin in Arabic.

However, those two measures are not applied in practice and many NGOs continue to communicate in the language that their officials best master. Furthermore, many NGOs develop humanitarian activities and promote them in their brochures, even if those activities are not in conformity with the purpose stated in their statutes.

Following the distribution of a handout in Alger, a member of SOS Disparu(e)s was arrested on the 14th of September 2005 when returning home after a weekly meeting. He was kept in police custody for four hours and later indicted for "possession of a handout that is detrimental to national interest". Yet, the incriminated handout merely stated the legitimate demands of the families of disappeared persons. The individual was later placed on probation.

8 - Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

Nothing in the legislation forbids NGOs from networking, and it appears that in certain regions, a number of NGOs have even put their resources in common.

During the last several years, a certain number of French NGOs have established partnerships with Algerian NGOs involved in social work, public health, youth recreational activities, educational work, without interference from the Algerian authorities.

There are exceptions though, such as when the Algerian government refused in September 2005 to grant entrance visas to foreign participants of the national congress of the Ligue algérienne pour la défense des droits de l'Homme (LADDH) that was taking place in Bourmerdes.

9 - Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

The political establishment is not interested in associations that are unlikely to promote or support its policies and initiatives. The associative movement is still seeking recognition and social legitimacy. Local authorities are still highly bureaucratic in outlook and do not seek to involve civil society when they draft their work programs.

**Part IV and V
FUNDING AND TAXATION
CONTROL AUTHORITY, GOVERNANCE
AND TRANSPARENCY**

1 - Are there any limitation on the rights of associations to receive and own property and funds? How?

The Law n° 90-31 (1990) allows now NGOs to own assets and funds other than membership dues.

Article 26 states that the resources of an association comprise subscription dues, income derived from its activities, donations and any funds that the central, regional or municipal governments may decide to grant.

Associations are allowed to use the funds derived from fund-raising campaigns, as long as they abide by the provisions on laws and regulations on the matter.

⁶ The National Consultative Commission for promotion and protection of Human Rights

⁷ L'Expression of 02/11/07: «Colloque sur les disparitions forcées : Ksentini justifie l'interdiction»

Thus, after each fund-raising campaign, they must declare the amount collected to the authorities.

2 - Are there limitations on the rights of associations to use the funds, other than by the conditions of their granting?

Associations recognized as being in the public interest are not permitted, unless specifically authorized, to use the funds they received from the government for any other uses than those enumerated in their stated objective (Article 30 and 31 of Law n° 90-31).

Article 46 provides for jail penalties for those who use the assets of the association for their own ends or for ends other than those specified in the statutes.

Finally, associations must regularly provide the authorities with information on the source of their financial resources and, generally, on their financial situation (Article 18). Refusal to supply such information is punishable by a fine of 2,000 dinars (Article 47).

3 - Are there specific limitations on receiving foreign funds?

Associations that wish to receive donations from foreign organizations must obtain prior authorization from the government, supply information on the donors and the amounts involved and show that these funds will be used to pursue the stated objectives of the association.

4 - How effectively are these limitations on funding enforced?

Associations are not allowed to draw an income from activities other than those set forth in their statutes.

5 - Are public funds made available to associations? How? Are these processes prone to discrimination?

Associations may receive financial assistance from the various levels of government (central, departmental, municipal). However, this source of funding is quite limited due to lack of resources and the lack of publicity and knowledge about the procedure to access such funding.



THE ALGERIAN GOVERNMENT IS CALLED UPON TO:**1. With regard to the political, democratic and human rights situation**

- 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 Algeria, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Put an end to the use of provisions of the law on the state of emergency as a basis for criminalizing or imposing arbitrary restrictions on peaceful activities or freedom of expression and association of civil society;
- Guarantee to all citizens effective access to justice and the right to a fair trial before an independent and impartial tribunal;

2. With regard to the laws and practices pertaining to associations and civil society organizations**Formation and Incorporation**

- Reform Law No 90-31 of 1990 on associations and, in particular:
 - Ease the formalities of incorporation set forth in articles 9 and 23 so as to facilitate the effective exercise of freedom of association by reducing the existing restrictive formalities;
 - Subject the formation of associations to the declaration system rather than to the prior control system now in place, in conformity with article 7 of Law No 90-31;
 - Issue immediately and automatically, and not after 60 days as is now provided by law, the registration receipt, thus assuming the good faith of the founders;
 - Allow the deposit of the statutes of an association at the seat of the sub-Prefecture, and not only at the seat of the Prefectures, that are often remote;

Dissolution and Suspension

- Amend article 45 of Law No 90-31 of 1990 on associations so as to eliminate jail terms for founders that pursue their activities while waiting for the receipt that the authorities have not wanted to issue within the 60-day period provided by law;
- Rescind article 5 of the law that allows the dissolution of any association based on a purpose that is "contrary to the established institutional system", such a notion is lacking precision and legal rigour.

Organization and Operation

- Eliminate from article 2 of Law No 90-31 of 1990 all restrictions pertaining to activities carried out by an association even if those activities do not conform precisely to its initial purpose;
- Create the offence of violation of the right of assembly, applicable against any individual or government official who intervenes to prohibit the holding of a meeting without having been given a mandate to do so for a legitimate cause;
- Put an end to police surveillance, used to intimidate, associations members and their premises;
- Lift all restrictions against associations pertaining to the rental of offices, freedom of assembly and the securing of funding to carry out their activities;
- Widen the possibilities for association to initiate and take part in legal proceedings, in particular by authorizing the associations possessing the legal personality to associate themselves to a court action in cases related to their purpose.

Funding and Taxation

- Abolish restrictions limiting the financing of associations, in particular by eliminating membership fee ceilings and by authorizing associations to resort freely to donations (public or private) in a transparent manner and by simply informing the administrative authority;
- Allow the acquisition of foreign donations without subjecting such donations to the exclusive evaluation of the minister of the interior, as it is now provided by article 28a of Law 90-31;
- Modify the provisions of the law of December 10, 2003 pertaining to the fight against terrorism and money laundering in order to eliminate any confusion with the financing of associations;
- Adopt a law that will provide for the transparent and equitable distribution of public funds;
- Ensure that the financing of the support programs of the European Union is obtained by the associations in conformity with the EU-Algeria association agreement and the national action plan of the European Neighbourhood Policy (ENP) and that there is no obstacles in the payment to the beneficiaries;

Control authority, Governance and Transparency

- Guarantee an effective remedy in a reasonable period in case of proceedings for abuse of power before administrative jurisdictions pertaining to restrictions against the basic rights of members of associations and human rights defenders;
- Eliminate penal sanctions and the confiscation of publications in case of a disagreement regarding the registration of copyright or custom controls of publications that are not prohibited, in the course of regular proceedings.

3. With regard to the climate required for the sustainable development of civil society

- Respect, *de jure* and *de facto*, the freedoms of expression, of assembly, of association, in conformity with the international commitments of Algeria;
- Rescind article 46 of the implementation order of the Charter for Peace and National Reconciliation that allow for an abusive interpretation of the restrictions on freedom of association;
- Ensure, by way of an adequate consultation mechanism, the participation of associations to the decision-making process on policies of public interest.

¹ These recommendations have been drafted on the basis of the report on Algeria written under the aegis of the EMHRN and the alternative report submitted by CFDA and FIDH at the time of the examination of the periodical report of Algeria in Geneva.



Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - THE GENERAL SETTING

1. Political, Democratic and Human Rights specific Contexts

The activities of Egyptian organisations are governed both by legislation adopted during the Nasser regime and by the state of emergency, which has been extended repeatedly since the assassination of President Sadat in 1981. As early as 1945, Law No. 49 made it mandatory for the establishment of organisations to be approved by the Ministry of Social Affairs. Law No. 384 of 1956 gave the ministry the right to abolish them. Law No. 32 of 1964 placed associations under the direct control of the Social Affairs Ministry, a situation that was maintained under Law No. 153 of 1999 and under Law No. 84 of 2002. Since 2005, control has been assumed by the Ministry of Social Solidarity.

Until the early 1980s, all Egyptian institutions, both public and private, were supposed to devote themselves to the implementation of national planning goals. Thus associations were appendages of the Ministry of Social Affairs and of the government party, and they helped the government to achieve its social objectives, which were intended to foster social cohesion while promoting the single party in power. As a trade-off, organisational leaders were elected with the support of the party in power or co-opted to well-paid or rewarding positions on municipal bodies, in the trade unions, in Parliament or on corporate boards.

In the 1970s and 1980s, President Sadat, and after him President Mubarak, allowed the development of service organisations tied to mosques and churches. In addition to their social work, the Muslim Brotherhood, other Muslim organisations and the churches have used associations of this type to expand or strengthen their influence.

The structural adjustment policy implemented by the government during the 1990s included a component focusing on the

management of poverty and rights promotion by the NGOs. As a consequence, the government initially tolerated the activities of some rights organisations - under the terms of the structural adjustment programme, creditor foreign governments as well as international institutions required that the Egyptian government reduce social spending and suggested that social assistance be shifted to NGOs - even though their room for manoeuvre was subsequently reduced because their work was deemed to impinge upon the prerogatives of the state. This policy enabled the government to reclaim a portion of foreign public financial assistance through the NGOs while displaying its respect for the principle of 'good governance' imposed by its foreign partners. This relatively favourable environment made it possible for numerous human rights NGOs to be established¹.

In 2002, the Egyptian Parliament adopted Law No. 84, which maintained and strengthened the restrictive character of provisions in laws previously adopted in 1964 and 1999 with regard to the rights of associations. In particular, Law No. 84 forced all human rights NGOs to accept the conditions set by the Ministry of Social Affairs and later the Ministry of Social Solidarity, and to be subjected to the formal control of those ministries and of the security services.

2. Legislation

Egypt ratified the International Covenant on Civil and Political Rights in 1982. The Constitutional High Court stated in 2000 that the right to form associations was one of the essential freedoms guaranteed by the Constitution.

The government used Law No. 153 of 1999 and Law No. 84 of 2002 to impose a series of requirements, supported by penalties, aimed at forcing human rights NGOs to submit to its control. As a result, several rights organisations decided to register as corporations in order to circumvent the ministry's refusal to grant them the status of an association. It should be pointed out that the steps taken against a number of organisations clearly contravene the recommendations made by the Arab League on

¹ Human rights organisations in Egypt include the following: the Cairo Institute for Human Rights Studies, the Association for Human Rights Legal Aid (AHLRA), the El Nadim Center for the Psychological Rehabilitation of Victims of Violence and the Egyptian Organization for Human Rights.

legislative reforms favouring freedom of association in the Arab region (at a meeting held in Cairo on 27-28 June 2007).

The ministry in charge of associations possesses very broad powers. It may require them to seek prior authorisation for such things as meetings, new activities, expenditures, the cashing of cheques, trips outside the country, invitations to foreigners, publications and the choice of publishers, etc. For example, if it wishes to prevent an organisation carrying out certain types of activity, the ministry may delay authorisation for several months or even deny it altogether. According to members of several NGOs, the security services have occasionally forced them to accept some individuals as new members or employees in exchange for permission to pursue certain activities. The ministry and the security services can also dismiss an organisation's directors or members and dissolve its board of directors.

In the case of organisations duly incorporated under the legislation on associations and foundations, the ministry and the security services have increased restrictions on raising and using funds, prohibited some activities and denied applications for registration. In addition, a large number of applications from organisations seeking to be registered have been rejected because the ministry or the security services were opposed to their goals, the presence of certain founding members or the choice of legal structure.

Today, the number of registered associations is close to 22,000. Nearly 75 percent of them are active in the field of social services, in particular in health and education, and about 20 percent focus on 'development' in general. The most common types of associations are as follows:

- Social assistance organisations: assistance to economically disadvantaged persons, provision of services to vulnerable individuals (orphans, disabled people, etc.) and above all health and education services.
- Rights NGOs (mobilisation or advocacy): human rights, gender equality, protection of the environment, consumer rights, etc. The main activity of these organisations is in the form of legal aid provided to specific groups (workers, farmers, women, children, prisoners, slum dwellers, religious minorities, agnostics, homosexuals, etc.), but they are also active in such areas as monitoring rights violations, rights education and training, promoting democracy, protecting the independence of the judiciary, fighting against discrimination of every type, advocacy against violence and the development of social and political involvement.
- Governmental organisations and 'specialised national boards', which are government bodies under the direct control of the President's office or other state institutions. In theory, their field of activity overlaps in part with that of mobilisation and advocacy organisations

Part I:

FORMATION AND INCORPORATION

1 - Does the system allow for non-declared or unincorporated associations?

Non-declared associations are not allowed. The members of non-declared organisations may incur penalties ranging from simple fines to imprisonment.

2 - Is the registration system based on licensing or on simple information/notification?

Law No. 84 of 2002 requires that the establishment of associations be approved by the Ministry of Social Affairs.

3 - On what grounds can registration be rejected (e.g. race, security, religion, politics)?

Article 11 of the law forbids associations from conducting activities that run counter to national unity, law and order or public morality, that discriminate against certain citizens or that are military in nature. In addition, the law prohibits organisations from any involvement in political or union activities that are restricted to political parties or trade unions. The authorities occasionally display contradictory attitudes in that regard: on 29 April 2007, the Ministry of Solidarity granted the *Centre for Trade Unions and Workers Services* (CTUWS) permission to fax the list of its activities but a few days later, the local authorities in Helwan refused to provide a legal receipt for its bank deposit and registration documents.

4 - How easy or difficult is it to register an association (e.g. delays, cost, number of founding members)?

Law No. 84 of 2002 contains a strict definition of the conditions governing the creation and operation of each type of association as well as its field of activity. An association is defined as a non-profit group of at least 9 'natural person or corporate body, a number that acts as an obstacle to the formation of associations. The statement of registration specifies the name, activities, geographic scope, address and physical resources of the association, as well as the given name and surname, age, nationality, occupation and residence of every founding member.

In accordance with article 6 of Law No. 84, the association's statute is to be published in the Official Gazette within 60 days of the date of submission of the application, unless the Ministry of Social Solidarity opposes it expressly. The ministry can prevent the formation of an association by a simple administrative decision. It can also delay its response through various means (by not providing the receipt supporting the date of submission of the application, by rejecting the name or the goals of the association, by withholding approval of the members of its board

of directors, its founding members or its leaders), thus forcing the association to renew its application and to wait another 60 days in each case.

5 - Are there effective remedies (e.g. judicial, administrative) in cases where registration is denied or delayed?

In the event that registration is formally denied, the organisation may lodge a complaint with the administrative tribunal within 60 days. To allow for an out-of-court settlement, article 7 of Law 84 of 2002 provides for the establishment in each governorate, by decree of the Minister of Justice, of a committee comprised of representatives of the Ministry of Social Affairs/Social Solidarity² and of regional alliances of organisations. The committee's conclusions are purely advisory and non-binding. This process is notoriously ineffective.

Judicial appeals, an avenue that most organisations have followed, may last several years. For example, the proceedings launched by the Egyptian Organization for Human Rights before the Supreme Court in 1992 lasted until 2000. The organisation was finally registered only in 2003³.

6 - Does registration automatically entail obtaining separate legal entity?

Once it has been registered, an association is granted juridical personality and the right of access to the courts.

7 - Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust, a Wakf)?

In order to enjoy juridical personality and conduct their activities freely, human rights activists have sometimes opted for other alternatives. For example, some have applied to be registered as foundations - a status that does not allow for the interference of security services in the choice of members, the obligation to provide information or the obligation to secure prior authorisation before undertaking each activity - but the ministry has denied most of those applications. Others have resorted to judicial registration as non-profit corporations, in accordance with the provisions of the Civil Code, a status that does not confer the tax benefits enjoyed by associations under the 1964 legislation but does give them greater freedom of action.

**Part II:
DISSOLUTION AND SUSPENSION**

Article 42 of Law No. 84 of 2002 authorises the Ministry of Social Affairs to dissolve an association and seize its properties without a prior judicial decision. The association may challenge the ministry's decision before the administrative tribunal, but only after

the dissolution and seizure have come into effect (article 6). The ministry's decision must be based on the following grounds (article 42): the association uses its funds for purposes other than those for which it was established; the association receives funds from a foreign organisation or sends its funds to a foreign organisation without the authorisation of the Ministry of Social Affairs/Social Solidarity (article 17); the association joins a foreign club or organisation without informing the ministry; the association's activities are prohibited under article 11 of Law No. 84. These provisions are targeted especially at human rights NGOs, which, contrary to organisations with social purposes, have international contacts and belong to international networks.

**Part III:
ORGANISATION AND OPERATION**

1 - What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (Are such documents imposed? to what extent?)

Article 11 of Law No. 84 of 2002 prohibits associations from carrying out any political, trade union or military activity. In the specific realm of political and trade union activities, organisations may not engage in opinion campaigns, lobbying or actions in support of people who are the victims of collective aggression or of violations of their political or social rights.

2 - How strict is the level of freedom of members to adhere to or leave associations?

The ministry may object to the bylaws of an association or foundation, or to the presence of certain founding members. In such cases, it must inform the founders of its reservations and request changes. On 1 February 2003, the Bashair Social Development Centre in Helwan applied for registration as a foundation. The Helwan authorities agreed to proceed with the application, provided that the Centre's president (Hala Shukr Allah) and secretary (Azza Kâmil) were excluded from its founding members.

3 - Is there any interference in the corporate bodies - e.g. attendance of meetings (Board, General assemblies) by 'supervisors'?

Law No. 84 reaffirms the government's right to interfere in the life of an association. It authorises the ministry to intervene in such areas as the name, members, purposes, activities, bylaws, funding and fund allocation, correspondence and properties of the association. A violation of the law may lead to the abolition of the organisation and the launching of legal proceedings against its members. The Ministry of Social Solidarity may, '*when requested by the association*', second a government representative to the association for one year or longer (article 12). Generally speaking,

² The ministry responsible for associations, established through Law No. 32 of 1964, was the Ministry of Social Affairs until its official dissolution in 2004. Two years later, the ministry was reconstituted as the Ministry of Social Solidarity.

³ See <http://www.fidh.org/spip.php?article201>

organisations with social or development purposes include civil servants in their activities and sometimes pay them in order to facilitate their relations with the government⁴.

Today, nearly 18,000 civil servants are believed to have been seconded to 22,000 associations, a large number of which were established or are supported by the government or by the party in power. Human rights NGOs generally do not include civil servants among their employees, but they face ongoing, informal interference by the security services. The minutes of the association's general assembly and of the meetings of its board of directors must be forwarded to the government, which may raise objections to any decisions made at a deliberative meeting within 30 days (article 38) and demand its withdrawal within 10 days (article 23). The list of candidates to the board of directors must be forwarded to the government 60 days before the voting general assembly is held and the government may oppose the nomination of certain individuals (article 34).

4 - Are there any restrictions (de jure or de facto) promoting, limiting or banning the participation of women in an association's positions (e.g. board of directors)?

Beyond the discrimination present in Egyptian society in general, there are no restrictions specifically aimed at the involvement of women in an association's activities.

5 - Is there any interference in the freedom of associations to decide on projects and activities? If so, how and why?

As already mentioned, article 11 of Law No. 84 of 2002 prohibits associations from carrying out activities that threaten national unity, law and order or public morality, call for discrimination against certain citizens or are of a military nature. In addition, an organisation may not engage in political or trade union activities restricted to political parties or trade unions.

6 - Is the association's right to freely assemble, to organize private and public meetings, or to move freely (including international travel) restricted in any way?

The emergency legislation prohibits public gatherings of more than five people without permission from the security services. In most cases, the security services deny permission to human rights NGOs, seen as hostile to the government, especially when the meeting is to be held in a poor neighbourhood. Meetings devoted to human rights must generally be in the form of a conference and take place at a hotel or in the organisation's offices (which are tolerated because they are not considered a public venue); they may never be held in a place that is accessible to 'non-militants'. In practice, only those meetings and activities whose theme, format and venue are approved by the security services may proceed. For example, after the Centre for Trade Unions and Workers Services (CTWUS), an organisation promoting the rights of trade union and social rights of workers,

was accused of instigating strikes and demonstrations that took place in December 2006 and January 2007. Following this accusation, three of its local branches (at Mahalla, Naj-Hamadi and Helwan) were dissolved by the government in April 2007. In similar actions, leftist political activists were prevented from leaving the territory until the mid-1990s, and members of the Muslim Brotherhood are still under the same prohibition.

7 - Are associations subject to specific limitations on their right to freely communicate (e.g. access to media, publishing and developing internet sites)?

Associations, journalists or photographers who attempt to document with photos or testimonies abuses committed by the police or the army in the context of expulsions (of farmers, workers or slum dwellers) risk being arrested and prosecuted. The publication of any periodical must be authorised by the High Council for the Press. NGOs may publish in the media or on the internet but they are subject to ongoing monitoring by the ministry and the security services. On 11 October 2007, Kamal Abbas and Mohamed Helmy were sentenced to one year's imprisonment for having published in Kalam Sinai'ia (a CTUWS magazine) the results of an investigation into the administrative and financial irregularities committed by a youth centre. In the end, allegations of corruption were confirmed by the centre's internal investigation⁵.

8 - Is the freedom of associations to cooperate and network with others (at both domestic and international levels) limited?

Articles 16 and 17 of Law No. 84 of 2002 impose restrictions on the freedom of associations to cooperate with foreign organisations. While the law does not make it mandatory to report on trips abroad, article 76 provides penalties for 'undeclared activities' and for the unauthorised affiliation of the association with other associations or organisations. Non-compliance with these provisions entails jail sentences of between three months and one year and fines between 1,000 and 10,000 Egyptian pounds. It may also lead to the closure of the association, confiscation of its property and a lifetime prohibition on membership.

9 - Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

Despite the administrative problems they continue to face, Egyptian human rights NGOs can be considered as more significant and effective actors in public life than many of the recognised political parties. In 1998, a number of these NGOs launched a campaign in favour of the rights of associations, to which the government responded by initiating a process of consultations on reforming the legislation on associations. Within that context, the government and the most active organisations

⁴ Amani Kandil and Sarah Ben Nefissa, *Civil Associations in Egypt* (text in Arabic); Cairo: Al-Ahram Center for Political and Strategic Studies, 1995.

⁵ See <http://www.fidh.org/spip.php?article4794>.

submitted their own proposals. As well, before the political tensions and hardening of positions that took place in 2006 and 2007, the Egyptian authorities adopted an ambivalent attitude towards a number of organisations that has gained international notoriety. In 2004, for example, organisations that were in breach of the law because they were registered as corporations rather than associations were included in the National Council for Human Rights (a national institution in the sense given to that term by the United Nations).

Part IV: **FUNDING AND TAXATION**

1 - Are there any limitation on the rights of associations to receive and own property and funds? How?

Under article 17 of Law No. 84 of 2002, an association may receive donations from natural or juristic persons following approval by the Ministry of Social Affairs. The ministry seeks the advice of the security services, which provide it with information on the source, purpose and use of the funds and on the nature of the beneficiary. Human rights NGOs seldom receive funding from Egyptian business people because the latter either fear this might have political repercussions, wish to maintain good relations with the authorities or are simply uninterested. The government tolerates the raising of funds from wealthy citizens and large institutions, but strictly forbids solicitations from the public at large. The government also prohibits fund-raising activities by organisations it considers as being part of the opposition (communists, Islamists and others). Fund-raising campaigns aimed at supporting a protest movement (a strike, an opinion campaign, etc.) are virtually prohibited. In all cases, the solicitation of donations is strictly controlled by the Ministry of Social Affairs.

2 - Are there any limitations on the right of associations to use the funds, other than by the conditions of their granting?

All funding received by an organisation, whether from public or private sources or from local or foreign sources, is considered public property. Associations are subjected to the control of the Court of Audits and their members are liable to imprisonment in cases of misappropriation of public funds.

3 - Are there specific limitations on receiving foreign funds?

Most organisations can only operate with the support of foreign organisations. Applications to receive funds from abroad or from foreign foundations in Egypt must be submitted to the Ministry of Social Affairs. The process is often lengthy: although the law stipulates that the authorities must respond no later than 60 days after the submission, they sometimes take almost two years before rendering a decision. As a result, numerous

projects cannot be implemented and the activities of some organisations are totally paralysed because they are unable to pay their employees or meet current expenditures. Budgetary expenses exceeding 1,000 Egyptian pounds (about €133) must be approved by the Ministry of Social Solidarity, but in practice even lesser expenses are submitted to the ministry. Despite these nit-picking controls, the ministry does not provide regular, detailed data on the resources of organisations. On 5 September 2007, the governor of Cairo province abolished the *Association for Human Rights Legal Aid* (AHRLA), which condemns acts of torture in Egyptian police stations, because it had received funding from abroad without authorisation. This action was taken despite the fact that the organisation followed legal requirements in seeking permission from the Ministry of Social Affairs, which systematically rejected the application. There is concern that political motivations are behind this decision, which is by no means an isolated case. For example, Hafez Abu Seada, general secretary of the Egyptian Organization for Human Rights, and Saad Eddin Ibrahim, director of the Ibn Khaldun Centre, were prosecuted on the same grounds in 1998 and 2000. Both, however, were eventually released. It is worth pointing out that the rules governing the solicitation of funding from outside sources in Egypt has been criticised by the UN Committee on Economic, Social and Cultural Rights in 1999 and by the UN Human Rights Committee in November 2006⁶.

4 - How effectively are these limitations on funding enforced?

The law is strictly enforced. It was on the basis of this law that Saad al-Din Ibrahim, as director, and 27 employees of the Ibn Khaldun Centre were sentenced to between one and seven years' imprisonment with forced labour. In these proceedings, the Centre was accused of using funds obtained from abroad to 'buy the votes of women' in elections. The nightmare suffered by the employees of the Ibn Khaldun Centre lasted three years, from their arrest on 30 June 2000 to the ruling by the court of cassation that declared them innocent on 18 March 2003 and the reopening of the centre on 30 March.

5 - Do associations benefit from tax benefits? Under what conditions?

Article 13 of Law No. 84 of 2002 makes it possible, by decree of the prime minister, to exempt an association from taxes and from a portion of the costs of the public goods and services it consumes.

6 - Are public funds made available to associations? How? Are these processes prone to discrimination?

The government only grants funding to organisations that, from a security point of view, do not present any 'political risk' and to which it can second its own employees.

⁶ See <http://www.amnestyusa.org/document.php?lang=e&id=ENGMDE120292007>.

Part V:
CONTROL AUTHORITY, GOVERNANCE
AND TRANSPARENCY

1 - What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, and security apparatus)? How consistent are the activities of these authorities with the principles of freedom (check principle 16 of the Declaration)?

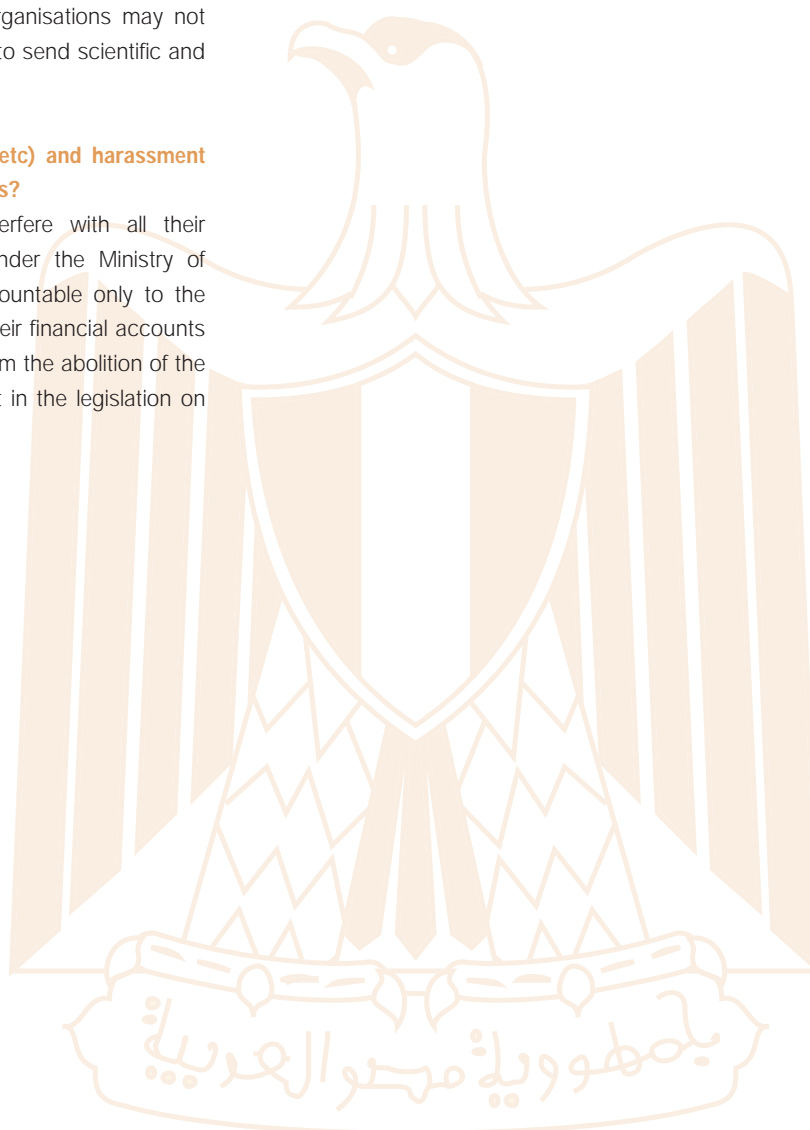
In a number of areas, social and development organisations supplement in part the shortcomings of state services and act as intermediaries between administrative bodies and the people. The raising and use of funds, whether from domestic or foreign sources, are subject to approval and monitoring by the ministry responsible for the associations.

2 - Are accounts and other information transparently available to the public?

Article 17 of Law No. 84 prohibits associations from receiving funds from a foreign organisation or from its representative in Egypt, of from an Egyptian or a foreigner outside Egypt, without the approval of the ministry. Egyptian organisations may not send funds abroad, but they are allowed to send scientific and technical books, magazines and journals.

3 - What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?

Although various security agencies interfere with all their activities, associations formally come under the Ministry of Social Solidarity. In theory, they are accountable only to the ministry and thus do not have to make their financial accounts available to the public. Penalties range from the abolition of the organisation to criminal sanctions set out in the legislation on associations on in other laws.



THE EGYPTIAN GOVERNMENT IS CALLED UPON TO:**1. With regard to the political, democratic and human rights situation**

- 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, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Repeal the emergency legislation used to justify practices and excesses that deny freedoms, in particular freedom of expression, of assembly and of association;
- Put an end to the use of provisions of laws on the state of emergency and against terrorism, and all other security-related legislation as a basis for criminalising or imposing arbitrary restrictions on the peaceful activities and freedom of expression and association of civil society;
- Take account of the recommendations of the conference held at Cairo on 27 and 28 June 2007 on legislative reforms related to freedom of organisation in the Arab world¹.

2. With regard to the laws and practices pertaining to associations and civil society organisations**Formation and Incorporation**

- Abolish the procedure of prior approval for the registration of associations and implement the declarative regime which, while it would not suspend the activities of the association, would not prevent the ministry responsible from refusing, on the basis of a judicial decision, to allow the association to be established;
- Authorise the creation of organisations working for the interests of workers;
- Apply a restrictive interpretation, in accordance with article 22 of the International Covenant on Civil and Political Rights and with related jurisprudence, to the concepts of 'law and order' and 'public morality' as discussed in article 11 of Law No. 84 of 2002, which are used to prohibit certain organisations;
- Amend Law No. 84 of 2002 so as to reduce to two the number of founding members required to create an association;
- Put an end to the abusive and delaying practices of the authorities with respect to applications for registration and ensure that the deadline of 60 days provided for in article 6 of Law No. 84 of 2002 is respected in practice;
- Generally, require that, when the ministry responsible rejects an association's application for registration, the reasons for the decision be supported by precise considerations in order effectively to make it possible to lodge an appeal;
- Allow the registration of changes in the association's statutes or in its governing bodies to be made through a simple declaration;
- Ensure that organisations challenging the rejection of an application for registration by the ministry responsible have an effective access to justice within a reasonable period.

Dissolution and Suspension

- Amend article 42 of Law No. 84 of 2002 so as to reduce the number of and clarify the reasons for abolishing or suspending an organisation;
- Amend Law No. 84 of 2002 so as to give the courts exclusive jurisdiction in abolishing or suspending an association;
- Provide that an association which is the object of an abolition or suspension measure may continue its activities until the final judicial disposition of the measure.

Organisation and Operation

- Put an end to the practice of seconding civil servants to associations, in particular by simply repealing article 12 of Law No. 84 of 2002;
- Rescind the possibility for the ministry responsible to oppose or demand changes in decisions made legally by the governing bodies of the associations;
- Abolish the obligation to seek prior authorisation for any public gathering of more than five people;
- Abolish all restrictions limiting the access of associations or their members to telephone, fax or internet services;
- Guarantee the access of associations to public media (press agencies, radio, television, newspapers, etc.);
- Lift all restrictions on cooperation or affiliation with foreign associations and organisations, in particular by abolishing the obligation to seek prior authorisation.

Funding and Taxation

- Lift all existing restrictions on fund-raising and the solicitation of donations, in particular by allowing all the associations that wish to do so to solicit donations from the public at large;
- Lift all restrictions on obtaining funding from foreign sources and, in particular, amend Law No. 84 of 2002 so as to eliminate the obligation to seek prior authorisation by the ministry responsible for securing such funding;
- Put an end to all delaying and abusive practices of the authorities and require them, in particular, to ensure that the deadline of 60 days provided for in article 17 of Law No. 84 of 2002 is respected in practice.

3. With regard to the climate required for the sustainable development of civil society

- Put an end to the intervention and interference of the security services at all stages of the life of associations and in all their activities;
- Put an end to harassment measures, including judicial measures, taken against human rights defenders and the members of organisations seen as hostile to the government;
- In so doing, rescind arbitrary administrative measures, such as those taken against the Centre for Trade Union and Workers' Services and the Association for Human Rights Legal Aid;
- Adopt a genuinely participative approach towards civil society organisations and ensure, through an adequate consultative mechanism, that they will contribute to decision-making related to public policy;
- Promote and continue the 'campaign of non-governmental organisations for freedom of organisation' launched on 13 May 2007 by 34 NGOs (as a follow-up to the first collective report on 'administrative and security harassment' - the so-called 'report on violations').

¹ The meeting was organised by the Arab League in partnership with the Arab Network of Civil Organisations on the basis of the Arab Initiative for the Freedom of Association and the 'Guidelines for legislation on civil society organisations'.

Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - Political, democratic and Human Rights specific contexts:

There are many limitations on the exercise of the right of freedom of association mostly involving discrimination between Arab and Jewish groups in Israel. The Law of Associations - 1980, the main statute that governs the establishment and functioning of NGOs in Israel and places limits on the exercise of the right of freedom of association, for example, gives powers to the Registrar of Associations, which today belongs to the Ministry of Justice, to intervene directly and indirectly in some circumstances in the activities of NGOs. In addition, since 1948, Israel has been in a declared "state of emergency", which gives the security bodies the power to use the Emergency (Defense) Regulations - 1945 in an arbitrary manner to limit the right of association in Israel. While it is true that this power has been used rarely since the 1990s, it still exists and is used in a draconian manner, denying individuals and groups their rights to due process, fair hearing and trial. Finally, Israel's position and practice as an Occupying Power has led to a wide number of violations of the right to freedom of association in the Occupied Palestinian Territories. However, the question of occupation will only be dealt with in this chapter in so far as it had consequences for associations inside Israel for example through the use of the Prevention of Terrorism Ordinance - 1948 and Law for the Prohibition of Terror Funding - 2005.

2 - Civil society landscape

Since the 1990s, the right of freedom of association in Israel has gained strength. Altogether around 40,800 organizations were registered in Israel between 1981 and 2005, 23,650 of which are active.¹ As of 2002, Israel's Third Sector constitutes roughly

13.3% of the country's GDP and employs over a tenth of the nation's workforce. According to the Israeli Center for Third Sector Research, in the Hopkins Project's comparisons among 22 countries, Israel ranked fourth (behind Holland, Ireland and Belgium) in the relative size of its Third Sector within the larger economy. Israel's Third Sector works predominantly in five fields: religion, culture and education, education and research, and welfare and philanthropy. The share of organizations involved in these areas amounted to 83% in 2005. Public funding is the Third Sector's main revenue source (52%) in 2002.² There are no GONGOS in Israel.

3 - Legislation

A - International standards

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

B - Domestic law

a. Constitutional provisions

Israel lacks a formal written constitution or a bill of rights. Over the years, the Knesset enacted a series of Basic Laws to delineate the separation of powers. In 1992, the Knesset passed two important Basic Laws - The Basic Law: Human Dignity and Liberty³ and The Basic Law: Freedom of Occupation⁴ - which, for the first time, contain "constitution-like" protections for some civil liberties. However, these Basic Laws, considered a mini-bill of rights by some Israeli legal scholars, do not enumerate the rights of freedom of expression and the right of freedom of association. Thus, Israel has no law that "constitutionally" guarantees the right of freedom of association.

¹ ADALAH - The Legal Center for Arab Minority Rights in Israel, Arab Association for Human Rights (HRA), B'Tselem, Public Committee Against Torture in Israel (PCATI), ACRI, Physicians for Human Rights, Association for civil rights in Israel.

² Ibid. The website of the Registrar of Associations does not provide any data of this type. See <http://www.justice.gov.il/MOJHeb/RashamAmutof> (Hebrew).

³ Available at: http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm

⁴ Available at: http://www.knesset.gov.il/laws/special/eng/basic4_eng.htm

b. Relationship between international law and domestic law

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

c. National law on freedom of associations

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

While freedom of association is a fundamental right, three types of statutory laws restrict the exercise of this right. The first type is found in statutes that regulate the formation and operation of NGOs, corporations, and cooperative associations. The second type of restrictions involves criminal laws and the Emergency Regulations - 1945 which aim to prevent the establishment or activity of "illegal associations" (namely those groups deemed by the law to be a security risk or to constitute a terror organization). The third type involves direct or indirect restrictions on the freedom to form professional associations or the requirement that certain professionals belong to such an association in order to practice their profession. This paper will focus on the first two types of restrictions.

d. The jurisprudence

The Supreme Court of Israel has recognized the rights of freedom of expression and association as fundamental rights. The landmark case in Israeli legal history which set forth the right of freedom of expression as a fundamental right was *Kol Ha'am*, delivered in 1953.⁵ The first case which related directly to the right of freedom of association was brought by an Arab group in 1960, when they applied to the Registrar of Companies to obtain permission to register their company, "El-Ard Ltd" In 1964.⁶ In this case, the Supreme Court decided that the "security of the state" was not an explicitly stated purpose in the law, and thus, the Registrar (for registering a company) does not have the authority to consider security reasons as basis for his decision to refuse to register the company. The Court ruled that the right to freedom of association is a fundamental right which can only be limited by express legislative authorization; in this specific case, the Registrar exceeded his power in denying permission and must allow the company to register.

Part I: FORMATION AND INCORPORATION

1. Does the system allow for non-declared or unincorporated associations?

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", meaning that it cannot be sued in court as an association and it cannot initiate a lawsuit in its name alone. Further, it cannot open a bank account or use checks in the name of the group.

2. What are the bases upon which registration can be rejected? (e.g. race, security, religion, politics)

Pursuant to Article 3 of the Law of Associations (1980), registration can be rejected if the association: (1) *negates the existence of Israel*; (2) *negates the democratic character of Israel*; and (3) *uses the association as a cover for illegal activities*.

Article 4 also sets restrictions on the name of an association. Registration will be refused if the chosen name is "likely to mislead or to offend the public interest or the feelings of the public" (art. 4-a). Article 4 (a) has been used by the Registrar in many instances, especially in political circumstances in which the Registrar stated that the name of the association might mislead the public. An association shall also not be registered if the name is "identical with or similar to such a name to mislead: (1) a registered association in Israel; (2) an association which was registered in Israel and its registration was cancelled and two years since the registration did not yet pass; and (3) an association which is in the process of registration" (4-b). If an association was registered in a name against what was stated in (a) or (b) above: "the Registrar may order it to change its name." If the association does not comply "within a reasonable time from the date of the order, the Attorney General of the state may ask the court to order the association to change its name." (4-c).

A landmark Supreme Court case in this regard is *Nasser*, in which a Palestinian and Jewish group asked to register as an association under the name, "The Israeli-Palestinian Association for Human Rights." The Registrar refused to register the group on the grounds that using the name "Palestinian" might mislead the public by giving the impression that Israel recognizes and legitimizes Palestine. In this case, the Supreme Court overturned the Registrar's decision ruling that he violated the fundamental right of the association to choose its name.

Despite the Supreme Court's clear ruling in *Nasser v. The Registrar of Associations*, the practice of the Registrar does not consistently conform to it. In many cases, the Registrar tries to convince the founders to change the name of the association, when he has no legal basis on which to do so. The founders often do not initiate legal proceedings against the Registrar so as not to delay the process of registration or create hostility with him at this early stage of establishment of the association.

3. Is the registration system based on Licensing or simple information/notification?

Article 2 of the Law of Association of 1980 discusses the procedural process of registering an association. The application fee is reasonable at NIS 773 (US \$185).

(a) "An application for registration of an association shall be submitted by the founders to the Registrar of Associations (hereinafter: the Registrar), stating the name, objectives and address in Israel of the association, and the names, addresses and identity numbers of the

⁵ (High Court) H.C. 73/53, *Kol Ha'am Ltd. v. Minister of Interior*, 7 P.D. 871.

⁶ H.C. 241/60, *Kardosh v. The Registrar of Companies*, 15 P.D. 1151.

founders. To this application will be submitted an affidavit signed by the founders stating their willingness to found the association as is requested and their willingness to be members of the Board of the association."

(b) "After submitting the application and as long as it was not registered as an association, the Registrar will accept any changes or amendments for the application as was stated in article (a) above, if it was signed by the majority of the founders of the original application; unless, he is convinced that the application for changing or amending was sent to all of the founders by registered mail at least 14 days before it was submitted to him."

According to article 5 Law of Associations 1980 : "When a registration under section 2 has been submitted, the Registrar shall register the association in the Register of Associations, unless he holds that he is prevented from doing so by sections 1, 3 or 4 (a) or (b)."

4. How easy or difficult is the registration: (e.g. time, cost, number of incorporators)

There are often long delays in registering associations in Israel.

5. Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative?)

"If the Registrar refuses to register an association, the founders may appeal to the District Court within 30 days after notice of the refusal was delivered to them. A request by the Registrar under section 4 (b) may be appealed as aforesaid within 30 days after notification thereof was delivered." (Article 6)

Based on Article 5, the Registrar may not reject an application for registration except for reasons based primarily on Articles 3 and 4. The Law of Associations - 1980 does not set forth a timetable by which the Registrar must respond to the application to register. However, the Law for Amending Administrative Arrangements (Decisions and Explanations) - 1958 states that each administrative body must give reasons for its decision within 45 days. Therefore, the administrative law requires the Registrar to provide his reasons within a limited time. However in practice, few individuals are aware of this administrative law requirement and since the Law of Associations - 1980 does not set a timetable, in many cases the Registrar delays his response beyond the 45 day deadline. If the Registrar does not respond within 45 days, legally it will be seen as a refusal to register and the founders may appeal to the District Court against this decision. In addition, if the Registrar sends the founders a notice of refusal to register the association or its name, they also have the right to appeal this decision within 30 days.

6. Does registration automatically entail obtaining separate legal entity?

The "legal personality" is not obtained by the registration but after publication in the official gazette. Articles 7, 8, and 8 (A) of

the Law of Associations 1980 state that when the association has been registered, the Registrar shall publish a notice to that effect in the gazette and shall issue a certificate of registration to the association. The association shall then be competent in respect to any right, obligation and legal act. In addition, Article 8(A) (a 1996 amendment to the law) orders the association to use its full name in all of its documents, pamphlets, publications, and signs, and at the end of its name to add one of three words: association, registered association, or the abbreviation RA. It appears that Article 8(A) was added to the law in order to distinguish between registered and non-registered associations.

7. Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust, a "Wakf")

Two other types of not-for-profit organizations, each with different requirements for formation, membership, and public purpose exist. These include: private companies for the public benefit, governed by the Companies Act, 1999; and cooperative societies, governed by the Cooperative Societies Ordinance, 1933.

Part II: DISSOLUTION AND SUSPENSION

1. What are the causes/grounds of dissolution? Suspension?

An association may be dissolved in two ways: voluntarily by the association or an involuntarily by an order of the District Court.

a) Voluntary dissolution (Articles 43-48 of the Law of Associations (1980)) - The General Assembly (GA), when convened in due form by the Board, may decide by a majority of two-thirds of its members to dissolve the association. The law is silent about the circumstances and conditions under which the GA might exercise its power to dissolve the association, giving thus total freedom to the members to decide about the ground of dissolution.

b) Involuntary dissolution - Dissolution by Court Order (Articles 49-54 of the Law of Associations (1980))

According to article 49, "The District Court may order the dissolution of an association when any one of the following is the case:

- (1) the activities of the association are conducted in a manner contrary to Law or contrary to its objectives or internal regulations ;
- (2) objectives of the association are aimed at the negation of the existence or the democratic character of the State of Israel;
- (3) an investigator appointed under section 40 has recommended that the association be dissolved ;
- (4) the association is unable to pay its debts ;
- (5) the court has found that it is equitable and just that the association be dissolved."

2. What authorities pronounce these decisions? (role of the Judiciary, Executive ...)

Only the District Court can pronounce the (involuntary) dissolution of an association. The application for dissolving an association shall be made by the Attorney General or the *Registrar* (art. 50-a) but only after the *Registrar* has warned the association in writing to remedy the position and after the association has not done so within a reasonable time after it received the warning, in the cases 1,3, and 4 of Article 49. Article 49-2 does not require any previous notification.

3. Are there effective remedies and appeals?

Every person (party or third party) aggrieved by the winding-up (dissolution) order or by a refusal to grant it, may appeal to the Supreme Court (art. 52).

4. Special regulations

Israeli criminal law

Israeli criminal law also prohibits "illegal associations" which are strictly defined. They can be either registered or non-registered associations. Illegal associations are defined by Israeli Criminal Law as composed of any group of persons which "by its regulations or propaganda or otherwise advocates, incites or encourages, the subversion of the political order by revolution; the overthrow by force or violence of the lawful government of Israel or any other state; or the destruction or damage of property of the State." Individuals found to be members of such unlawful associations, primarily relating to high security breaches (art. 145-1 of the Penal Law of Israel - 1977), may be punished by imprisonment for three years (art. 146). To pay fees, donate funds, or publish materials for or in the interests of such an illegal association is considered as an offence punishable up to six months (art. 148).

The emergency (defence) Regulations - 1945

The state may also use the Emergency (Defence) Regulations - 1945 to close down and declare any group to be an "illegal association". Under Regulation 84, the Minister of Defence has absolute discretion to declare any group of persons, a registered or unregistered association, to be an "illegal association" for high security breaches, which are inciting or encouraging the overthrow by force or violence of the political order or government of Israel; bringing into contempt or arousal of disaffection against the government or its ministers in their official capacity; destruction of or damage to government property; or acts of terrorism directed against the government of Israel or its servants.

Israel used the Emergency (Defence) Regulations - 1945 extensively against the Arab minority, especially during the military regime period (1948-1966). It was also used by former Prime Minister Menachem Begin in the 1980s to prohibit the holding of a conference organized by Arab leaders. Since the

1990s, the use of the Emergency (Defence) Regulations - 1945 against citizens of Israel to close down associations is rare. However, Article 84, noted above, is used frequently to declare illegal organizations outside of Israel (such as Hezbollah) in order to prohibit Israeli residents and citizens from being in contact with these groups as members or for financial purposes.

The prevention of terrorism ordinance - 1948⁷

Article 1 of the Prevention of Terrorism Ordinance - 1948 defines a "terrorist organization" as a group of persons "resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence." Activity in a terrorist organization is punishable by twenty years imprisonment, while membership in such a group carries a maximum sentence of five years. The Ordinance also prohibits support or encouragement of a terrorist organization, possession of propaganda of such an organization, allowing one's property to be used by a terrorist organization or its members, or identification with such an organization by flying its flag, displaying its symbols, shouting its slogans or singing its hymns.

The "government, by notice in the Official Gazette" is empowered to "declare that a particular body of persons is a terrorist organization." According to the law, that notice "shall serve in any legal proceeding, as proof that the body of persons is a terrorist organization, unless the contrary is proved." Thus, the executive branch is empowered to declare at any time, about any organization, based on its own discretion and without debate, that the organization is a "terrorist organization." This authority, not based on express legislation, is incompatible with the rule of law.

The Prevention of Terrorism Ordinance - 1948 has never been used to declare an Arab association in Israel illegal. Rather, the State used the Emergency (Defense) Regulations (1945) in order to outlaw Arab associations. The Prevention of Terrorism Ordinance has been used against individual Arab citizens of Israel, such as MK Dr. Azmi Bishara in 2001, and Jewish organizations in Israel, such as the Lehi (which was led by former Prime Minister Menachim Begin prior to the establishment of the state), and the racist "Kach" and the "Kahane Chai" movements led by Rabbi Meir Kahane.

The law for the prohibition of terror funding - 2005

In 2005, Israel passed a new law entitled "The Law for the Prohibition of Terror Funding." This law criminalizes all humanitarian aid or assistance to the Palestinians in the OPTs. Article 8 of this Law provides that any action taken in property used to facilitate or promote or to fund terror acts or to compensate for these acts or to fund the activities of a terror organization is a crime punishable by ten years in prison. The Law provides that "to compensate for terror acts" includes the situation in which

⁷ Available in English at: http://www.mfa.gov.il/MFA/MFAArchive/1900_1949/Prevention%20of%20Terrorism%20Ordinance%20No%2033%20of%205708-19

the recipient of the funds did not commit any terror act nor did he intend to do so. Under the Law, an individual or association which sent funds, directly or indirectly, to any group designated as a terror organization or to its supporters, even when this money was not used to commit a terror act nor was it intended to be used for that purpose, could be criminalized. For instance, in the case of *Sheikh Raed Salah*, in which Islamic associations sent funds to poor families in Gaza intended for humanitarian aid, and even though this money was not used or intended to be used for terror acts, the state could sustain a criminal charge on the basis that the individuals and associations should “foresee” that this money could finance a terror organization just because the recipients of the funds belong to Hamas or Islamic Jihad or any other Palestinian organizations declared as terror organizations by the Israeli government.

Both, the Prevention of Terrorism Ordinance - 1948 and the new Law for the Prohibition of Terror Funding - 2005 have in common the fact that an individual or an association may not receive funds or send funds, even in situations that have nothing to do with security concerns.

Part III: ORGANIZATION AND OPERATION

1. What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (are such documents imposed? to what extent?)

The Law of Associations - 1980 requires each association to have internal regulations. Under Article 10, if an association does not have or did not decide upon its internal regulations, the model rules of association, which is a part of the Law of Associations - 1980 (Schedule - Section 10), shall be the rules of the association.

Under Articles 11 and 12, an association has the freedom to change its objectives, its name, or all its internal regulations by a majority vote of its General Assembly members. These changes should be submitted to the Registrar and they will be valid from the day that the Registrar has declared that he accepted them.

2. How strict is the level of freedom of members to adhere to or leave associations?

Every adult is eligible to be a member of an association (Articles 15-18).

The right for resignation is also guaranteed under the condition of a reasonable prior notice. Every association is entitled to decide upon its own rules for the admission, resignation and exclusion of members. The resignation of a member requires only reasonable prior notice and exclusion can only be decided for reasons detailed in the internal regulations and the member must be given the opportunity to be heard.

3. Are there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by “supervisors”?

Article 19 of the Law of Associations (1980) states that each association shall have three institutions or governing bodies: a General Assembly, a Board of Directors, and a Control Committee, and it may have additional institutions as provided in its internal regulations. Provisions of articles 32-34 set forth responsibilities and authorities of these governing bodies, as well as rules regarding conflicts of interest. Thus, the Law sets forth detailed requirements regarding the structure of NGOs.

4. Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. Board)? No

2. Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

See Part 5: Control, transparency

3. Is the association’s right to freely assemble or organize private and public meetings, move freely (including international travel) restricted in any way? No

4. Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)? No

5. Is the freedom of associations to cooperate and network with others limited (both domestic and international)? No

6. Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations? No

Part IV: FUNDING AND TAXATION

1. Are there specific limitations on receiving foreign funds?

Numerous bills have been introduced in the Knesset (Israeli Parliament) over the years seeking to ban or greatly restrict NGOs from receiving foreign funds. Proponents of these bills argue that greater requirements on NGOs which receive funding from abroad are required for purposes of transparency and accountability. None of these bills have been enacted into law.

2. Do associations benefit from tax benefits? Under what conditions?

Under the Income Tax Ordinance, «public institutions» are granted some exemption from taxes on income. There are six criteria that an organization must meet to qualify for tax exemption:

"(1) The organization does not have to be an association, but must consist of a collection of people ; (2) There must be at least seven members ; (3) The majority of the members may not be related to each other ; (4) The organization must have a public aim ; (5) The income and resources of the organization must be used in pursuit of the public aim ; and (6) The organization must provide annual reports detailing its expenditures, resources, and income to assure compliance with its public aims."

«Public aim» has been defined broadly to include activities related to religion, culture, education, science, health, welfare, and sport, as well as any other public aim approved by the Minister of Finance.

NGOs are required to pay Value Added Tax (15.5%) under the VAT Law of 1975 for supplies and other services purchased. However, the VAT Law provides that organizations engaging in non-commercial business are exempt from paying value added tax («VAT») on income. In order for an organization to be exempt from VAT, it: "(1) Must be an association of people, but not necessarily incorporated ; (2) Must not engage in for-profit business activities ; and (3) Must not be a financial institution." The VAT Law requires NGOs to pay a payroll tax (Wage Tax), in addition to the Employer Tax (4%) which is imposed only upon NGOs.

The Income Tax Ordinance provides donors with a tax credit for donations to public institutions. To qualify for such an allowance, the following conditions must be met: "(1) The organization must satisfy the Income Tax Ordinance definition of a "public institution"; and (2) The organization must be approved by the Finance Committee of the Knesset". Individual donors may receive a 35% tax credit for contributions to certified NGOs exceeding 370 NIS but not greater than NIS 4,000,000 or up to 30% of one's total tax. A very small number of organizations possess this status, and thus, the tax laws are a disincentive to individuals to contribute to NGOs.⁸

Research by the Mossawa Center (*Advocacy Center for Arab Citizens of Israel*) found that the budget for governmental support approaches NIS 2.5 billion (almost US \$600 million) annually, yet an extremely negligible amount of this sum reaches Arab NGOs. Mossawa asserts that the Social Affairs Ministry allocates less than 1.2% of its support budget to Arab NGOs. The Health Ministry allocated only 0.6% of its support budget to Arab NGOs in 2003 and 1.5% in 2005. Arab NGOs received 0.5% of the Justice Ministry's Inheritance Fund. According to Mossawa, dozens of criteria exist to determine the allocation of funding, which blatantly discriminate against Arab NGOs.⁹ Most Arab NGOs in Israel rely entirely on foreign funding and individual donors for their activities.¹⁰

3. Are public funds made available to associations? How? Are these processes prone to discrimination?

Public funds are made available to associations. However, the Registrar of Associations created a new procedure and

requirement in 1999, which is not enumerated in the Law of Associations - 1980, that applies specifically to associations that wish to receive state funds for their activities or some tax exemptions. This procedure allows the Registrar to thoroughly examine the financial expenditures of associations in order to issue a "certificate of good governance" without which an association may not receive public funds. There are no clear, objective criteria for obtaining a certificate of good governance or accompanying laws articulating the Registrar's powers. Thus, an association is dependent upon the Registrar in order to obtain this certificate. Oftentimes, it is a lengthy process for an association to obtain the certificate, and there is no time limit on this procedure.

The website of the Registrar of Associations notes the following statistics for 2005 concerning certificates of good governance: 2,500 associations underwent a regular examination; 767 associations underwent a deep examination; 7,832 associations received the certificate after a long process; and 1,942 associations were denied the certificate.¹¹

Part V: CONTROL AUTHORITY, GOVERNANCE AND TRANSPARENCY

1. What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, security apparatus)? How consistent are the activities of these authorities with the principles of freedom

Article 38A of the Law of Associations (1980) (as amended 1996) concerns the submission of a range of documents pertaining to the functioning of the organizations and its governing bodies such as "a copy of the financial report together with the recommendations of the Control Committee or auditor ... together with his certificate and comments" and "a protocol of the General Assembly to dissolve the association and its decision to nominate a liquidator." Article 38A (a) (amendment 1999) states that the association must give the Registrar, based on his request and during a period that he will decide, every document or additional information, that he finds relevant to request in order to clarify details mentioned in the audited financial report submitted to him (emphasis added).

These provisions give the State, through the Registrar, control over the substance of the work of associations and severely damage their independence. Based on these provisions, the Registrar may ask about any activity undertaken by the association. Moreover, under Article 39 (b), "documents submitted to the Registrar under articles 2, 10 or 38 shall be open for inspection at [the Registrar's office] by any person." With these controls, the independence of NGOs may be severely compromised, especially in a divided society in which there are harsh violations of human rights.

⁸ See: http://www.usig.org/countryinfo/israel.asp#Tax_laws

⁹ Jack Khoury, "Gov't funding for nonprofits to be assessed for anti-Arab discrimination," Haaretz English Edition, 26 January 2007.

¹⁰ See Ittijah: Union of Arab Community-Based Organizations: <http://www.ittijah.org/inside/ngos.html>

¹¹ See <http://www.justice.gov.il/MOJHeb/RashamAmutot> (Hebrew).

The Law of Associations - 1980 (article 40) gives additional power to the *Registrar* to open an investigation to inquire into the management of the association, its functioning based on the law, and its financial activities. The investigator, who will be nominated by the *Registrar*, has the authority to ask any questions; to order witnesses from within and outside of the association, to testify before him; and to take and review any document which belongs directly or indirectly to the association.

The Registrar's power to order an investigation of this scope and magnitude has many negative effects on the independence of the NGOs:

A. By exercising this power, the state may obtain access to all decisions and the personnel and members responsible for the decisions of the association. This is a very significant matter for human rights organizations which try to keep distance in their relationship with the state in order to criticize violations of human rights committed by the state.

B. The investigatory process, which may take a very long time, could completely paralyze the activities of the association.

C. The fact that the *Registrar* possesses such power might create a chilling effect among some NGOs and cause them to compromise their independence by limiting their critical speech against state authorities due to fear of investigation.

Article 40 explains the situations in which the *Registrar* may use this power. Article 40 (b) provides an exception in the case of an association in which the objectives are religious. In these instances, the *Registrar* must consult with the General Director of the Ministry of Religious Affairs. Usually, this Ministry is controlled by Jewish religious parties. Thus, religious NGOs, which mainly belong to Jewish religious groups, are afforded more privileges under the law than others NGOs. Note that many Jewish religious associations receive substantial financial support from the state. There is no justification for affording this privilege to religious associations.

Article 41 (a) authorizes the Registrar to impose all or some of the costs of the investigation on the association, on the members of the Board or on the applicants for the investigation.

Article 41 (b) provides that the association may appeal the Registrar's decision to the Interior Minister, within 14 days after the day on which notice of the decision was given. The result of an investigation might be severe including, pursuant to Article 49 (3), the dissolution of the association by the District Court based on the recommendation of the investigator.

In August 2002, the *Registrar* of Associations announced in the media and later by official notice to the organization that he intended to appoint an investigator into Adalah's activities. Around the time that the investigation was launched, Adalah was litigating several high-profile cases. In particular, Adalah had recently filed numerous petitions before the Supreme Court challenging the Israeli army's heavy military invasions of Palestinian cities in the OPTs ; had represented Sheikh Ra'ed Salah, the head of the Islamic Movement in Israel, who was banned from leaving Israel for a period of six months based on "secret evidence"; and was also defending Member of Knesset

Dr. Azmi Bishara, the head of the National Democratic Assembly - Balad party, on criminal charges stemming from political speeches he made criticizing Israeli government policy in South Lebanon and in the OPTs as well as for assisting in organizing a much-publicized series of visits by Arab citizens of Israel to Syria to meet with their refugee relatives. In July 2002, Adalah's offices were burglarized and some computers were removed. No one was ever charged or indicted for the break-in. In September 2002, Adalah submitted an appeal to the Interior Minister arguing that the Registrar's conduct, as well as his three claims, clearly point to the fact that his decision was arbitrary, illegal, discriminatory, and politically-motivated. On 7 February 2004, the Interior Minister accepted Adalah's appeal. In the decision, the Interior Minister stated that: "*in accordance with the opinion of the Legal Advisor of the Interior Ministry, the arguments of the organization (Adalah) as to its goals, including the funds received from the Galilee Society, are all accepted.*"

2. Are accounts and other information transparently available to the public? No

3. What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?

According to article 64 of Law of Associations, 1980 "*An association which contravenes any of the provisions of articles 18, 23, 29, 35, and 38, and every person responsible for the contravention shall be liable to a fine of NIS 1,000**" (around US \$250).

Article 64 also provides that a member of an association or a staff member, a member of the Control Committee or the auditor, who does any following, may be sentenced for three years in prison: (1) *provides a false answer or false information to a question which he was asked pursuant to this law; and (2) continues to act on behalf of the association in order to commit a fraud when the association is under a dissolution order.*

This provision criminalizes individuals and the association for two kinds of offences: one which belongs to the category of fraud (individual responsibility) and the other, which has an administrative character and carries the punishment of a fine against the association and the individual who was liable for the omission. The administrative offences belong mostly to the duties that the association must perform vis-à-vis the Registrar (e.g., failure to submit a financial report, failure to hold the annual GA meeting or failure to carry out the orders of the investigator or the liquidator).

Article 65 permits the Interior Minister, with the approval of the Knesset Constitution, Law and Justice Committee to exempt specific categories of associations from provisions of the Law of Associations - 1980. The Interior Minister is also authorized with the implementation of this law and may set forth, pursuant to Article 66, regulations on any matter relating to the law's implementation including fees payable for acts by the Registrar. The Justice Minister may make any procedural regulations for court proceedings under this Law.

WE CALL UPON THE ISRAELI AUTHORITIES TO:**1. With regard to the political, democratic and human rights situation**

- 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 Israel, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Cancel the Emergency (Defense) Regulations [EDR] - 1945 which limit the right of association in an arbitrary way; in any case, cease using the EDR to close down NGOs without due process of law;
- Cancel the authority of the government, as provided by the Prevention of Terrorism Ordinance - 1948, to declare any organization as a "terrorist organization" without relying on clear criteria as prescribed by express legislation;
- Cancel the Law for the Prohibition of Terror Funding - 2005 it contradicts fundamental principles of criminal law (such as "intent").

2. With regard to the legislation and practice relating to civil society organizations**Formation and Incorporation**

- Ensure that the refusal to register an association according to Article 4 of the Law (regarding restrictions on the name) is not based on arbitrary considerations or interference in order to give serious weight to upholding the right for association;
- Ensure that the period of time between the time of filing an application for registration of an association and the receipt of the certificate of association within a reasonable time; ensure that the Registrar of Associations should set forth regulations ensuring an easier and quicker process of registration.

Organization and Operation

- Cancel Articles 38(A) and 38(A) (a) 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 into NGO activities;
- Cancel Article 40 which gives the Registrar of Associations the power to appoint an investigator to investigate the activities, management, functioning and finances of organizations. If an NGO is suspected of violating the law, the police must respect the criminal procedure law and the criminal law.
- Ensure the freedom of movement, corollaries of the freedom of association.

Funding and Taxation

- Cancel the requirement that NGOs pay Value Added Tax (VAT) on all purchases of supplies and services and, cancel the employer tax on employee wages which applies solely to NGO;
- Set forth clear, written standards or criteria in order to ensure equal state funding for NGOs for all sectors;
- Legislate tax laws which provide "tax-exempt" status broadly to NGOs and give tax credits to individuals and corporations who donate to these organizations in order to give more incentives for contributions to NGOs.

Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - The political and democratic situation linked to human rights

Given the youth of the Hashemite Kingdom of Jordan, having achieved its independence in 1946, the Jordanian civil society can be considered nascent. As is the case in other parts of the region, political factors and frequent wars in the region played a major role in shaping the civil society in Jordan. One could argue that the role of associations was restricted in the beginning to charity and relief work. However, their role developed with the evolution of social life to cover various aspects of social and cultural affairs.

Jordan's accession to international charters and conventions starting with the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights increased awareness among various segments of the Jordanian society about human rights concepts, including the right of association and awareness about the role of associations as essential partners of the government in developing the society.

After martial law was lifted in 1989, most elements of the Jordanian political spectrum returned to a more democratic life, and the participation of ordinary citizens in Jordanian civil life was revitalized. The lifting of martial law contributed to creating more institutional stability essential to building the society.

Presently, Jordan provides a certain environment for the work and development of civil society organizations as well as a margin for freedom and democracy conducive to the presence of these organizations. However, the reforms currently adopted by Jordan that amongst other subjects the Jordanian economy to privatization programs have reflected negatively on the country's social infrastructure and the so-called "war on terror" has limited public freedoms.

The laws relating to the right of association were amended, giving the Ministry of the Interior more control over the freedom

of assembly. The government enacted new laws including the Anti-Terrorism Law, which gives the government powers to monitor and interfere with the work of civil society organizations. Restrictive articles of legislation were introduced in the Political Parties Law to limit such parties' freedom of action. In addition, there have been attempts to amend the Professional Associations Law so as to enable the government to restrict the work of those associations.

It is noteworthy that the government constantly proclaims the principle of the rule of law even though the laws that are being legislated contain provisions contradicting the principles and standards contained in the international charters and conventions ratified by Jordan. Moreover, such laws contravene the spirit of the Constitution.

2 - The situation of civil society: General outline for all kinds of associations

Official statistics reveal that the number of civil society institutions exceeds 2,000 organizations, 800 of which are charity associations; 300 cultural institution ; 45 centers for studies, research, training, and social and psychological guidance. In addition there are more than 35 foreign NGOs. The number of political parties is currently around 23 parties, some of them were joined into a federation framework.

In regard to geographical distribution of these organizations, statistics show that 32.3% of them are in Amman, 12.8% in Irbid, 6% in Al-Balqa, 8% in Zarka, 7% in Mafrq, 5% in Karak, and 4% in Ma'an, Ajloun, Tafilah, and Madaba ¹.

According to the law, associations are "establishments that voluntarily provide any service or activity to enhance standards of living to citizens in the society whether in regard to culture, education, health, sports, spirituality, social, or the arts." The law distinguishes between charity association, social institution, ordinary institution, foreign association, and institutions formed by a special law that act like non-governmental organizations.

Charity association are linked to the Ministry of Social Development, while ordinary associations, like sports, cultural,

¹ Ali Al-Balawnah, "Civil Society Associations' Role in comprehensive development", Directorate of research and Polls.

and social clubs, and boys/girls scouts are linked to the Ministry of Interior and the Ministry of Culture and Youth.

There are all kinds of associations in Jordan that deal with issues related to human rights and public freedoms, they include:

There are many associations concerned with human rights in general. For example: The Arab Organization for Human Rights, the Jordanian Organization for Human Rights, the Jordanian association for Human Rights, al-Qanoun Center for Human Rights, Amman Center for Human Rights Studies, Adalah Center, the Center for Development and the Rule of Law, etc

There is no organization specialized in combating torture, despite the bad situation of human rights in Jordan's jails, including cases of torture and coerced confessions as was documented in the reports of the National Center for Human Rights issued on 2005 and 2006.

There are a number of associations in Jordan concerned with vulnerable groups: protection of women's rights² ; protection of children's rights³ ; organizations concerned with cultural issues⁴ ; organizations concerned with protection of the environment⁵ ; religious organizations (Islamic or Christian)⁶ ; etc.

In Jordan, there is a type of organization called "Governmental NGOs", which is a mixed type. They claim to be non-governmental, but they were established by the government which appoints their boards of directors, and some of them are headed by one of the royal family. They are established by special laws.⁷

3 - Legislation

a) . International conventions ratified by Jordan

Jordan has ratified most of international agreements including the International Covenant on Civil and Political Rights (16.12.1983).

b) Jordanian Constitution

The Jordanian constitution affirms in Article 16 the right of assembly and the right of association. The National Convention affirmed these rights further in Article 10 of chapter 5 under the title "the Social Domain".

c) Laws

In 1976, the Jordanian state abolished the liberal Ottoman law of 1909, which was based on a system of declaration.

After that, successive governments issued laws to organize the work of associations, the latest being law number 33 on associations and social institutions of 1966 amended by law number 2 of 1995, and it is the currently operative law.

There are other laws and regulations related to establishing and organizing the work of civil society organizations, mainly: law of public assembly number 7 of 2004, the labor law which regulates labor union activities, law of cooperative associations, law of political parties and associations, the new company law of 1997, and trade unions laws.

Part I

FORMATION AND INCORPORATION

1 - Does the system allow for non-declared or unincorporated associations?

Jordanian law does not allow the existence of undeclared association. The penal law considers associations without license as "*associations of outlaws or illegal associations*". The interpretation of this law considers this offense a misdemeanor and not felony.⁸

2 - Is the registration system based on licensing or simple information/notification ?

For the establishment of any association or institution, the law on associations and social institutions requires obtaining written permission from the responsible minister who is authorized to accept or reject the registration of any association or institution. However, under article 12 of this law, if the Minister has not answered nor requested any additional information within three months after reception of the request, the association is allowed to start its activities as if it was duly registered. Article 6.2 of the same law gives the Minister the opportunity to seek advice from the Governor on an association's request for registration. The Governor has to obligation to reply to such request within 30 days.

3 - What are the bases upon which registration can be rejected? (e.g. race, security, religion, politics)?

In most cases, rejection the registration of an association is justified on the basis of "diversion from the purposes of the association or the existence of legal transgressions". The associations denied registration is usually those who advocate opposition policies.

² The National Committee for Women's Affairs, the Federation of Women's Committees, the Union of Jordanian Women, Sisterhood is Global Institute/Jordan, the Jordanian Committee for the Protection of Domestic Violence Victims, Center for Legal and Social Counseling for Women in Zarka...

³ The Union of Jordanian Women, which provides the "*Children Hospitality House*" program, Coast Quest Association, etc..

⁴ League of Jordanian Writers (1974), League of Theatre (1977), League of Artists (1977), Pen Club, Abd El-Hamid Shouman Institution, etc.

⁵ Environmental Protection Committee, the National Association for the Environment and Wild Life, the National Association for Combating Desertification, etc.

⁶ The Counsel of Islamic Associations. Christian associations work within sectarian framework

⁷ Like, Nour Al-Husain Foundation, the National counsel for family affairs, the National committee for women affairs, King Abdullah Fund for Development, the High counsel for Citizens.

⁸ Court of cassation ruling number 240\1991.

In March 1997, the National Association for the defence of public liberties had its request for registration rejected by a decision of the Minister following a negative recommendation by the Governor of Amman, who had geographic jurisdiction, on the grounds that there already were other organizations with the same objective registered with the Ministry. This negative decision was confirmed by the Court of Cassation in 1998.

Furthermore, it should be mentioned that the formation of trade union, and thus trade union membership, is prohibited for parts of the population, such as civil servants including teachers. Similarly, students are not authorized to form unions.

4 - How easy or difficult is the registration ?

Registration applications are usually easy and affordable, except in rare cases when the application requires more procedures and consultations with the governor, and security services. However, the law stipulates that the number of founding members must be a minimum of seven members, which makes it harder to establish an association.

5 - Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative?) ?

When a registration application is denied, applicants can resort to the ordinary courts and the Court of Cassation at the highest level, to contest the administration order within 15 days from receiving the order. In addition, they can ask for damages through a law suit.

6 - Does registration automatically entail obtaining separate legal entity?

After approval of registration application, associations gain an independent legal personality that enables them to pursue their activities within their mandates and goals.

7 - Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust or a "Wakf")?

In principle, it is possible to challenge the minister's decision by resorting to competent courts.

Part II : DISSOLVING AND SUSPENSION OF ASSOCIATIONS

1 - What are the causes/grounds of dissolution? Suspension?

Article 16 of the Law on associations and social institutions gives authority to the Minister to order the dissolution of an association which: acts in violation of its statutes ; pursues objectives different from those mentioned in the statutes; has ceased activities for 6 months or does not have any activity ;

refused to allow officials to attend its meetings or control its offices; used its funds for other purposes than those planned; gave incorrect information to administrative authorities; more generally violated a provision of this law; or if more than one third of the General Assembly of its members voted in favour of dissolution. However, the reasons for dissolving associations and institutions, as well as the reasons for rejecting registration applications, are usually general reasons and not specified, such as "diversion from the purposes of the association, or the existence of legal transgressions." Targeted associations are usually those who advocate opposition policies.

In the past, dissolutions motivated by the personality of the founders targeted Leith Shbeilat, Ali Abu Sukkar and member of parliament Toujan Faisal. Today, they are targeting the members of the Islamic Action Front and communist parties, such as 'Ashaghila' which were arrested and subject to legal action.

2 - What authorities pronounce these decisions? (role of the Judiciary, Executive ...)

A- An association can be dissolved or suspended if one third of its general assembly who are eligible to vote, vote in favor of its dissolution.

B- Members of an association can resort to courts and ask to dissolve the association if there has been a breach to the conditions stipulated by law.

C- In cases prescribed by article 16 of the Law on associations and social institutions mentioned above, which gives authority to the Minister to dissolve an association in specific cases.

3 - Are there effective remedies and appeals?

The law allows the founders of any association to resort to the judiciary to contest an order to dissolve the association before the Court of Cassation, which usually adopts legal texts that give the minister wide authority to dissolve an association.

Worth mentioning is a judgment by the Court of Cassation adopted on 4 July 2007 which annuls the Minister of Culture's order of dissolution of the association 'Al-Kitaab and the reformist Sunnah Association' on the grounds that the process leading to the dissolution was invalid both procedurally and in its substance.

Part III : STRUCTURES AND ACTIVITIES

1 - What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (Are such documents imposed? to what extent?)

Everything must be done with the approval of the public administration and the relevant ministries. Associations are required to obtain written approval for any amendment to their statutes.

2 - How strict is the level of freedom of members to adhere to or leave associations?

The constitution and the law affirm the freedom to join associations or dissociate from them. But the relevant ministries observe every thing happening in associations.

3 - Is there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by “supervisors”?

Under article 15 of the Law on associations and social institutions, associations must notify the administrative authorities, at least 15 days in advance, of the date and place of the meeting during which the executive bodies will be elected. The Minister can delegate its authority to attend meetings to one of the ministry's employees in order to ensure that elections are held in accordance with the statutes. Meetings will not be considered legal without the attendance of the ministry's representative.

4 - Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. Board)?

There are no restrictions in the law on the participation of women in associations. It is worth noting that there is a big presence of women in charitable and social organizations and institutions, while the situation is different in political parties and trade unions. Because of widespread prejudices and prevailing social models which tend to confine women in charity work, they are much less represented in associations, clubs and parties of a political nature as well as in trade unions.

5 - Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

The minister or his/her representative have the authority to visit any association or social institution and inspect its records and documents to insure that its funds are being spent appropriately, and to insure in general that it is doing its work according to the law, and that it abides by its goals and cooperates with the ministry.

6 - Is the association's right to freely assemble or organize private and public meetings, to move freely (including international travel) restricted in any way?

Associations can hold their meetings in their headquarters and centers without obtaining permission or even informing the authorities, but they need to inform the governor and obtain his/her written approval for any meeting or public demonstration outside their headquarters and centers. Under article 3 of the Law on Public Meetings, the request for authorization, including the date and place of the event as well as the names and addresses of the organizers, must be submitted at least 3 days in advance to the Governor. Furthermore, the Minister of the Interior may adopt regulations prohibit *“the use of slogans, expressions,*

songs, drawings and pictures which undermine state sovereignty, national unity, security and public order”.

The adoption of the Law on Public Meetings in 2004 allowed security bodies to prohibit by force a number of activities⁹. In 2006, a series of arrests and abuses against freedoms targeted members of professional associations, such as member of parliament Ali Abu Al-Sukkar, and engineers Turki Al-Jawarneh and Tareq Abu Khalaf, because of their political positions concerning ongoing events in the Arab region.

7 - Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

There are no special restrictions on freedom of communications or on dealing with the media or publishers or the internet, unless there is a breach of the law. There is not a flagrant interference in associations' activities and projects as long as they abide by the goals stipulated in their statutes and are faithful to the government.

Associations opposing the regime are subjected to a much higher level of interference which can lead to dissolution. The Union of Jordanian Women for example was dissolved twice since it was created because of the political positions it holds.

However, Article 4 of the new law for combating terrorism stipulates that “if there is a suspicion that an individual has connections with terrorist activities” the prosecutor of the state security court is authorized to *“issue any of the following decisions: impose surveillance at the suspect's place of residence, his movements, communications, prevent him from traveling, search places he frequents, seize any materials connected to terrorist activities, and seize any funds that may be connected to terrorist activities for three months. The state security court can extend this for a similar period, if the suspicion justify such measures.”*

8 - Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

No, there are no legal provisions restricting that, and the last few years has witnessed the creation of many networks and alliances. However, most of those networks are temporary and they end when the goal or the mission of the network is accomplished.¹⁰.

9 - Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

The government consults some associations and institutions when it makes decisions related to public interest, and asks them to write the state reports related to its obligations under human

⁹ National Center for Human Rights, 2004 report.

¹⁰ Ali Khawaldeh, “Establishing Networks and Alliances in Jordan: The Challenges and Mechanisms for reinvigorating”, a paper presented at a workshop entitled “Arab Reformists and Building Networks and Alliances”, organized by Al-Quds Center for Political Studies, 24-25 March 2007.

rights international agreements.¹¹ However, the government enacts the laws without consulting civil society in most cases.¹²

Many activists and representatives of Human rights organisations see the 'security mentality' as the reason for the lack of success of their requests and applications with successive governments. Some people think that the government's refusal to deal with rights organizations stems from the accusations leveled against human rights organizations that they work in accordance with outside agendas, that they are influenced by foreign governments, and that their reports are not "objective".¹³

10 - Are there effective remedies and appeals?

Association members have the right to resort to the judiciary (the high court) to challenge the legality of general assembly elections, or to demand compensations for damages.

Article 4 of the combating terrorism law permits a suspect to object before the state security court within "three days from his notification" the measures taken by the state prosecutor against him/her. If this objection is rejected, or the prosecutor extends the period mentioned above, the suspect can appeal to the cassation court. The cassation court's decisions are final.

Part IV :

FUNDING AND FINANCIAL ISSUES

1 - Are there any limitation on the rights of associations to receive and own property and funds? How?

The constitution defines special conditions in Article 3 paragraph 16 related to oversight of associations' resources: "the law organizes the ways to establish associations and political parties and the oversight of their resources." The law imposes many restrictions that limit associations' rights to gain or own funds and assets.

2 - Are there any limitations on the rights of associations to use the funds, other than by the conditions of their granting?

Laws impose many restrictions that limit the associations' right to use assets other than the assets they have declared. The law permits the minister to dissolve any association or social institution if he/she is convinced that the association has spent its funds on ways other than what they were designated for, or if the association has presented incorrect data to the official authority.

In addition, the new definition of terrorism according to Article 147/2 of the new penal code considers that terrorist conduct includes any conduct related to a bank transaction, in particular financial deposits in any Jordanian bank or financial institution or transferring moneys through them "if it is proven that the money

is suspicious and related to terrorist activity." Furthermore, the new anti terrorism law allows the government to monitor bank accounts belonging to associations and institutions. This law also penalizes the giving of donations to charity associations who are suspected of giving support to the legitimate resistance in Palestine, Lebanon, and Iraq. The government issued an order that requires trade unions to put their accounts and general budgets under the supervision of the accounting bureau, which allows the government to interfere with trade unions' freedom in managing their financial affairs and their own resources.

3 - Are there specific limitations on receiving foreign funds?

Because of the limited resources and capacities in Jordan, civil society organizations find themselves compelled to resort to international donors to obtain funding. The main donors are the United Nations agencies, the European Union, and some international organizations. The government does not restrict obtaining foreign funding as long as the beneficiary association provides documents to prove that funds are spent to implement its programs and activities.

4 - How effectively are these limitations on funding are enforced?

There are no actual restrictions for association in receiving foreign funding as long as the funding is declared and established in agreements and contracts. However, actual restrictions are imposed on political parties, especially opposition parties for which the government persists in monitoring their accounts and funding resources through inspection visits that are allowed by law.

5 - Do associations benefit from tax benefits? Under what conditions?

Associations do not enjoy any financial privileges because of the limited resources and the limited funding from the government to civil society associations. The only source of funding for the associations is foreign funds.

6 - Are public funds made available to associations? How? Are these processes prone to discrimination?

The Ministry of Development of Management decided that funding for civil society organizations should go through its ministry. According to this plan, donor states provide funds to the ministry which in turn distributes them to projects managed by organizations and institutions after they fill special applications to the ministry. But the ministry does not adhere to fair criteria in distributing the funds, and it can give or hold funds according to its own criteria. This situation has led many organizations to go directly to donors for funds and to refrain from applying for funds from the ministry.

¹¹ Like reports submitted to the CEDAW committee, or the Right of the Child Committee.

¹² Especially in political and economical affairs, like the law of political parties, or the general elections, cases of human rights violations, and the income tax law.

¹³ As-Sabil weekly, 27/7/2004.

Part V :
MONITORING, GOOD GOVERNANCE, AND
TRANSPARENCY

1 - What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, and security apparatus)? How consistent are the activities of these authorities with the principles of freedom (check principle 16 of the Declaration)?

According to the law of associations and social institutions, the minister of social development is charged with supervising charity associations, social institutions, and the different kinds of unions. The minister of culture and youth is charged with supervising sport clubs and cultural institutions. The minister or his representative maintains a record for all registered associations that contains their names, the scope of their activities, their aims, and any other information deemed necessary by the Ministry. Article 15 of the law imposes to associations several obligations regarding their activities reports and financial monitoring of their budget. The competent minister is the authority empowered to monitor associations. The minister is empowered to dissolve any association, after consulting with the relevant authorities, if the association violates the law.

2 - Are accounts and other information transparently available to the public?

The law stipulates that the general assembly of any association has the right to review financial and administration reports of their association. The managing boards are required to prepare these reports and distribute them to the general assembly. Hence, financial records of associations must be declared and available to the public.

3 - What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?

The law of associations and social institutions contains a number of sanctions, including prison sentences, against persons found in breach of its provisions, which is in contradiction with international standards, which prohibit criminal sanctions against civil activities by associations or their members.



WE CALL UPON THE JORDANIAN AUTHORITIES TO:

1. With regard to the political, democratic and human rights situation

- 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 Jordan, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Repeal the law on fighting against terrorism as it is not in conformity with the Constitution and the human rights international standards and principles;
- Raise awareness and promote training on human rights principle amongst civil servants (incl. government and civil servants and members of the security forces);
- Strengthen the role and the independence of the judiciary in order to allow it to deal in an independent, impartially and fair manner with cases related to human rights and, more generally, with cases related to civil society activities;
- Eliminate all forms of discrimination based on gender, race, language, religion, political opinions, sexual orientation or minority status when dealing with civil society organizations. Create an appropriate complaint mechanism.

2. With regard to the legislation and practice relating to civil society organizations

- Lift the ban on several professional groups, including civil servants and teachers, and on university students to freely establish and become members of professional organizations;
- Upgrade the Jordanian legislation and practice in order to bring them into conformity with the international standards related to freedom of association and for that purpose modify the Law on associations and social entities, the Law on public meetings and the Law on fighting terrorism as follows :

Establishment and registration

- Abolish both the requirement of a prior authorization by the minister for registration and the prior consultation of the district Governor by the minister;
- Simplify the requirements for establishing an association, including by reducing to two the required number of founders.

Dissolution and suspension

- Assign exclusive competence to dissolve or suspend an association to judicial courts;
- Guarantee the right to an effective judicial recourse, with suspensive effect and within a reasonable period, in case of a dissolution or suspension decision pronounced by the authorities.

Structure and activities

- Allow all organizations to freely adopt and modify their statutes;
- Abolish the requirement of informing in advance the authorities of upcoming meetings of the organization's elective bodies and therefore the possibility for the minister to send a representative to these meetings; in any case amend the legislation so that the attendance of the ministry's representative is optional and cannot affect the validity of the decisions made by the organization's elective bodies;
- Abolish the required authorization of the administrative authorities for any out door activities or any public meetings or event;
- Allow Jordanian civil society organizations to form national, regional and international coalitions and to affiliate with international bodies without permission of the minister.

Funding and financial issues

- Abolish all remaining restrictions regarding access to foreign funding for civil society organizations;
- Allocate part of the public funds to support the programs and projects run by civil society organizations;
- Exempt civil society organizations from taxes and customs duties;
- Ensure that funds of associations can be frozen or seized only on the basis of a final judicial ruling.

Monitoring, good governance and transparency

- Repeal all legal provisions allowing for criminal proceedings, which may lead in some cases to imprisonment, in relation to civil activities of the organizations or their members.

3. Concerning the environment required for a sustainable development of the civil society

- Put an end to the "security mentality" when dealing with civil society organizations in general and human rights organizations in particular;
- Allow and formalize the participation of civil society organizations in the decision-making processes regarding public policies.



Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - Political, Democratic and Human Rights Specific Contexts

Lebanon is a multi-confessional presidential republic, independent since 1943. The Constitution dates from May 1926 and has been amended several times, most recently by the Charter of Lebanese National Reconciliation (Taëf Agreement) of October 1989 which ended 15 years of civil war. Lebanon's political system is characterised by power sharing between religious confessions. According to the Taëf Agreement Christians and Muslims are represented on a 50:50 basis in the Parliament, the Council of Ministers as well as in all high ranking civilian and military posts. All sub-communities Alawi, Druze, Shia, Sunni within the Muslim community, and Armenian Catholic, Armenian Orthodox, Greek Catholic, Greek Orthodox, Maronites and Protestants within the Christian community are represented in a "proportional" manner within this overall ratio.

The Lebanese citizenship is granted only by membership to a denominationally determined group, however, it is theoretically possible to be Lebanese without having a religion (see the campaign for the withdrawal of the confessional marital status register). The peculiarity of the Lebanese system which is supposed to encourage greater space of freedom compared to other countries in the region, has sometimes formed a barrier to individual freedom and respect for human rights. It is indeed very difficult to impose major restrictions in any permanent fashion to the 18 different confessional groups whom all enjoy full freedom regarding personnel status and education, areas traditionally reserved for the central government in any other country. Unfortunately when it comes to impose restrictions on individual freedom, the main religious leaders are all in agreement to expand their own rights and restrict those of citizens, as in the example of bringing optional civil marriage to the legislation.

At the time of writing and following the withdrawal of the Syrian

army from Lebanon and the war between Israel and Hizballah, Lebanon is facing a period of political uncertainty where the question of the continued influence of Syria and of other regional powers over Lebanon's political life are at stake.

2 - Civil Society Landscape

Lebanon has been a part of the United Nations since its founding in 1945 and has ratified a number of international instruments which reaffirm the freedom of associations. Some texts concerning this fundamental freedom are also found in its Constitution and its laws. It should also be noted that the Associations Act also covers political parties.

However, freedom of associations in Lebanon is not absolute, far from it.

Foreigners are not allowed to form associations in the same manner as the Lebanese. A special law requires that prior authorization be taken by decree to the Council of Ministers for the creation of a foreign association, and introduces strict control over all activities of the association.

Moreover, homosexuality is forbidden and so are the associations of homosexuals.

Similarly, the young have no freedom to form and manage associations. The youth associations - and sports - are exempt from the law of associations, and are subject to the prior authorization of the competent minister, and the lives of these associations is completely governed by the ministry and subject to the discretion of the minister and its director general. The comprehensive reform of the interior is considered as the overhaul of the law, but it seems that the desire to liberalize the law has eroded recently.

Finally, the legislation regulating the trade unions is also very restrictive and for establishment of trade unions there is required a double authorization from the Minister of Labor as well as that of the Interior Minister. The freedom to join or not to join a union is not respected, neither that of negotiating, any more than the right to gather. The administrative control affects all levels of life and functioning of the association

Civil society is highly diversified for the reasons cited above. This diversity is reflected in associations. Thus, operating on Lebanese territory are associations of all types : Human rights associations¹ ; legal aid associations² ; associations combating torture³ ; women associations⁴ ; children associations⁵ ; single mothers associations⁶ ; prisoners associations⁷ ; juvenile delinquents associations⁸ ; handicapped associations⁹ ; environment associations¹⁰. Much of the Lebanese NGOs have a proximity to power, however, it is not always obvious to qualify them as GONGOS, with the exception of associations and charitable developments directly related to senior political leaders or run by their wives.

Lebanon, like other countries in the region, has *Wakfs* that could be labelled as “foundations” having generally a charitable objective. They can belong to a community for an undetermined period or be created by individuals for a determined period.

On the other hand, and in view of the policy of repression exercised by the government over a period of time - in violation of the law in force, and to avoid obtaining a license, certain associations have opted for the creation of civil societies, even commercial, even if the latter does not give them the advantages granted to associations by law.

Nevertheless, due to the repressive policy implemented by the government in violation of the law in force, and to circumvent the obtaining of a license, some associations resorted to the creation of civil companies¹¹ , or even commercial companies¹² , even though this deprives them from the advantages granted to associations by the law.

3 - Lebanese Legislation

a) International Instruments Ratified by Lebanon

- United Nations Charter and Universal Declaration of Human Rights that Lebanon adopted as a founding member of the United Nations Organization.
- International Covenant of Civil and Political Rights: Lebanon ratified this covenant on November 3rd 1972 after the promulgation by the government of implementation decree No. 3855 of September 1st 1972.

b) Internal Instruments

- **The Lebanese Constitution**, The Lebanese constitution guarantees the principle of the freedom of association in its article 13.
- **Law and Decrees Governing Associations** qui régissent la matière des associations
 - Ottoman association law of august 3rd 1909
 - Order No. LR 369 of December 31st 1939, issued by High Commissioner Gabriel PUAUX, that governs foreign associations in Lebanon and that is still in force;
 - Decree-law No.10830 of October 9th 1962 prohibiting anybody from endeavouring to *continue an association that was dissolved for crime against state security*;
 - Law No.16/72 of December 15th 1972 that subjects youth and sport associations to the control of the Ministry of National Education and Sports;
 - The second chapter of Labour Code (article 86 and f.) of September 23rd 1946 and decree No. 7993 of 2/4/1952 regarding the creation of *employers associations and workers trade unions*;
 - Decree No.17199 of August 18th 1964 regarding *cooperatives*;
 - Decree-law No. 35 of May 9th 1977 regarding *mutual funds*;
 - Decree-law No.87 of July 30th 1977 regarding *public interest institutions*;
 - Article 22 of decree No.5734 of October 20th 1994 that created a “*Service for Volunteer Associations and Organizations*” within the Ministry of Social Affairs.

Part I : FORMATION AND INCORPORATION OF ASSOCIATIONS

1 - Does the system allow for non-declared or unincorporated associations?

The Lebanese system does not recognise “secret associations” that are prohibited under the 1909 law that laid down criminal penalties that could lead up to prison in addition to the payment of a fine (art. 337,338, 339 of the Penal Code).payement d'une amende (art. 337, 338, 339 du Code pénal).

¹ Association for the Defence of Rights and Freedoms (ADDL), Lebanese Human Rights Association, Lebanese Association for Democratic Elections (LADE), Lebanese Association for Civil Rights, Amnesty International, Palestinian Association for Human Rights (Rased), Lebanese NGOs Forum, Palestinian Organisation for Human Rights, Lebanese Centre for Human Rights, Foundation for Human Rights and Humanitarian Law, Lebanese Association for Education and Training, etc...

² Lebanese Public Interest Centre (PINACLE), Catholic Relief Services that offers legal aid to migrant workers, Caritas, Frontiers, Ruwas Association, etc...

³ Al-Khiam Centre for the Rehabilitation of Torture Victims, Committee for the Support of Lebanese Detainees in Syrian Prisons (SOLID), etc...

⁴ Lebanese Women Council, Civil Committee for the Follow up of Women's Affairs, United Women Committees of the North, Lebanese Woman's Voice, League of Women's Rights in Lebanon, Kafa, etc...

⁵ Children of Lebanon” association

⁶ Good Shepherd Sisters Home

⁷ Prisoners' Rights Observatory, Coordination and Action Committee for Prisoners, Justice and Mercy Association, etc.

⁸ Juvenile Delinquents Aid Association, Dar al Amal, Offre Joie, Union for the Protection of Childhood in Lebanon, the Lebanese Association for the Protection of Juvenile Delinquents in Lebanon, etc...

⁹ Arc en Ciel, National Association for the Rights of Handicapped, Lebanese Physical Handicapped Union (LPHU), Handicapped Forum, Al Zawrak, Lebanese Autism Society, etc.

¹⁰ Green Line, Lebanon Nature Environment, SPNL, Green Forum, Green Peace Lebanon, Society for the Protection of Nature, AFDC, etc...

¹¹ For instance, Mounzer Foundation has thought in the beginning to create a civil company, then ended up creating this company in the USA and opened a branch in Lebanon

¹² Ex: Zawayya Association

2 - Is the registration system based on Licensing or simple information/notification?

The Lebanese system is based on a simple information procedure called "*aalm wa khabar*", a document delivered by the Administration after the deposit of the declaration. It is at the same time a receipt proving that the association has duly deposited the declaration and an acknowledgement of receipt proving that the Administration is duly informed of the existence of the association. It is a simple notification of the public authorities of the existence of the association after its creation and it does not constitute an approval from the Administration. Therefore, the Administration can not refuse to take note of the creation of the association and give the acknowledgement of receipt.

Exceptions are provided for in specific laws. Some associations are thus subjected to a prior authorisation such as foreign associations which need a decree issued by the Council of Ministers, youth and sports associations that are subjected to the authorisation of the minister of National Education - General Direction of Youth and Sports, cooperatives that are subjected to the authorisation of the minister of Habitat and Cooperatives, and workers trade unions and employers associations that need a double authorisation, from the minister of Labour and from the minister of the Interior.

3 - What are the bases upon which registration can be rejected? (e.g. race, security, religion, politics)

The causes for the rejection of registration are the following:

- i. If the declaration is incomplete and does not contain all necessary information;
- ii. In accordance with the *rationae loci* competence, if the founding members addressed the administration outside the premises of the association headquarters;
- iii. If the object of the association is unlawful, in accordance with article 3 of the law; but in this case, the rejection must be followed by the dissolution of the association by a decree issued by the Council of Ministers.

4 - How easy or difficult is the registration: (e.g. time, cost, number of incorporators)

Theoretically, the ministry of the Interior must deliver the "*aalm wa khabar*" without any delay. But in practice, associations complain about delays in the delivery of the acknowledgement of receipt and about favouritism to the benefit of some associations. For example, FABRIC, an artistic association, deposited its papers at the Ministry of the Interior on July 11th, 2006 and until May 1st, 2007, the "*aalm wa khabar*" has not been delivered yet. ZAWAYA, another artistic association, deposited its statutes in October 2006 and May 1st, 2007, the association did not yet received the "*aalm wa khabar*". Others associations get their "*aalm wa khabar*" in two days only (That was the case of the May Chidiac Foundation for instance).

Furthermore, contrary to the provisions of the law, the ministry sets as a condition for obtaining the "*aalm wa khabar*" the payment of the publication in the Official Gazette fees. This requirement leads to an additional delay. Moreover, the high cost of publication fees can be prohibitive given the very modest minimum wage applied in Lebanon.

5 - Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative?)

We don't know any legal or judicial procedure to accelerate the delivery of the acknowledgement of receipt except for the intercession of the minister which constitutes a resurgence of the minister's discretionary power in the association field. A lawsuit before the State Council is possible but takes years to lead to any results.

6 - Does registration automatically entail obtaining separate legal personality?

An association is born from the will of its founding members and their signature on the statutes. The obtaining of the legal personality is automatically acquired after the deposit of the declaration and the file of establishment. It is not conditioned by the by the delivery of the registration receipt which is provided afterwards.

7 - Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust a "Wakf")

An alternative would be to incorporate as a civil or commercial company. Individuals can also create *wakfs*. But, except for the "*wakfs*", companies will pay income tax and cannot benefit from VAT discount.

8 - Some Illegal Practices¹³

a) Illegal practices carried out by the Administration

The Administration exercises a guardianship power on some associations that are declared of "public utility" by controlling the attribution of this label. Even though some criteria have been set, the attribution of this label by the Administration remains discretionary and some times even arbitrary¹⁴. Associations that receive the "public utility" label benefit from ensuing financial subsidies contrary to those that do not obtain this label.

The Administration has also implemented in the eighties a practice that is contrary to the law by submitting the "*aalm wa khabar*" associations to the prior authorisation regime. Although circular No.10/am/2006 of 19/5/2006 of the ministry of the Interior has abolished this practice, the latter is still implemented and the "*aalm wa khabar*" are delivered at the minister's discretion despite the existence of a uniform and stable jurisprudence enshrined by an important decision of the State Council in 2003.

¹³ Regarding all illegal practices of the Lebanese Administration, cf. reports of the American State Department, on the department's website reserved to human rights in the world: <http://www.state.gov/g/drl/rls/hrrpt>

¹⁴ We can give the example of the Lebanese Association for Democratic Elections (LADE); report of this association on the 1996 elections, Dar el-Jadid, Beirut, 1997

The Administration conducts investigations before the delivery of the acknowledgment of receipt of the " *aalm wa khabar*". It refuses to receive the declaration and to give the acknowledgment of receipt to some categories of associations. The current Ministry of the Interior refuses to regularise the situation of associations that never received the acknowledgment of receipt and that do not have in fact any file at the ministry. It accepts to "take note" of the existence of the said organisation as of the date of the new deposit, even if the association had made before a declaration through a bailiff (ADDL, CLDH, Zawaya etc.). It used to impose the models of pre-printed statutes (standard statutes) containing clauses conferring to the ministry of the Interior interference powers (this practice has ceased now).

b) Illegal practices carried out by associations

Some people create fictitious associations to benefit from fiscal advantages granted to associations. This fraud is widespread and seriously harmful to a healthy association life.

Part II : DISSOLUTION AND SUSPENSION OF ASSOCIATIONS

1 - What are the causes/grounds of dissolution? Suspension?

An association can be dissolved by the General Assembly. In this case, the statutes must have specified the quorum and necessary majorities for this purpose. If the statutes are silent, the dissolution decision must be taken unanimously by all members, in accordance with the principle of contractual freedom established by article 166 of the Code of Obligations and Contracts an association can be dissolved by the arrival of the expiry date specified in the statutes.

An association can be dissolved by a penal judicial decision for having an unlawful object pursuant to articles 336,337 and 338 of the Penal Code prohibiting associations with an unlawful object as well as secret associations.

An association can be dissolved by a decree of the Council of Ministers for violation of law and good manners, violation of public order, stirring up coups or trying to overthrow the government, stirring up political discriminations. If the association is of a political nature, it can be dissolved if it is based on " *nationality or nationalism*"¹⁵. Associations of political nature can be dissolved by a decree of the Council of Ministers if their members committed, in their partisan capacity, crimes harming national security and were convicted without the possibility of appeal (Article 1 of decree No. 10830 of 9/10/1962). The Council of Ministers can also pronounce the dissolution of a non-declared association.

¹⁵ This provision results from the Ottoman law of 1909, when the Ottoman Empire had started the modernization of its laws and institutions, and aimed in particular at Arab nationalism.

¹⁶ Cf. the 2006 report of the American State Department on human rights in Lebanon, <http://www.state.gov/g/drl/rls/hrrpt/2006/78857.htm>, as well as reports of previous years.

2 - What authorities pronounce these decisions? (role of the Judiciary, Executive ...)

Dissolution or suspension decisions are taken:

- Pursuant to the members' will (GA decision or arrival of the expiry date specified by the statutes),
- By a decree of the Council of Ministers,
- By a judicial decision (civil, administrative or penal court).

Part III : ORGANIZATION AND OPERATION

1 - What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (are such documents imposed? to what extent?)

The law sets only the general framework for the management of the association, leaving to members themselves the task of agreeing on administrative details. The only obligation imposed by the law is to have statutes comprising the association's name, objective, General Assembly and administrative committee composed of two members at least.

As for the by-laws, the law makes no provision for them. But, according to customary practice, the statutes are divided into two parts: the statutes themselves and the by-laws.

An association can amend its statutes at any moment and does not need a prior authorisation for this purpose. The only obligation is to observe the rules set by the statutes and by-laws and inform the Ministry of the Interior. The non-notification of the ministry exposes it only to the payment of a fine and cannot constitute grounds for the dissolution of the association.

The practice followed previously by the administration was different and constituted a blatant violation of the law¹⁶. This period is now revolved.

2 - How strict is the level of freedom of members to adhere to or leave associations?

This freedom is guaranteed by the Lebanese law. All persons have the right to join or not to join an association provided that they fulfil the conditions imposed by the law and by the association's statutes and by-laws. The law prohibits people less than 20 years old to join associations. It also bans the membership of people not having the capacity i.e. deprived of their civil rights or sentenced to a criminal penalty. But these conditions only set a minimum threshold. Associations have also the right to expel (or exclude) members. Exclusion decisions can be appealed before the Appeal Court.

3 - Are there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by "supervisors"?

This freedom is guaranteed by the Lebanese law that does not comprise any provision restricting the freedom of the association to choose its Executive Committee members. But Lebanon witnessed abusive interference by the Administration during the Lebanon civil war in the 70s'.¹⁷

4 - Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. Board).

We haven't had reported in Lebanon a restriction, de facto or de jure, limiting or banning the accession or participation of women in associational offices particularly the Executive Committee.

However, 1) there is no text banning any form of discrimination, 2) we can not know whether the statutes of some associations contain prohibitions or restrictions of this sort, 3) even if they did, these restrictions are not deemed illegal and can not constitute the object of legal proceedings before the judiciary.

5 - Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

The Lebanese law guarantees the freedom of the members of an association to decide the activities of their association. Previously, standard statutes that were imposed on associations at a given period of Lebanon's recent history gave full powers to the Administration to interfere in the association's activity and to decide its projects and activities. Currently no such practice is reported.

6 - Is the association's right to freely assemble or organize private and public meetings, move freely (including international travel) restricted in any way?

This freedom is recognized by the Lebanese law. In the past, it was violently restricted and the dates as well as the agenda of the association meetings had to be communicated in advance to the ministry of the Interior who would send a delegate to attend the meeting. This practice has disappeared today¹⁸.

Furthermore, we have not heard of a case where members of a given association were banned from leaving Lebanese territories.

7 - Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

This right is recognised by the Lebanese law. The only violation is probably phone-tapping. But this practice does not only target human rights activists in particular.

Access to media, publications and internet sites development are totally free within the limits provided for by the law (particularly the press law).

8 - Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

There are no restrictions on this freedom both at local and international levels.

9 - Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

It seems that a new trend has started to emerge in Lebanon lately on the initiative of the European Union and the United Nations. Associations were (shyly) solicited for advice for the formulation of the Action Plan at the time of the conclusion of the Association Agreement between Lebanon and the European Union, in the framework of the European Neighbourhood Policy.

In parallel, the Parliamentary Human Rights Commission is drafting, in collaboration with the UNDP, an Action Plan for all human rights issues. For every matter, a specialist from the association milieu is solicited to conduct a study to be presented and discussed at the Commission.

10 - Are there effective remedies and appeals?

The member who wants to contest elections results or any other decision of the Executive Committee can resort to the judiciary and engage in legal proceedings before the Court of first instance. The exclusion decision of a member can be appealed before the Appeal Court. An association dissolved by decree of the Council of Ministers can challenge the decision before the State Council.

Part IV: FUNDING AND TAXATION

1 - Are there any limitations on the rights of associations to own property and funds?

The Lebanese law does not include any limitations on the rights of associations to receive and own assets and funds.

2 - Are there any restrictions that limit the right of associations to use funds in ways different than what their statutes stipulate?

The Lebanese law does not include any limitations on the rights of associations to use the funds other than by the conditions of their granting.

3 - Are there specific limitations on receiving foreign funds?

The Lebanese law does not include any specific limitations on receiving foreign funds.

4 - Do associations enjoy any financial or taxes privileges? To what extent?

As for tax benefits, associations do not pay income tax even if their balance sheet shows profits. The VAT is even reimbursed immediately to associations upon the submittal of receipts and

¹⁷ Abovementioned American State Department 2006 report.

¹⁸ Abovementioned report of the American State Department

of the acknowledgment of receipt of the "aalm wa khabar". But because of the delay of the administration in delivering the acknowledgement of receipt the association that was declared but did not receive yet the "aalm wa khabar" can not benefit from the VAT discount.

5 - Are public funds made available to associations? How? Are these processes prone to discrimination?

Some association are granted access to public funding. Some associations can benefit from the "public utility association" label, attributed exclusively by the Ministry of Social Affairs to associations having a social objective, and can enjoy thus ensuing fiscal advantages. The attribution procedure of this label is prone to discrimination. In fact, the law allows abuses and the decision to attribute the label or deny it is relatively arbitrary.

As for the "consent" notion, it does not exist and the "aala wa khabar" associations do not enjoy any assistance from the government.

The Administration imposes an indirect limitation on the freedom to create associations by prohibiting banks from opening accounts to associations that do not submit their "aalm wa khabar".

**Part V:
OVERSIGHT, GOVERNANCE
AND TRANSPARENCY**

1 - What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, security apparatus)? How consistent are the activities of these authorities with the principles of freedom (check principle 16 of the Declaration)?

a) Administrative Control

The ministry of the Interior imposes a subsequent control on the creation of the association and its activities. Every year, the records imposed by the law should be sent to the ministry allowing it to exercise its control. In the event of a proven violation of the law by an association, it is the ministry that proposes its dissolution by administrative means, i.e. by a decree of the Council of ministers. This practice is obviously in contradiction with article 17 of the Declaration .

b) Judicial Control

Different jurisdictions are competent to settle disputes pertaining to associations.

Administrative jurisdictions: The State Council is competent in disputes opposing associations and the ministry of the Interior.

Judicial jurisdictions: judicial jurisdictions are competent when the dissolution of the association is judicial. It is the Public Prosecution that brings the association before justice and demands its dissolution. They are also competent to settle disputes between members of an association and its Administrative Committee.

Penal jurisdictions: the association and its members can be brought before penal jurisdiction in some cases related to their civil activities, which is contrary to international law.

2 - Are accounts and other information transparently available to the public?

Accounts transparency is not regulated by the Lebanese legislation in a very accurate manner. The law compels associations to keep accountancy books. The verification of these books and other written proofs can be requested at any moment by the Administration. However, the ministry of the Interior is abusively imposing sanctions and fines on associations that present spontaneously their records but with a small delay after the supposed date of the submittal of records specified by the Administration in January. Both the Lebanese Association for Political Sciences and Civil Peace Association paid the price for this policy.

Accountancy books are not accessible to the public. There is no register that could give information on associations and their founding members. But the ministry is imposing the publication in the Official Gazette, a very costly measure that is not required by law.

Moreover, bank secrecy bans anybody without authorisation from having access to any accounts whatsoever. This element aborts any transparency policy in this regard.

3 - What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?

- a) The dissolution of the association in the abovementioned cases;
- b) Penal sanctions for members of secret or non declared associations that could lead up to prison as well as the payment of a fine (art. 337, 338, 339 of the Penal Code).

THE LEBANESE GOVERNMENT IS CALLED UPON TO:

1. With regard to the political, democratic and human rights situation

- 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 Lebanon, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Ensure that both versions of the Constitution are similar in French and in Arabic regarding "Freedom of association";
- Eliminate all forms of discrimination based on, *inter alia*, gender, race, language, religion, political opinions sexual orientations or membership to a national minority in all matters pertaining to the organizations of civil society; set up an adequate complaint mechanism.

2. With regard to the laws and practices pertaining to associations and civil society organizations

- Redraft the text in a way to delete any reference to ottoman authorities and ottoman currency;
- Abrogate article 4 that establishes racist and anti-democratic rules.

Formation and Incorporation

- Cancel all provisions pertaining to secret associations since this notion has become obsolete and adopt instead the distinction between declared and non-declared associations, the latter not enjoying moral personality status and unable to benefit from all advantages that are attributed to declared associations;
- Ensure that the delivery of the *aalm wa khabar* is not submitted to the publication in the official Gazette;
- Ensure the registration of the association if delays in delivering of the *aalm wa khabar* are not legally respected, not motivated and unexplained;
- Put an end to a blatant clientelism in the delivery of the *aalm wa khabar*;
- Put an end to the investigations of the General Security, State Security or Internal Security Forces prior to the delivery of the *aalm wa khabar*;
- Send a circular to all other ministries and banks asking them to deal with the association as a moral personality and accept any proof of declaration without waiting for the delivery of the *aalm wa khaba*.

Organization and Operation

- Abrogate part of article 5 of the law on associations regarding to members' age. This article is unconstitutional since the constitution sets majority at 18 years.

Funding and Taxation

- Introduce the notion of ministerial consent so that the State could subsidise associations in an objective and non-discriminatory manner;
- Implement article 17 of the law on associations regarding the label of public association that should be given by decree issued by the Council of Ministers on the advice of the State Council, but that is being granted today by the ministry of Social Affairs in violation of the law. The labelling of public utility associations should benefit associations with a more diversified object, and establish more objective criteria.

3. With regard to the climate required for the sustainable development of civil society

- Ensure, by way of an adequate consultation system, the participation of associations to the decision-making process on policies of public interest. Associations were solicited for advice for the formulation of the Action Plan at the time of the conclusion of the Association Agreement between Lebanon and the European Union, in the framework of the European Neighbourhood Policy and it must be complimented;
- Create a register of associations that, for good publicity, would be kept, at least temporarily, at the Clerk's Office of the court of first instance, and that would be for free or for a symbolic fee;
- Eventually attach the Service of Associations of the Ministry of the Interior to a big ministry that would gather, in addition to the common law associations, youth and sports associations, political parties, foundations, *waqfs*, and religious associations.

Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 – Political, democratic and human rights specific contexts

The political system of Libya is unique and, within the Euro-Mediterranean region, highly differentiated by the fact that it does not have an independent civil society. The number of restrictions and limitations to the exercise of freedom of association is extremely high.

On September 1, 1969, a military coup (known as the al-Fatih Revolution) led by colonel Muammar al-Qadhafi overthrew King Idris and abolished the monarchy. Initially, the country was governed by a Revolutionary Command Council (RCC) which proclaimed the Libyan Arab Republic. On December 11, 1969, the RCC issued a Constitutional Proclamation that guaranteed fundamental rights, such as the rights to work, to health, to education, to religious freedom and to the inviolability of one's home. However, in the case of the freedoms of expression and opinion, the Proclamation stated that they were guaranteed "within the limits of public interest and the principles of the Revolution". In 1971, the RCC established the one-party system under the name of Arab Socialist Union (ASU). This was to be confirmed by a law adopted in 1972, known as Law 71. This law prohibits all political entities or groups from advocating any other doctrine and principles than those of the al-Fatih Revolution of 1969. Article 3 of Law 71 provides for the death penalty for individuals who create, join or support political groups prohibited by law. Hundreds of Libyans have been imprisoned, and some condemned to death, for having contravened that rule.¹

On April 15, 1973, in the course of a public celebration in Zwara, Qadhafi expounded his five-point program (al-Niqat al-Khams) "to further the Al-Fatih Revolution". This program proclaims the necessity of a "cultural revolution" to allow the Libyan people to govern themselves. However, the second of the five points is

devoted to the suppression of any political party or group that pursues ideals that are at variance with those of the Revolution. Furthermore, it criminalizes any form of cooperation with these groups, some of which are explicitly assimilated to enemies of the State, such as communists, atheists, members of the Muslim Brotherhood, advocates of capitalism and agents of Western propaganda.

In the Green book published in 1975, Qadhafi rejected the concept of representative democracy and called for the establishment of a system of direct democracy based on "people's committees". In reality, these "people's committees" have become a tool for oppression in the hands of an autocratic regime.

In order to project a more acceptable image of the regime internationally, the People's General Congress adopted in June 1988 a "Green Charter of Human Rights of the Jamahiriya Era". That Charter promoted the independence of the judiciary, freedom of thought, gender equality and prohibited any penalty that violated the dignity and the integrity of the individual (the abolition of the death penalty was even envisioned).

During the last three years, the Libyan government has adopted a series of measures aimed at convincing the international community that Libya was making genuine progress in the field of human rights. For instance, the People's general committee for public security and justice was divided in two separate departments, with the aim of guaranteeing the independence of the judiciary. The People's Court, which had become notorious for its systematic violation of the right to a fair trial, was dissolved in 2005. The latest measure taken was the freeing of long-term political prisoners, including 86 members of the Muslim Brotherhood. However, Qadhafi and his entourage appear little inclined to implement a real reform, in particular as regard to the freedoms of expression and association, which would threaten to lessen their grip on power, which has lasted more than three decades.

¹ Human Rights Watch, «Libya: Words to Deeds, The Urgent Need for Human Rights Reform», January 2006 p.13. See <http://hrw.org/reports/2006/libya0106/libya0106web.pdf>.

Generally, the government maintains that in a political system where "People's power" is paramount, the freedoms of association and assembly are unnecessary. Only associations that "defend the professional interests of their members" are authorized. In practice, the few associations in existence are tightly controlled by the revolutionary committees. Workers' representation is limited to the National Federation of Labour Unions, the Federation of Chambers of Commerce, the Federation of Chambers of Trade, the Federation of Chambers of Agriculture, and the General Federation of Producers Labour Unions, all closely supervised by the government.

2 – Legislation

Libya has signed all major United Nations conventions on human rights. It is clear that adherence to those instruments has remained a dead letter when one looks at the internal legislation and the ongoing practices of the authorities. Furthermore, Libya has made major reservations when it signed a number of those conventions, in particular regarding commitments deriving from the Convention on the resolution of conflicts between states and the Convention on the elimination of all forms of discrimination against women (only applied "in conformity with Islamic Law"). A certain number of reservations pertain to Israel. Finally, Libya has often refused to allow specialized agencies of the United Nations to make evaluation visits to the country.

At the regional level, Libya is also a signatory state of several human rights instruments, in particular the African Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child, the Arab Charter on Human Rights, the Protocol of the African Charter on Human and People's Rights setting up the African Court on Human and People's Rights, as well as the Protocol of the same Charter on Women's Rights in Africa.

Article 6 of the Great Green Charter on Human Rights states that the people are "free to form unions, trade unions and leagues to defend their professional interests".

Article 8 of Law 20 on the strengthening of freedoms (1991) guarantees freedom of expression and states that citizens shall not be prevented from exercising the right to express their opinion in public, unless they abuse that right in order to elude the People's authority or for personal ends. It also states that it is prohibited to promote ideas and opinions secretly or to attempt to impose such ideas and opinions by way of incitation, force, intimidation or fraud. Article 9, which guarantees freedom of expression, states that citizens are free to set up and join unions, leagues, social and professional federations and charitable associations in order to protect their interests or achieve the legitimates objectives for which those institutions were established. That law was never implemented in practice.²

The Law on the code of honour, adopted in March 1997,

authorizes the collective punishment of tribes, families and communities that have protected or assisted individuals or groups guilty of terrorism, acts of violence, illegal possession of weapons or attempts to subvert "People's power". Furthermore, various restrictions written down in the Constitutional Proclamation of 1969, the Declaration of People's Power, the Charter of Human Rights, Law 20, as well as other laws, prohibit the formation of associations based on an ideology at variance with the principles of the al-Fatih Revolution. For instance, 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). The Penal Code also provides for the death penalty for anyone who supports, creates, joins, administers or finances any group or association prohibited by law or whose objectives or activities *undermine the government*. Anyone who promotes in any way principles or theories that aim at altering the existing system of government is liable to 10 years imprisonment.

Freedom of association is now governed by Law 19 of 2003, which amended Law 111 adopted in 1970.

Part I: FORMATION AND INCORPORATION

1 – Does the system allow for non-declared or unincorporated associations?

Undeclared or unregistered associations are not allowed in Libya.

2 – Is the registration system based on licensing or simple information/notification?

Different bodies have authority over the registration process depending on the type of association (regional, national or international). A regional association must lodge a request with the regional People's General Congress, while a national association must lodge a request with the secretariat of the General People's Congress. An international association must apply to the People's General Congress.

3 – What are the bases upon which registration can be rejected (e.g. race, security, religion, politics)?

The registration request may be rejected if the objectives of the association contravene the principles of the Revolution.

4 – How easy or difficult is the registration (e.g. time, cost, number of incorporators)?

Under Law 19 of 2003, an association must present a registration document signed by all founding members, who must number at least 50. A fee of 50 dinars must be paid for each request.

² Human Rights Watch, « Libya: Words to Deeds, The Urgent Need for Human Rights Reform », January 2006, p. 7. See <http://hrw.org/reports/2006/libya0106/libya0106web.pdf>

5 – Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative)?

There are none.

Part II:**DISSOLUTION AND SUSPENSION**

An association may be suspended for any activity that contravenes the principles of the Revolution. Article 30 of Law 19 states that *the security unit of the People's General Committee (PGC), or that of the local People's Congresses, have the power to supervise the activities of any association. The security unit may suspend any decision taken by the association or its executive committee.* The same law allows the PGC to set up a committee to run the association if its executive committee is dissolved. The secretary of the GPC or that of the local People's Committee may merge several associations if they pursue the same goal, without having to inform their members. In preparation for such an amalgamation, they may close down the premises of an association for a maximum period of 30 days. The Revolutionary Committees, "*protectors of the Revolution*", have the power to dissolve any association that they consider a threat to the "*authority of the people*".

Part III:**ASSOCIATION AND OPERATION****1 – What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object (Are such documents imposed? to what extent?)**

Members of an association may draft and amend their own statutes and rules and determine the goal and objectives of their association, provided those goals are not at variance with the principles of the Revolution. In other word, associations may exist as long as they do not undermine in any way the orientations, policies and action of the government. In practice, the statutes and rules of an association that do not promote the principles of the Revolution are seen as illegal. Such restrictions do not allow for the establishment of independent associations. All existing associations are linked directly or indirectly (through government-controlled unions) to the government. The revolutionary committees supervise and control all the activities of the associations.

2 – How strict is the level of freedom of members to adhere to or leave associations?

Article 5 of Law 19 stipulates that members of an association may leave the association at any time. In fact, that provision is seldom respected. The revolutionary committees' main task

is to incite the population to participate to the Revolution. They therefore pressure the population to join official associations, and rely on coercive practices to achieve that goal (risk to lose one's job, black lists, impact on family members, threats, social pressure, etc.).

3 – Is there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by "supervisors", elections?

The government may interfere with the internal rules of associations and impose its own management team and protocols, disregarding the statutes and rules of the association, as well as the wishes of its members. This interference occurs through the revolutionary committees or government-controlled federations.

4 – Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

The freedom to decide on projects and activities is restricted by the fact that those may not contravene or be at variance with the principles of the Revolution.

5 – Is the association's right to freely assemble or organize private and public meetings, to move freely (including international travel) restricted in any way?

Libyan associations may not organize private or public meetings without the prior authorization of the government. Moreover, any travel on behalf of an association (at the regional, national and international level) is also subject to prior authorization.

6 – Are associations subjected to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

Associations do not have free access to the media, nor the right to publish or develop internet sites. All these media are tightly regulated and controlled by the government.

7 – Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

Associations may cooperate and establish network with other associations inside Libya. However, cooperating and networking with international associations is tightly controlled. Article 208 of the Penal Code makes provision for a prison sentence for anyone who set up an international association in Libya without prior authorization. Anyone who creates, organizes or run an international association in Libya by supplying false information faces the same penalty.

Part IV:**FUNDING AND TAXATION****1 - Are there any limitation on the right of associations to receive and own property and funds? How?**

Law 19 clearly set forth the rules pertaining to the right of associations to receive funds. While Article 11 states that the budget of the associations is made of annual membership fees, the income from its activities and of donations, Article 15 prohibits an association from raising funds by any mean, except at the time of its formation.

2 - Are there specific limitations on receiving foreign funds?

Libyan associations are not allowed to receive funds from foreign sources without prior authorization by the government. The government is very suspicious of any foreign funding.³

3 - Do associations benefit from tax benefits? Under what conditions?

Law 19 is silent regarding any tax benefits for associations.

4 - Are public funds made available to associations? How? Are these processes prone to discrimination?

All existing associations are financed by the government.

Part V:**CONTROL AUTHORITY, GOVERNANCE AND TRANSPARENCY****1 - Are accounts and other information transparently available to the public?**

The law does not require the associations to make their accounts public. On the other hand, they must make those accounts available to the secretary of the local People's Congress or the secretary of the People's General Congress (PGC).

³ Ibid. p. 43.



THE LIBYAN GOVERNMENT IS CALLED UPON TO:

1. With regard to the political, democratic and human rights situation

- 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 Libya, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Accordingly, initiate a process of reform with the aim of transposing into national law and the institutions of Libya all the international commitments undertaken by Libya;
- In particular, 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;
- Lift all reservations pertaining to a number of provisions of the international conventions signed by Libya;
- Abrogate all provisions that criminalize the activities of political parties and associations.

2. With regard to the laws and practices pertaining to associations and civil society organizations

- Void all the declarations and provisions where it is mentioned 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 (in particular, articles 19, 21, and 22 pertaining to the freedoms of association and expression), among others, Law No. 20 of 1991, the Code of Honour of March 1997, Law No. 71 of 1972 and the provisions of the Penal Code pertaining to the repression of independent associative activities (art. 173, 174, 176, 206, 207, and 208).

Formation and Incorporation

- Reduce to two the number of founding members required to form an association ;
- Establish a transparent and impartial registration system;
- Ensure, in particular, that the deposit of a registration request could be proven in various ways (administrative stamp, registered letter with receipt of reception, affidavit drawn up by a bailiff, etc), in order to put an end to the current practice of not following up on request deposits;
- Ensure that the registration of the modifications to the statutes of an association and changes within its corporate bodies will be governed by the same rules;
- Ensure that associations have access to judicial remedies against decisions of the authorities.

Dissolution and Suspension

- Abrogate all provisions that allow the authorities to dissolve an association on the grounds that its activities are "contrary to the principles of the Revolution", or deemed a threat to "the authority of the people";
- Prohibit the authority to arbitrarily order the merge of associations.

Organization and Operations

- Put an end to the arbitrary interference of the authorities, in particular the revolutionary committees, in the internal affairs of associations, whether that interference is direct or carried on under the guise of judicial proceedings;
- Authorize associations to draft and modify their statutes and decide on projects freely;
- Abolish the obligation to obtain prior authorization from the authorities for holding private or public meetings;
- Put an end to the restrictions limiting access to telephone, fax or internet services;
- Guarantee the right of members of associations to travel freely and put an end to the confiscation of passports and the arbitrary refusal to leave the country;
- Allow international organizations to operate in Libya under the same conditions granted to national associations;
- Lift all restrictions limiting the right of associations to cooperate and establish networks in Libya.

Funding and Taxation

- Amend the provisions of Law No. 19 of 2003 pertaining to the financing of associations, in particular those limiting the right to raise funds, in order to establish a fair and impartial system of access to funding;
- Lift all existing restrictions limiting access to foreign financing.

3. With regard to the climate required for the sustainable development of civil society

- Put an end the pressure applied on the population to incite people to join official associations;
- Free all human rights defenders and members of associations that are arbitrarily detained and guarantee, if the need arises, their right to a fair trial.



Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - Civil society landscape

In the Constitution of 1962, Morocco is defined as a "constitutional, democratic and social monarchy". King Mohammed VI, on the throne since 1999, is "the supreme representative of the Nation and Commander of the faithful". The King chairs the council of ministers, promulgates the laws, signs and ratifies international treaties. He is the supreme commander of the armed forces and chairs the Superior Council of the judiciary. Even if the Constitution provides for the separation of powers, the Sovereign retains a number of major executive prerogatives and exercises a certain degree of legislative power.¹

The dahir of May 21, 1914, inspired by the French legislation of 1901, established the legal framework for contemporary associations in Morocco.

The push for democracy, particularly strong in the aftermath of Independence, soon brought about the adoption of the Code of Public Liberties (Code des libertés publiques). With the encouragement of early governments, the associative movement spread quickly.

The Constitution of 1962 (amended several times since its adoption) enshrines the freedom of association as a constitutional right.

With the outset of political unrest in the late 1960s - the so-called années de plombs - the three dahirs on which rested the Code of public liberties were amended. It became no longer possible to form an association without prior authorization as it had been the case previously. Non-observance of the new legislative restrictions was punishable by law and the government was given the authority to suspend or dissolve existing associations. During that period, the associative movement suffered a setback

and the activities of associations were seriously hindered by government action.

Between 1973 and 2002, the government was vested with the authority to unilaterally suspend or dissolve an association by decree on the same grounds that a suspension or dissolution could be effected through the judicial process, namely: the objectives of the association (Article 3) ; in case the founding members or the corporate bodies of the association did not follow the required procedures when setting up the association ; "generally, if it appears that the activities of the association may threaten public order", a provision prone to the exercise of arbitrary power in practice.

The attitude of the authorities changed during the 1990s, although changes in the legislation only came in 2002. Now, an association may be dissolved by a tribunal if its objectives are deemed illegal, contrary to public morality, discriminatory or risk undermining the Muslim religion, territorial integrity or the monarchy.

Associations may take many forms:

- Associations of the types provided for in the dahir of 1958 on the freedom of association²;
- Association unions and federations, associations recognized as being in the public interest (ARUP), foreign-based organizations, political parties and organizations of a political nature, combat groups and militias governed by dispensatory or complementary regulations;
- urban landowners' unions, education and sports associations, irrigation network users' associations, professional associations of banking and credit institutions and micro-credit associations governed by the dispensatory regime provided for in the dahir of 1958, in particular pertaining to membership, withdrawal, operations and patrimony;
- So-called "Gongo" NGOs relied upon by the authorities to carry out a number of activities in the field of social work, protection of children against violence, etc.

¹ Working documents of the Commission, COM(2004)373 final

² Some of the major human rights NGOs of Morocco are: l'Association marocaine des droits Humains (AMDH), l'Espace Associatif and l'Organisation marocaine des droits Humains (OMDH).

2 - Legislation

Morocco has ratified, without reservations, the International Covenant on Civil and Political Rights and Convention No 98 of the ILO on labour unions and collective agreements (1949). While the national legislation has been modified a number of times since then, it still does not fully meet international standards. At the national level, freedom of association is enshrined by Article 9 of the Constitution.

Associations are governed by Dahir No 1-58-376 (November 15, 1958), amended twice since then. The first amendment, in 1973, authorized the administrative suspension or dissolution of an association and increased the penalties for violations of the rules on association. The amendment of 2002 mitigates those restrictions and brings some changes pertaining to, in particular, the declaration procedure, the legal capacity of declared associations and the procedure for the official recognition of an association as being in the public interest.

A consultation process began during the second half of 2006 between the associative movement and the Ministry of Social Development and Solidarity, as well as within the associative movement itself. This two-tiered consultation process aims at improving the "qualification" of associations in order to improve their capacity to better contribute to the development of society, and at putting in place an impartial procedure for creating partnerships with associations, at the level of government policies and territorial and local communities. It should be pointed out that it is in the framework of the inter-association consultation process that the project to draft an ethical charter of the associative movement has been developed.

The *Observatoire marocain des libertés publiques* (OMLB) was created at the end of 2006. This non-governmental initiative is the outcome of an advocacy and dialogue process, initiated in 2004, which focus on the implementation of freedom of association.

Part I: FORMATION AND INCORPORATION

1 – Does the system allow for non-declared or unincorporated associations?

Article 5 of the Dahir of April 10, 1973, states that associations are subject to a system of prior declaration. However, the law of 2002 imposes sanctions on anyone who, following the incorporation of an association, undertakes any of the activities provided for in Article 6 (declaration procedure). One may conclude from the wording

of that provision that non-declared association are authorized, provided they do not undertake activities such the day-to-day activities. However, since Article 5 of the Dahir of April 1973 has not been modified and is still in force, this interpretation is subject to caution.

2 – Is the registration system based on licensing or simple information/notification?

According to Article 2 of the Dahir of 1958, associations of persons may be freely created without prior authorization, provided they conform to the provisions of Article 5 (*association are subject to a prior declaration*).

3 – What are the bases upon which registration can be rejected (e.g. race, security, religion, politics)?

Since the reform of 2002 provides for the automatic issuance of a provisional receipt once the association has been declared, it appears that it would be difficult not to allow the declaration process go through. However, the authorities will occasionally block the declaration by invoking public security, the fight against terrorism or protection of territorial of integrity.

4 – How easy or difficult is the registration (e.g. time, cost, number of incorporators)?

The involvement of two individuals is sufficient to create an association. The declaration must be made with the local administrative authorities of the jurisdiction where the headquarters of the association is located. Article 5 of the Dahir specifies what information should be provided: corporate name and object of the association, names of the members of the corporate bodies, etc. The only expenses are the fiscal stamps.

The reform of 2002 provides for the obligatory issuance of a provisional receipt of declaration, and a permanent receipt within sixty days of the declaration "*otherwise the association may begin its activities in conformity with its statutes*". Modifications of the statutes are subject to the same procedure. However, this change in the law has not brought the expected results since the authorities, invoking the need to protect public security, the fight against terrorism or protection of territorial integrity, occasionally refuse to issue the receipt. For instance, the Réseau Amazigh pour la citoyenneté, created in July 2002, only obtained its receipt on June 16, 2006.

5 – Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative)?

In the event that the authorities have taken no action within 60 days of the declaration, the association may begin its operations. The authorities must justify their refusal whenever they refuse to

issue a receipt when they consider that the association does not satisfy the requirements of the law. In such cases, the association may lodge an appeal for abuse of power before an administrative tribunal and, as the case may be, before an administrative appeal court.

6 – Does registration automatically entail obtaining separate legal entity?

Article 6 states that any declared association may, through its president, *file a lawsuit or appear in court, acquire and administer public funds, membership fees, donations from the private sector, etc.* There is therefore no doubt that the association may initiate a civil action for any material damages it has suffered. The same applies in case of moral prejudice. The new code of penal procedure states that only associations recognized as being in the public interest may associate with a court action, provided the association has existed for at least five years at the time of the events, and that the public lawsuit has been initiated by the public prosecutor, or in case the victim has associated himself/herself with a court action.

7 – Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporation as a company, a trust, a Wakf)?

There are no legal alternatives to the association.

Part II : DISSOLUTION AND SUSPENSION

Following the reform of 2002, the dissolution of an association by administrative decision, allowed in 1973, is no longer permitted. Since then, a dissolution may only occur by judicial decision, and in cases for nullification provided for in Article 3: when the goals of the association are illegal or undermine the law, public morality, territorial integrity or the monarchy; when its action is discriminatory, undermines the Muslim faith, when it is *in breach of the law*, or when it engages into activities that are not provided for by its statutes (Article 36).

In its decision, the court set forth the manner in which the dissolution is implemented. The assets of an association that has obtained public funds are awarded to the State, to be used for charitable or other public assistance projects.

An association may appeal a judicial decision of dissolution.

Once an association has been dissolved, any person who illegally re-forms the association or facilitates the reunion of members of such an association is liable to a jail term of one to six months and a fine of between 10,000 to 20,000 dirhams.

Part III : ORGANIZATION AND OPERATION

1 – What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (Are such documents imposed? to what extent?)

The law is silent regarding the statutes, and merely states that they should not be contrary to the law and public morality or undermine the Muslim faith, national integrity or the monarchy, and must not be discriminatory. The underlying principle is freedom of contract.

2 – How strict is the freedom of members to adhere to or leave associations?

Any individual who possesses legal capacity is free to join or leave an association (Article 4). While the law is not explicit on that point, members of the military and judges may not join an association. However, the law does specifically prohibit those categories from belonging to a labour union.

3 – Is there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by “supervisors”, elections?

No interference in the corporate bodies of associations has been reported. However, the statutes must provide for the potential presence of government representatives in those bodies.

4 – Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. the Board)?

There is no legal restriction on the participation of women in the activities of associations. However, the weight of traditions still limits the participation by women.

5 – Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

Associations may freely decide on projects and activities.

6 – Is the association's right to freely assemble or organize private and public meetings, to move freely (including international travel) restricted in any way?

Associations are subjected to the same rules as individuals regarding freedom of assembly. The local authorities must be notified prior to the holding of a public meeting.

7 – Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

The law is silent regarding the right of association to communicate, to publish and to develop internet sites. As the issuance of passports has recently been made easier, the free

movement of members of associations should not be hindered. That said, the situation may change, depending on the political climate.

8 – Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

Associations are free to affiliate with a national network and set up unions or federations. Such structures are subjected to the same rules as associations. Likewise, there are no barriers impeding affiliation with regional or international networks. Foreign associations (associations whose headquarters are outside Morocco; whose officials are foreigners; or who have half of their membership outside the country but have their headquarters in Morocco) are subjected to the same rules as Moroccan associations. However, the government reserves the right to supervise their operations.

9 – Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

Associations have been consulted by the authorities during the decision-making process. For instance, studies undertaken by the Association démocratique des femmes du Maroc on discrimination against women in penal laws and the criminalization of sexual harassment, have been taken into account when important changes to the Penal Code were considered by the Ministry of Justice in 2003. Likewise, associations were actively implicated in the reform of the law on associations in 2002. The associative movement has been calling for such a reform since the late 1990s. A public debate in several regions of the country, as well as the undertaking of a comparative study on association law had been instrumental in the development of a legal framework in line with international standards.

Part IV : FUNDING AND TAXATION

1 – Are there any limitation on the rights of associations to receive and own property and funds? How?

Since 2002, associations that are merely declared may receive donations from private individuals, foreign associations and international organizations (Article 6). In order to finance their activities, associations may call for public donations, within the limits set by law. Thus, associations that are merely declared must obtain an authorization from the secretary-general of the government, while associations recognized as being in the public interest must present a declaration to the secretary-general of the government within 15 days preceding the event. Associations recognized as being in the public interest may own *moveable or immovable assets needed to carry out their mission*

within the limits set by the recognition decree (Article 10). If the end use of a moveable or immovable asset is not determined, the association must obtain prior authorization before acquiring it. The authorization takes the form of a ministerial order issued by the Prime Minister.

2 – Are there any limitations on the rights of associations to use the funds, other than by the conditions of their granting?

Associations that periodically receive funds from government entities must submit a budget and a financial statement to the entity that has granted the monies. In case of dissolution, the assets are transferred to the State, to be used for charitable or other public assistance projects. The Cour des comptes oversees the accounts of associations that receive funds from entities that fall under its supervisory power. Financial controls are tighter in the case of associations recognized as being in the public interest, and are set by regulation. Those associations must submit to the secretary-general of the government an annual report certified by a chartered accountant (Article 9, par. 5 and 6)

3 – Are there specific limitations on receiving foreign funds?

Associations that receive foreign funds must, within 30 days of the reception of such funds, declare them to the secretary general of the government, and specify the amount as well as information on the donor. Any breach of this regulation may result in the judicial dissolution of the association (Article 32a).

4 – How effectively are these limitations on funding enforced?

The law is improperly applied or not applied at all in a number of areas. This situation may represent a risk, in particular for associations that benefit from the non-application of the law. It constitutes a permanent form of pressure on them by the authorities.

5 – Do associations benefit from tax benefits? Under what conditions?

Associations are exempted from paying the VAT as well as the income tax on corporation for all activities undertaken in pursuance of the objectives set forth in their statutes. Associations recognized as being in the public interest benefit from additional exemptions (donations in cash or in kind are tax deductible and buildings housing charitable organizations are exempted from municipal taxes).

6 – Are public funds made available to associations? How? Are those processes prone to discrimination?

Associations may receive public funding. Control over the use of such monies is insured by the government department that granted the funds, and by the Cour des comptes. It is to be noted that, as regard the financing of associations,

many Moroccan associations call for a true partnership between associations and the government. One NGO, Espace Associatif, has launched an initiative in order to identify the financial needs of associations, to better understand the mechanisms put in place by government agencies and to determine what could be done to remedy the unsatisfactory relationship between the associations and the government as regard funding³.

Part V :

CONTROL AUTHORITY, GOVERNANCE AND TRANSPARENCY

1 – What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies and security apparatus)? How consistent are the activities of these authorities with the principle of freedom (check principle 16 of the Declaration)?

There are three types of control:

- administrative control: at the time the association is declared (control on formal conditions);
- judicial control: the court of first instance may render a decision on a requests for dissolution and may order such a dissolution;
- accounting controls.

2 – Are accounts and other information transparently available to the public?

During general assemblies, members are presented with a financial statement of the association, in accordance with the provisions of its statutes.

3 – What penalties (e.g. criminal, fines, etc) and harassment measures are applied in case of violations?

Officials of associations that do not follow accounting rules may be fined from 200 to 1,000 dirhams. An association may be dissolved if any foreign funds it has received are not declared within 30 days. Associations are held legally responsible (Article 32).

³ For full details of the various measures put forward by Espace Associatif for a fair and effective partnership, see Mémorandum « *Pour un financement durable des associations par les pouvoirs publics et les collectivités locales* », October 31, 2003. Available on request from the secretariat of the Euro-Mediterranean Human Rights Network.

ITHE MOROCCAN GOVERNMENT IS CALLED UPON TO:

1. With regard to the political, democratic and human rights situation

- 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 Morocco, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;

2. With regard to the laws and practices pertaining to associations and civil society organizations¹

- Ensure that the existing laws are strictly applied, in particular with regard to respect of freedom of association.

Formation and Incorporation

- Simplify the administrative procedure on formation and incorporation that associations must follow;
- Strictly apply the provisions of the law pertaining to the procedure on declaration: the administrative authorities must issue "on the spot a sealed provisional receipt" (article 5, par. 1)

Dissolution and Suspension

- Ensure that the provisions of the reform law of 2002, that abolish administrative dissolution and entrust that task to the judicial system, are strictly followed.

Organization and Operation

- Widen the access of association to civil action²: access to civil action should not be limited to associations recognized as being in the public interest, and whose recognition does not follow clearly established and implemented criteria and for which the authorities are not accountable
- Ensure the effective implementation of the law as regard the distinction between meetings of members of an association and public meetings.

Funding and Taxation

- Process within a reasonable time all requests for an association to be recognized as being in the public interest and ensure that the decision is notified in writing.

¹ The reform of 2002 put into question the tone and repressive aim of the previous legislation on the free exercise of freedom of association (in particular, the dahirs of 11/15/1958 and 04/11/1973). As that reform has satisfied the main demands of the associative community, the main challenge now is to ensure the effective application of the law in the day-to-day practices of the local, regional and national authorities.

² The provisions of the new Code of penal procedure (promulgated in 2002) pertaining to the possibility for an association to associate itself in a court action with the public prosecutor (constitution en partie civile) are very restrictive: only associations recognized as being in the public interest are allowed that right, provided they have been in existence for at least four years at the time of the events. The action is allowable only if there are already proceedings initiated by the public prosecutor or by the victim associating himself/herself in a court action. Because of these restrictions, only a small number of associations may associate themselves in a court action with the public prosecution. They also deprive the associations of one of the main advantages of that proceeding, which is initiating legal proceedings, since an association may only join proceedings that are already ongoing.



Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - «THE GENERAL SETTING»

1 - Civil society landscape

The manner in which public freedoms are exercised in Syria is tied to the political stability and the security situation of the country. Above all, the authorities are preoccupied by the security situation and, in their eyes, that preoccupation justifies the maintenance of the state of emergency. The internal situation is therefore kept under tight control and restrictions, both legal and de facto, are imposed on the formation of political parties and associations of civil society.

The associative movement in Syria has been largely stagnant since the adoption in 1958 of Law 93 on associations. That law, still in force, is inconsistent with the country's basic laws, such as the Constitution and the Civil Code. Apart from subjecting the formation of an association to prior authorization, that law has allowed, in practice, the dissolution of a number of associations and political parties. The State intervenes not only at the formation and dissolution stage of associations, but also in all of their activities. State interventionism has developed hand in hand with coercive policies. With the rise to power of the Arab Socialist Baath Party, so-called "people's democratic institutions" have been put in place and fusions have been enforced by decree.¹

The majority of associations undertook to obtain their registration after the adoption of Law 93 in 1958.² However, only a small number of new associations have been able to register, and those were affiliated to the party in power, the National Progressive Front.

Depending on their sphere of activity, associations have been classified in four groups by the Ministry of Social Affairs and Labour: a) social associations; b) health associations; c) cultural associations; d) associations for the protection of handicapped persons. It must be pointed out that this classification does not truly reflect the activities of the associations.

As far as geographical distribution is concerned, the Register of associations shows that 40% of all associations (540 in 2001) are located in Damascus, even if most of them have regional offices in other parts of the country. Of the remaining 60%, 120 are located in rural areas, while the remainder are spread among various cities, in particular Aleppo and Homs.

It should be noted that there is another group of associations - important because of the scope of their activities and the services they provide - that depend on ministries other than the Ministry of Social Affairs and Labour.³

Following the death of President Hafez Al Assad in 2001, associative life in Syria was revived. Ten new associations were created in 2001 alone. The total number of associations rose from 540 in 2001 to 1,012 in 2005, then doubled in three years to reach 1,400 in 2007.⁴

¹ Such as the Farmers Union, the Youth and Revolution Union, the Baathist Vanguard, the General Union of Women.

² The major associations were formed during that period: the Social Forum, Cinema Club, and Family Planning (created in 1973, it is one of the rare organizations that receive funding from outside the country; However the authorities have accused it of deviating from its set objectives and to promote permissive idea), the Seminar of Women, Friends of Damascus (heritage), the Syrian Universal Association (modern physics). There are also a number of associations such as the Youth Forum, the Association Hope, the Bardi Sports Club, and the *Ligue des lauréats de France*, etc.

³ In particular the association of tourist guides (Ministry of Tourism); the Syrian Red Crescent; rural development associations (Ministry of Agriculture); the Local Society Development Association (Ministry of Health), institutions that supply social services to the elderly, orphanages and kindergartens (municipal governments and local governors); youth clubs and boy scouts (affiliated to church groups); private clubs, such as the Armenian Fraternity, the Tcherkesse Association, the Golan Association

⁴ The Fourth « Summit of Arab Youth » held in Damascus at the initiative of the Organization of Arab Women on July 10-13, 2007 (information supplied by the Organization of Arab Women).

The sphere of activity of these new associations varies greatly: from the protection of the environment⁵ to various social issues⁶. There are now associations that are active in the fields of human development⁷ and gender issues⁸. On the other hand, few focus their action on the defence and promotion of human rights⁹.

The following are some active human rights associations, none of whom are registered: Committees of defence of democratic freedoms and human rights in Syria (CDF, 1989), HRAS, Human Rights Association of Syria (2001), Arab Human Rights Association of Syria (AHORS, 2004), National Association of Human Rights (NOHR, 2006), Damascus Center for the studies of human rights (2006), Center for Freedom (2005), Syrian Centre For Legal Studies (2006), Kurdish Association for Human Rights and Freedoms (DAD, 2006), Kurdish Committee For Human Rights (2005), Human Rights Association in Syria (2001), National Centre For The Defence of Freedom of the Press and Journalists (Hurriyat), Alatasi Forum (2003), Human Rights Centre For Freedom of Expression and The Media (2006) and the Syrian Association for Human Rights (Swasiah, 2004).

2 - Legislation

The Constitution of 1950 enshrined the right to create associations, subject to limitations determined by law pertaining to public order and morality. According to Article 17 of the Constitution, *associations need only be declared, that is, publicize their existence, and need not be authorized*. Article 18 states that political parties may be formed under the same principle.

Although the primacy of the Constitution over national norms is established by law, the government, in particular the Ministry of Social Affairs and Labour, alone determines the extent of the

exercise of the freedoms of association and expression. The Ministry has put in place a system of unlimited control over civil society by invoking the provisions of Law 93 of 1958 that, in practice, make a mockery of the provisions of the Constitution.

Laws and decrees governing associations

- The Law on the State of Emergency, adopted by decree n° 51 of December 22, 1962, and amended by decree n° 1 of March 9, 1963, authorizes the Minister of the Interior to impose restrictions on the freedom of individuals (Article 4 of decree). The scope of the restrictions may be expanded if need be and offenders handed over to military tribunals. Decree n° 6 of January 7, 1965, *provides for the punishment of anyone who, in any way, hinders the application of the social legislation* (Article 1). Such offences are dealt with by military tribunals.
- The Law on associations and private institutions, enforced by decree n° 93 of 1958 and published July 8, 1958.¹⁰
- The enabling regulations of Law n° 93 on associations, enforced by decision n° 1330 of October 13, 1958 and legislative decree n° 224 of September 21, 1969 amending the legislation on associations and tightening government control even more.

Part I:

FORMATION AND INCORPORATION

1 – Does the system allow for non-declared or unincorporated associations?

Non-declared associations are not allowed. According to Article 71 of Law n° 93 on associations, any activities carried out by non-declared associations are punishable by a jail term of three months and a fine.

⁵ Examples : the Association for the protection of Nature, National association for spreading social values, Associations that focus on scientific research such as the Syrian association for economics sciences, the Syrian Association in support to medical research and le Syrian Forum for building software.

⁶ The Association of social workers, the Association for the protection of the consumers and the Association for road safety, the Association for child rights and the Association for social initiative. The *Ligue des lauréats de France* is a new NGO created by a group of lawyers whose goal is to study the UN resolutions that focus on our region, as well as the Association for the fight against corruption, which has not yet been granted an authorization.

⁷ The Nabk Association strives to put in place a development project at the location of a large landfill. The Family and Fraternity Association head a project to accommodate handicapped persons on a permanent basis, a specialized schools network and medical services.

⁸ Among those associations : the General Union of Women, the Syrian Women League, the Association for social initiative (this association was recently banned and its authorization was withdrawn, following discussions on the personal status in Syria); the Association for combating violence against women, created in 2001, has still not obtained its authorization; Syrian Association for blind women (ELWIAM) as well as an internet website called the Syrian women website, that focuses on issues of rights and culture concerning Syrian women.

⁹ As an example: the Committee for the renewal of civil society. That association, created by a group of Syrian intellectuals had developed into a social movement. The association, which has a coordination committee, has no headquarters and hold meetings in private homes, it has coordination committees in the regions. Its objective is to revive civil society by means of heighten public awareness about the associative culture and incite the population to get involved to improve its living standards. However, after the closing by the authorities of various clubs and forums, including the ATASSI forum, its activities have become more politically oriented. The ONG ask for the lifting of the state of emergency, the liberation of political prisoners, the repeal of Law No. 93 and respect for the freedom of the press and of political parties. The publication of the Damascus Declaration on October 16, 2005, has been followed by a wave of arrests and repressive measures against the leadership of these committees, including M. Sayf.

¹⁰ Hereafter Law n° 93 of 1958.

All the human rights associations listed above are non-declared due to the systematic refusal of the Ministry of Social Affairs and Labour to register them. Therefore, those NGOs continue to operate illegally and are issued warnings by the authorities because of their ongoing activities.¹¹

As an example, in spite of financial support granted by the European Union, the Syrian Centre for Legal Studies was closed down by the authorities on opening day in March 2006. The founder of the Centre, Anouar Al Bunni, had been imprisoned after having signed the Declaration of Damascus of October 16, 2005¹².

2 – Is the registration system based on licensing or simple information/notification?

Associations and private institutions must obtain a written authorization from a competent authority (Article 26). It is therefore an authorization system.

Syrian law states that associations must get registered on a register set up to that effect. The founding members must lodge a registration request accompanied with specific legal documents. The Ministry of Social Affairs and Labour then has 60 days to study the request and accept or reject it. In practice, the Ministry consults with the security bodies before taking a decision.¹³

The system is thus based on prior authorization by the government. If an authorization is granted, the Ministry put the association's name on the Register of associations and publishes a notice in the Official Bulletin within 60 days of the deposit of the request (Article 9). If the notice is not published within 60 days, the association is considered, in principle, duly registered (Article 10).

3 – What are the bases upon which registration can be rejected (e.g. race, security, religion, politics)?

The grounds for a refusal are primarily based on politics and security. The request is first examined by the Ministry of Social Affairs and Labour and then transmitted to the security agencies, which then proceed to an in-depth investigation of the founding members of the association. The grounds for refusal are at the discretion of the authorities since the Law on the State of Emergency authorizes the Ministry "to assess the importance of the association's objectives and determine to what extent they are needed" (Article 6). Furthermore, according to Article 304 of the Penal Code, any association created with the aim of changing the economic or social structures of the State, or the fundamental institutions of society will be dissolved and its members condemned to hard labour.

Arbitrar practices are important of the decision making process is exemplified by the case of the Human Rights Association of Syria (HRAS). On December 11, 2001, HRAS lodged a registration request, that the Ministry rejected 62 days later, without motivating its refusal, thus contravening the law. HRAS then lodged an appeal before the Ministry, and later before the administrative tribunal (*Majlis al-Dawla*). The legal status of the association having not been recognized by the government, the Ministry, on May 10, 2006, sent a letter to HRAS which had requested permission to hold their annual meeting in Damascus. The letter reminding the association that it operated illegally and that it could face legal proceedings if the meeting took place.¹⁴

4 – How easy or difficult is the registration (e.g. time, cost, number of incorporators)?

The law stipulates that the founding members of an association must number at least 11. This high number, as well as the methods of investigation and the scrutiny of the founding members, are among the factors that discourage people to form associations. On the other hand, the documents requested do not present undue difficulties and the publication of the notice is free. Therefore, the main difficulty rests with the purely administrative aspects of the request, which, in practice, conditions the registration process of human rights groups.

5 – Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative)?

There is no recourse in case of administrative delays. In theory, Law n° 93 of 1958 states that registration becomes effective 60 days after the request is lodged (Article 7), whether the notice of registration has been published or not. The association acquires legal personality on that day.

The appeal in case of refusal of the authorities to register must first be lodged with the Ministry of Social Affairs and Labour (Article 11 of the Code of procedures). If this internal remedy fails, it then becomes possible to seek redress from the administrative tribunal, that is then is supposed to examine the validity of the Minister's decision. Three associations, Swasiah, AHOR and NOHR have attempted to obtain redress that way but there has been no proceedings yet since the tribunal has not yet convened.

6 – Does registration automatically entail obtaining separate legal entity?

According to the provisions of Law n° 93, *an association is not a legal entity until it its registration has been publicized* (Article 7 and 9). Its name must appear on the Ministry's Registry of association before it becomes a legal entity.

¹¹ Testimony of a human rights defender, member of Swasiah, to the EMHRN, November 9, 2007.

¹² See <http://www.damadec.org/index.php>

¹³ State security agency, Political security agency, Military security agency.

¹⁴ Testimony of a former member of HRAS to the EMHRN, November 10, 2007.

Law n° 93 also stipulates that an association automatically acquires legal personality if there has been no response within 60 days of the request. Article 7 stipulates that the registered association may then take all necessary measures to needed to operate.

In practice, an association does not formally become a legal entity merely because the Ministry has not responded within 60 days. For instance, while the Arab Human Rights Association (AHOR) did not receive any reply to its registration request within 60 days, it was still compelled to petition the Ministry for having its statutes published. That request was eventually rejected on the grounds that it was against the public interest of Syria.

7 – Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust, a Wakf)?

Refusal to register an association is usually due to ministerial objections to the goals of the association or to one or more of its founding members.

In that respect, trying to modify the legal status of the association by changing it into a commercial enterprise or a non-profit organization would be useless. *Regardless of its formal legal status, the association will still be considered to be the same by the government, as long as it wishes to pursue goals that the government does not agree with, or that its founding members remain the same. In such a case, the association, which is considered illegal because it is not registered, falls under article 327 of the Penal Code which states that an association is considered a secret (illegal) association if it takes the shape of an association while in fact its objectives are in breach of the law, whether all or only some of its activities are secret.*

Part II : DISSOLUTION AND SUSPENSION

1 – What are the causes/grounds of dissolution? suspension?

According to Law n° 93, any of the following four reasons may justify the legal dissolution of an association: 1) the association no longer has the capacity to fulfil its commitments; 2) it uses its financial resources for other ends than those it was set up for; 3) it commits a serious violation of its statutes; 4) it undermines the law, public order or public morality.

By way of a motivated ruling, the Ministry of Social Affairs and Labour may dissolve an association in any the following cases: 1) the association has moved away from the objectives set forth

in its statutes; 2) the Board of the association has not convened for six months; 3) the association is pursuing activities that are racist, religious or political in nature, that undermine the security of the State; 4) the association is pursuing activities that are contrary to public morality; 5) the association continues to pursue activities that are against the law, despite warnings from the Ministry; 6) the association is incapable of achieving its objectives; 7) the Ministry considers that the services offered by the association are not needed.

2 – What authorities pronounce these decisions?

Law n° 93 grants the Ministry of Social Affairs and Labour full authority to apply the law on associations and to take all measures needed for its application, including dissolving associations.

Such arbitrary decisions, based on the safeguard of the interests of the State, have brought about the dissolution of the Association for Social Initiatives that focused on issues related to women's rights.¹⁵

According to Article 4 of legislative decree n° 224 (1969), the public authorities have all the authority needed and the intervention of the judiciary is not required. No objection or opposition to its decisions is possible.

3 – Are there effective remedies and appeals?

Law n° 93 set forth the procedure for the dissolution of association, but is silent on the issue of remedy and appeals. Therefore, it appears that any administrative decision on dissolution is final and may not be appealed or reviewed.

Part III : ASSOCIATION AND OPERATION

1 – What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object (Are such documents imposed? to what extent?)

The statutes of an association are determined by the founding members at the time of its creation. However, they must follow a standardized model for the request to the Ministry. According to Article 2 of Law n° 93, the statutes may not undermine national or State security, the laws of the country or public morality. The association that wishes to modify its statutes must lodge a registration request for any modifications, similar to a regular registration request. The Ministry may register those modifications or not. Article 13 of the Law states that *any modification that has not been published is null and void.*

¹⁵ "No room to breathe, State Repression of Human Rights activism in Syria", Report of Human Rights Watch, 2007.

The internal rules of the association must follow a standardized model¹⁶, and members may not change that model in any way.

2 – How strict is the level of freedom of members to adhere to or leave associations?

When applying for membership of an association, the candidate must fill in a standard form in which he must give extensive details about himself or herself before presenting it to the security services. The candidate must be sponsored by two members of the association. Any member who wishes to leave the association may do so freely. The general assembly may expel a member, in conformity with the internal rules.

In practical terms, it is the Board of the association that accepts or refuses membership requests. The president has discretionary power in that respect as in the case of expulsions.

3 – Is there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by “supervisors”, elections?

As regard the daily management of an association, law n° 93 authorizes the Ministry of Social Affairs and Labour to interfere directly in the operations of the association. Meetings of the Board are closely monitored and the ministry in charge is always represented.

By law, the authorities must be informed at least 15 days prior to the holding of any meeting of the general assembly and must be remitted a copy of the agenda. As regard associations recognized as being in the public interest, Article 47 of Law n° 93 stipulates that *the public authorities may refuse the candidacy of any individuals that it considers unsuited to sit as a board member.*

For other types of association, the authorities may delegate a representative who will be present at the elections and verify that the proceedings are in accordance with the statutes. The authorities may, by way of a motivated ruling, annul any election within 15 days of the date of the election if it considers that either the statutes or the law have been breached.

4 – Are there any restrictions (legal or de facto) promoting, limiting or banning participation of women in associational offices (e.g. Board)?

The legislation on association does not differentiate between men and women and there are no restrictions to the access of women to the Board or other offices.

5 – Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

The authorities intervene in all the activities of associations. According to Article 35 of Law 93, the Ministry of Social Affairs and Labour may intervene to change the objectives of an association in order to bring them in line with the stated purpose of the association. The Ministry may also prohibit the implementation of a decision of the general assembly, the Board or the president, if it considers that the decision is in breach of the law, public order or public morality.

Furthermore, the association must request prior approval of the Ministry for any project or activity that it wishes to undertake.

6 – Is the association's right to freely assemble or organize private and public meetings, to move freely (including international travel) restricted in any way?

Freedom of assembly is authorized only if it conforms strictly to the objectives of the association. Meetings must be mentioned in the planning of orientation activities, and organizers must seek the required authorizations. As per Article 23 of Law n° 93, an association must notify the authority responsible at least 15 days prior to the meeting and remit a copy of the agenda. The Ministry has the authority to refuse that the meeting proceeds as planned. The minutes of the meeting must be sent to the authorities within 15 days after the meeting.

Freedom of movement inside or outside Syria is guaranteed by the Constitution, but in accordance with the law only. The legislation on associations is silent on this matter but in practice that freedom tends to be restricted.¹⁷ In its declaration of August 22, 2007, the Committee for the renewal of civil society in Syria lists the restrictions to freedom of movement faced by human rights activist. They are not allowed to travel to a developed country even for medical treatment and political prisoners are deprived of such treatments. Riyadh Sayf, the head of the secretariat of the NGO Damascus Declaration for National Democratic Reform, is not allowed to go abroad to receive medical treatment for prostate cancer, which has now reached an advanced stage. For months, the authorities have subjected him to vexatious conditions that have worsened his health condition and endangered his life.

7 – Are associations subjected to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

The law on the state of emergency and articles of the Penal Code give all latitude to the government to determine what constitutes

¹⁶ Article 70 of ministerial decree n° 119 of 1970.

¹⁷ Cf. http://www.ahrarsyria.com/index.php?option=com_content&task=view&id=1237&Itemid=39

an illegal expression of thought. One may be imprisoned and fined for publishing “erroneous” information, particularly if it “risks causing public agitation or disturb international relations” or undermine the dignity of the State or national unity, affect the morale of the armed forces, or be prejudicial to the national economy or monetary system¹⁸ or if it is contrary to the aims of the revolution.¹⁹

In July 2002, Aref Dalila was condemned to 10 years of hard labour by the Supreme State Security Court for having spread false information, prevented the authorities to carry out their mission, incitation to mutiny and confessional discord, and for having attempted to change the Constitution by force.²⁰

Invoking one or another of the laws referred to above, the government censors and prevents access to internet sites that contain information deemed politically sensitive, such as all foreign sites, those of opposition parties and those that are critical of the government. Many sites that are not overtly critical are also inaccessible.

Associations have only limited access to local media. Officials of the government media receive instruction to ignore all communiqués from independent associations, and the activities of those groups are never mentioned except when they are slandered. As a consequence, only the official viewpoint of the Baath Party is aired in the media.

8 – Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

NGOs are not allowed to freely collaborate with entities outside the country. Article 21 of Law n° 93 states that associations must inform the Ministry of Social Affairs and Labour of any intended collaborative projects and ascertain that the authorities are not opposed to such projects. As per decree n°6 of 1965²¹, members of associations that affiliate with other associations without prior authorization may be condemned to a jail term and a fine; in certain cases, they may even risk the death penalty.

As per Article 4 of decree n° 51 of December 22, 1962, restrictions may be imposed on the right of assembly, the right of abode and freedom of movement and anyone suspected of endangering public security and public order may be arrested. On November 1, 2007, the security services arrested Jihad Msoti, member of the Al-Atassi Forum, just before he was leaving for Cairo to take part in a workshop organized by the LIDF, in collaboration with the Cairo Center for Human Rights.

¹⁸ Article 306 of the Penal Code.

¹⁹ Opposition to the aims of the Revolution: article 3 and 4 of legislative decree n°6 of 1965.

²⁰ Cf. The joint appeal of several Syrian human rights organizations for the liberation of Aref Dalila. The document, translated in French by the French embassy in Damascus, can be obtained from the EMDRN on request.

²¹ Cf. The case of Aktham Nu'aysa of CDF, condemned in April 2004 and summoned before the Supreme State Security Court.

9 – Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

There are no consultations with independent associations during the decision-making process on issues of public interest.

Part IV : FUNDING AND TAXATION

1 – Are there any limitation on the right of associations to receive and own property and funds? How?

Article 21 of Law n° 93 prohibits associations from receiving funding from individuals or associations outside the country without prior authorization from the Ministry of Social Affairs and Labour. Any fund-raising campaign inside Syria must also receive prior approval.

2 – Are there any limitations on the right of associations to use the funds, other than by the conditions of their granting?

Yes. Financial resources and assets belonging to legally-registered associations must serve exclusively for the furtherance of the objectives of the association. In all cases, prior authorization must be obtained before the funds may be spent. Article 22 of Law n° 93 set forth the rules for obtaining public funding and states that the government may add other conditions for any activities of an association. Article 23 stipulates that the relevant authorities must be informed of the activity plan of an association.

3 – Are there specific limitations on receiving foreign funds?

Article 3 of legislative decree n° 6 (1965) stipulates that any financing used to support an illegal activity is punishable by death. According to the information available, that provision has not yet been applied.

4 – Do associations benefits from tax benefits? Under what conditions?

Only a few agricultural cooperatives and consumer and investment associations enjoy tax rebates. As per the Custom Code, donations to orphanages, elderly persons institutions, charitable associations, hospital and health centers are exempted from custom duties and other duties and taxes.

Part V :
**CONTROL AUTHORITY, GOVERNANCE
 AND TRANSPARENCY**

1 – What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, and security apparatus)? How consistent are the activities of these authorities with the principles of freedom (check Principle 16 of the Declaration)?

The Ministry of Social Affairs and Labour closely and directly supervises all actions and activities of associations. NGOs may in theory appeal any decision of the Ministry before the administrative tribunal (*Majlis al-Dawla*).

It should be noted that several human rights defenders and activists have been brought before the Supreme State Security Court (*Mahkama Amn al-Dawla al-Uliyya*). This court was set up in the aftermath of the proclamation of the state of emergency. That special court is not bound by the normal rules and procedures applicable in the case of regular courts.

2 – Are accounts and other information transparently available to the public?

Annual activity reports and financial statements are prepared by associations. The financial statement and other reports are presented to the general assembly at the annual meeting. While not confidential, those reports are not published. As per Article 23 of Law n° 93, they must always be submitted to the Ministry of Social Affairs and Labour.



THE SYRIAN GOVERNMENT IS CALLED UPON TO:**1. With regard to the political, democratic and human rights situation**

- 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 Syria, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Consequently, to revoke the Law on the State of Emergency and Law n° 93 of 1958 on associations, both contrary to the Constitution, as well as the articles of the Penal Code used to control and harass human rights defenders and organizations of civil society;
- Abolish the Supreme State Security Court, a special tribunal that does not meet international norms on the right to a fair trial before an independent and impartial tribunal;
- Guarantee to all citizens an effective access to justice and the right to a fair trial before an independent and impartial tribunal.

2. With regards to the laws and practices pertaining to associations and civil society organizations

- Reform Law No. 93 of 1958 on the associations and the practices of the Administration, in order to, *inter alia* :

Formation and Incorporation

- Reduce from eleven to two the number of founding members required to form an association;
- Abolish the procedure of prior approval for the registration of associations and implement the declaratory system which, while it would not suspend the activities of the association, would not prevent the ministry responsible from refusing, on the basis of a judicial decision, to allow the association to be established;
- Proceed to the immediate registration of all associations, in particular human rights organizations, that were hitherto forced to operate illegally;
- Guarantee an effective recourse before a tribunal, within a reasonable period, to any association whose registration request has been rejected;
- Ensure that associations will be able to pursue their activities until a final ruling on their case is made;
- Allow associations to modify their statutes and stated purpose by way of a simple declaration;
- Put an end to the abusive and dilatory practices of the authorities when processing the registration requests lodged by associations;
- Put an end to the intervention of the security services during the processing of registration request;

Dissolution and Suspension

- Assign exclusive competence to dissolve or suspend an association to judicial courts;
- Guarantee the right to an effective judicial recourse, with suspensive effect and within a reasonable period, in case of a dissolution or suspension decision pronounced by the authorities;

Association and Operation

- Amend both the legislation and the practices in order to put an end to interference by the authorities in the activities and the management of associations and, in particular:
- Put an end to the interference of the authorities in the procedures pertaining to members joining or leaving an association;
- Abolish the obligation to inform the authorities in advance of planned meetings of the corporate bodies, the right for the authority to send a representative to meetings, the obligation to submit the minutes of meetings, and the right for the authorities to oppose decisions of the corporate bodies;
- Abolish the obligation to obtain prior authorization from the authorities for the planned activities and projects of the association;
- Abolish all restrictions to the freedom of assembly of associations;
- Authorize associations to cooperate freely, without restriction and prior authorization, with other associations, federations or networks at the national, regional and international level;
- Abolish all restrictions to the free circulation of members of association, except in the case of motivated judicial decisions;
- Lift all restrictions limiting access to telephone, fax, email and internet services;
- Guarantee fair access to the official media by associations.

Funding and Taxation

- Lift all prohibitions and restrictions limiting fund raising activities by associations;
- Put in place a fair, transparent, neutral and impartial system of allocation of public funds to associations;
- In particular, authorize associations to receive funding from foreign sources without prior authorization and without arbitrary and excessive control on the use of such funds.

3. With regard to the climate required for the sustainable development of civil society

- Respect, *de jure* and *de facto*, the freedoms of expression, assembly and association in conformity with the international commitments of Syria;
- Put an end to the persecution and harassing practices and the policy of exclusion and censorship against independent associations;
- Repeal all provisions that allow criminal proceedings against associations and members for their normal activities and, in particular eliminate the death penalty for offences pertaining to such activities;
- Establish a new institutional relationship with associations of civil society founded on transparency, the impartiality of the State and the amended legislation on associations.

Freedom of association in Palestinian territories



Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - Political, democratic and Human Rights specific contexts

Throughout their history, Palestinian associations have had a very unique experience compared to their peers in other parts of the world. Their experience has been different in terms of their inception and the environment they operate in, let alone the fact that they came to existence prior to the creation of the state. Civil action in Palestinian territories in general and the formation of associations in particular have passed through two basic stages, separated by the establishment of the Palestinian National Authority (PNA).

A constant issue that has structured the life of associations has been establishing of the State of Israel and in particular the Occupation of the West Bank, Gaza Strip and East Jerusalem in 1967.

- First Stage: Pre-Palestinian National Authority (PNA)

In this first stage there were multiple authorities with jurisdiction over civil action in the West Bank and Gaza. The 1909 Ottoman Associations Law was the basis for the work of these organizations in Palestine placing little restriction on the registration procedures. However, the Ottoman authorities' fear of the growing phenomenon of Arab nationalism in the Arab world led them to place several strangling restrictions on this right, especially regarding political and social associations.

Also under British mandate period in the emergency laws imposed in 1945, several restrictions were placed on these social associations.

This situation changed after the 1948 war and the subjection of the West Bank and the Gaza Strip to two different legal administrations. In Gaza, the Ottoman Associations Law remained in effect without any changes by the Egyptian

administration, while the Jordanian Charitable Societies Law No. 33 of 1966 was applied in the West Bank.

In the aftermath of the Israeli occupation of the West Bank and the Gaza Strip in 1967, the Israeli military ruler of the Gaza Strip and North Sinai issued military decree No. 686 simultaneously with military decree No. 89 in 1970. These decrees amended the Ottoman Associations Law in the West Bank, and mandated the officer in charge of interior affairs in the Israeli military administration to impose strict surveillance on the work of associations, a situation that drove some of them to register as not-for-profit commercial companies.

- Second Stage: Post- Palestinian National Authority Establishment

The PNA was established in 1994 as the first Palestinian national authority. in the context of a highly efficient civil society sector. Palestinian civil organizations played a vital role in terms of provision of services over many decades prior to the establishment of the PNA. When the PNA was established, these organizations were responsible for 60% of primary health care, 49% of secondary and tertiary health care, and 100% of primary care services.¹

The number of associations registered in the West Bank and the Gaza Strip stood at 1250 in 2001. About 675 associations operated in the West Bank, 31.1% of which were registered after the establishment of the PNA. In Gaza, the number of associations registered with the Ministry of the Interior stood at 575, 79 of which were licensed before the PNA was established.²

According to the same source³, out of the total number of associations registered in the West Bank and Gaza for the same period, charities constituted 40.4%, youth and sports organizations 30.4%, cultural centers 10.2%, relief organizations 4.8%, development organizations 4.9%, research centers 3.5%, training and rehabilitation. The remaining 2.8% were human rights organizations.⁴

¹ Barghouthi, Mustafa, *Palestinian NGOs and their Role in Building a Civil Society*, Jerusalem: Union of Palestinian Medical Relief Committees, 1994.

² The Independent Palestinian Commission for Citizens Rights, *The Formation of Societies in the PNA Territories, Law and Practice*, a series of reports (15), 2002, Ramallah.

³ It was very difficult to obtain accurate figures on the numbers of associations registered with the Interior Ministry because of the damage the buildings and files of the Ministry sustained during the infighting. However, the figures we obtained from the personnel of the NGO's Department at the Ministry indicate that the number of associations registered with the Ministry stood at 1059 at the beginning of 2007.

⁴ For example, the Al Mezan Center of Human Rights, Al-Haq, le Palestinian Center for Human Rights.

The Palestinian Legislative Council (PLC) endorsed the Palestinian Charitable Associations and Community Organizations Law in 2000 and the legislation was published in the Official Gazette (Al Waqae Al Filistiniya) in the same year. In 2003, the executive regulation of the law was issued following Cabinet decision No. 9 of 2003. Although the legislation has positive aspects, the executive power's insisted that the Ministry of the Interior be the body in charge of the registration of civil organizations and entities, rejecting outright demands from civil society, which raised fears of security monitoring and police interference in the work of civil organizations.

In the meantime the Israeli occupation, and Israeli annexation attempts of the West Bank, incursions into Palestinian Territories, the West Bank, and Gaza since the onset of the al-Aqsa Intifada, has caused a constant deterioration of the human rights situation and of Palestinian NGOs' working conditions - thereby seriously compromising the efforts and possibilities to work of associations.

2 - Legislation

A - International instruments: The PNA is not entitled to sign agreements, so there are no agreements ratified by it. The Israeli ratification of the International Covenant on Civil and Political Rights does not obligate the PNA. Hence, there is no law that supersedes national legislation that obligates the PNA to international agreements.

B - Constitutional provisions: The right to form associations is a constitutional right stipulated in Article 26 of the Palestinian Basic Law which emphasizes that "*Palestinians have the right to participate in the political life as individuals and groups. Particularly, they enjoy the following rights:*

1 - Establishing political parties and joining them in accordance with the law ; 2 - Establishing trade unions, associations, leagues, clubs, and civil institutions in accordance with the law ; 3 - Choosing representatives from among them through voting and/or nomination for election in public elections in accordance with the law ; 4 - Holding positions and public offices based on equal opportunity ; 5 - Holding private meetings without the presence of police personnel, and holding public meetings, marches, assemblies in accordance to the law.

C - National law (reference labor laws, cooperatives, solidarity associations, ... etc.)

Palestinian law of charity associations and civil institutions number 1 of 2000

D - Decrees

Executive regulations of the law under council of ministers resolution number 9 of 2003.

Recently, after the Hamas coup in Gaza, President Abbas issued a decree on 20/6/2007 for registration of civil associations and institutions, which requires all associations to renew their registration. The decree was considered to be targeting associations that belong to the Hamas Movement in

the West Bank and Gaza Strip. It was criticized by many rights organizations and trade unions.

E - What is the relationship between international law and the national law?

The basic law of the PNA (it is called a constitution figuratively) does not deal with the relationship between the international law and the national law, and which law supersedes the other. This stems from the fact that the PNA is not a state and does not enjoy the right to sign international agreements. However, article 10 of the basic law stipulates that the PNA seeks to join international and regional agreements and covenants related to human rights.

Part I: FORMATION AND INCORPORATION

1. Does the system allow for non-declared or unincorporated associations? (Are there penalties for non-declaring? Dissolution? Imprisonment? Etc.)

Palestinian law does not allow undeclared associations. In this case the association is considered illegal and its members are punishable under penal law by imprisonment for a period between three to seven years, or a fine in accordance with the law.

2. Is the registration system based on licensing or simple information/notification?

The law emphasizes the right to form associations as a basic principle for civil bodies without the need for a license. But in practice, licensing is considered a prerequisite in registration procedures since associations are not allowed to conduct any activity before obtaining the approval of the Minister of Interior within a period that does not exceed two months after submission of application.

By including conditions for registration in laws and regulations, the Palestinian law adopted a compromise stance between the Ottoman Association Law, which did not require licensing aside from declaration, and the Jordanian Association Law which required licensing.

However, this compromise stance has been abused to justify hampering the freedom of civil society work in Palestinian territories. The executive authority considers issuing a license to be a gift rather than a fulfillment of the requirement of the law. Cases of such practices have happened already.

The case *Association for Palestinian Workers Aid* is significant. The founders applied to the interior ministry to register their association, but have not received any response from the ministry. In 1/4/2007, the founders sent a legal note to the ministry, but to no avail. In 12/5/2004, they resorted to the Palestinian supreme court, which issued a judgment after two years, in 16/4/2006, to force the Ministry of the Interior to issue a resolution to register the Association for Palestinian Workers Aid

and to consider it licensed by law. The association then received the registration. (see press release issued by Al-Mezan Center for Human Rights number 7/2006, 19/6/2006).

3. What are the basis upon which registration can be rejected? (e.g. race, security, religion, politics)

The law only requires submitting a written application for the establishment of a civic association, and that the application fulfills all the conditions in the law. The acceptance of the application by the competent authority does not depend on the discretion of that authority, but rather on the compliance of the application to the legal conditions, including registering the association and declaring it. If two months pass without a response from the authorities after submitting the application, the association will be considered registered in accordance with the law. If the minister issues a decision to deny registration, the decision should be justified. The applicants have the right to appeal the decision within thirty days after receiving the rejection decision in writing.

The cases of justified rejection to register an association are rare. However, there is usually a delay in responding by the ministry for security and political reasons. Delay in responding under the Fatah government is usually directed toward associations whose applicants belong to Hamas, or other groups not affiliated with the PNA.

4. How easy or difficult is the registration: (e.g. time, cost, number of incorporators)

The cost of establishing an association is not high; it amounts to 20 Jordanian dinars (almost \$30). This amount does not constitute any hindrance to establishing an association. The Palestinian law prescribes that the number of founders be a minimum of seven persons. This requirement increases the difficulty of forming an association.

In terms of regulations, the executive regulations define the practical steps that must be followed to apply for registration and the required contents of the application submitted to the competent directorate in the Ministry of Interior. Article 11 of the executive regulations stipulates that the application should be submitted by at least three of the founders to the competent directorate. In addition, the regulations require three other attachments to be enclosed with the application, including a written proxy from all the founders authorizing the three applicants to sign on the application. Registration is not difficult after compiling all required documents, but it is worth noting that the quantity of documents is very large and it takes a considerable time to compile them.

As for the practical aspect, the ministry requires more procedures and documents from applicants.⁵ In addition, the competent directorate in the ministry confers with the security services in regards to applications. This internal procedure is not required

by law, which made obtaining registration by citizens contingent on acquiring approval from four different governmental bodies: the Ministry of Interior, the relevant ministry which covers the activities of the association subject of the application, the preventive security force, and the intelligence agency.⁶

5. Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative?)

In case of denial of registration, law provisions of 2000 are clear and allow applicants to resort to the judiciary. In the case of delay in responding to an application, the law considers the association to be licensed after 60 days of submitting the application. The receipt for registration fees could be considered a registration certification, but it is better to resort to the Supreme Court and submit this receipt to obtain a judgment that forces the ministry to issue a registration certificate. This report has cited a similar case earlier.

6. Does registration automatically entail obtaining a separate legal personality?

Article 7 of the law stipulates that associations and institutions gain an independent legal and financial personality right after registration. Associations are not allowed to carry out their activities before registration, or before declaration of registration in the official gazette.

7. Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust a "Wakf")

There were a number of associations registered during the occupation era and the beginning of the PNA as not-for-profit companies in accordance with the companies' law number 30 of 1929.

There are a number of associations registered in the Ministry of Labor as cooperatives according to the Cooperative Associations' Law number 50 of 1933 applicable in Gaza Strip, and the Cooperative Associations' Law number 17 of 1956 applicable in the West Bank.

Part II : DISSOLUTION AND SUSPENSION

1. What are the causes/grounds of dissolution? Suspension?

Associations have the right to dissolve themselves voluntarily with the approval of the majority of their public assemblies. Associations should inform the ministry immediately about dissolution resolutions.

If dissolution is forced upon an association, it could be for the following reasons:

- If the association does not start its actual activities during the first year after its registration, as long as the suspension of activities

⁵ For instance, registration procedures in Gaza strip also requires "attaching curriculum vita for each founding member for the association, which should include current and past political affiliation, countries visited, date and reasons of imprisonments, names of three close friends, and a summary of the main stages of life. All these questions are stemmed by security concerns and have nothing to do with civil society activities." (Ribhi Qatamish, Registration of Civil and Charitable Associations: A study in Legal and Administrative Procedures, Tamkeen – Project of Promoting Democracy and Civil Society, 2003, P.18)Society, 2003, p. 18).

⁶ Ibid. p.19

was not caused by a force majeure out of the association's control. In this case the registration will be canceled by the ministry after issuance of a written warning.

- If it was proved that the association violated its statutes in a crucial way, and did not correct the situation within a maximum of three months after receiving a written warning by the ministry or the directorate.

If an order is issued by the minister to dissolve the association, the decision should be justified and in writing. Associations can continue their activities until the court issues a ruling in the dissolution case.

On August 27, 2007, the Ministry of Interior dissolved 103 associations. The authorities have not notified the associations condemned nor notified in what capacity the associations failed to comply with the Law.⁷

2. What authorities pronounce these decisions? (role of the Judiciary, Executive ...)

The law authorizes the Minister of the Interior to dissolve associations to his discretion, in contradiction with the international standard.

3. Are there effective remedies and appeals?

The law authorizes the administrative judiciary to consider appeals submitted by associations which object to the minister's decision to dissolve them. The law stipulates that the "competent court" in this regard is the Supreme Court in its capacity as an administrative court. It considers the minister's decision an administrative decision.

If the dissolving decision was voluntary, other members may object about voting results. Readers should refer to the paragraph that deals with this issue.

Part III :

ORGANIZATION AND OPERATION

1. What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own objectives? (are such documents imposed? to what extent?)

The Law of Charity Associations and Social Institutions number 1 of 2000 guarantees the right to carry out different activities that realize associations' goals, and it guarantees the right of members of the "public assembly" to form policies and general directions of the association, in addition to the right of members to amend statutes if they obtain the absolute majority of the public assembly's votes.

Studying the realities of charity associations in Palestinian territories reveals that their statutes are based on a form that the ministry prepared in advance and distribute to people applying for registration of an association. Founders of associations

are obliged to fill the basic information: name of association, address, branches, and goals. Other than that, all associations should follow the ready form. If an association does not abide by that form, the ministry will object and put obstacles in the registration process.

2. What degree of freedom do members have to join or leave associations?

Article 1 of Charity Associations and Social Institutions Law number 1 of 2000 stipulates that "*Palestinians have the right to engage in social, cultural, trade, and scientific activities freely, including establishing and running civil associations in accordance with the law.*" Hence, the law guarantees the right to establish associations, but it stipulates that the number of founders should be a minimum of seven persons. As for types and conditions of membership and reasons for terminating membership, it has been left to the association's statutes.

We believe that the Charity Associations and Social Institutions Law is consistent with Palestinian legislators' intentions to consolidate the right to establishing associations, joining them, and running them freely. Membership in associations is open to everyone. Even though the law guarantees the right to join or leave associations, there is not in practice any freedom to join associations since membership is closed and depends on the will of managing boards of associations.

The issue of opening membership is usually a subject of debate during public assembly meetings. Some powerful actors in associations resort to recruiting new members to guarantee adoption of particular decisions or electing particular persons.

The law does not put any restrictions on senior public officials, whether civilian or military, joining associations. This opens the door for conflict of interest and the control of some associations.

3. Is there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by "supervisors", elections?

The ministry has the right to send a representative to attend public assembly meetings and elections. Associations must inform the ministry in advance about the dates of public assembly meetings and elections. However, the ministry or any other executive authority has no right to send a representative to attend any of the management's meetings.

4. Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. Board).

As for participation of women, there are no restrictions on their participation. However, the social situation in Palestinian territories has a direct effect on the level of participation and on women's roles in society.

⁷ For more precisions, see "*Al-Haq Position Paper on the Ministry of Interior's Decision to Dissolve 103 Civil Society Organisations*" <http://www.alhaq.org/etemplate.php?id=340>

5. Is there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

There is no interference by the authorities in the activities of associations. The law guarantees the right of associations to carry out any legal activity to realize their goals. In practice, the role of the Ministry of Interior or any other relevant ministry does not exceed receiving reports from associations, which indicates that associations are free to pursue their projects and activities.

6. Is the association's right to freely assemble or organize private and public meetings, move freely (including international travel) restricted in any way?

Associations hold their meetings freely as part of their activities. The PNA does not impose any restrictions on freedom of movement and travel. However, the restrictions imposed by the Israeli occupation affect practicing this right in terms of the movement of the associations' cadre. These restrictions also have an effect on associations' ability to hold management meetings, board meetings, public assemblies, and elections. Recently, numerous associations have been forced to stop their activities after damages to facilities caused by armed groups.⁸

7. Are associations subject to specific limitations on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

Charity associations and social institutions practice their activities in communications and publishing freely. They also use their websites without any hindrance and can engage in joint activities with other associations locally, regionally, and internationally.

8. Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

There are no restrictions on associations' freedom to deal and cooperate with other associations.

9. Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

Article 10 of the Charity Associations and Social Institutions Law number 1 of 2000 stipulates that *"the relationship between associations and institutions with relevant ministries is based on coordination, cooperation, and integration for the benefit of the public interest."* This shows the necessity of establishing strong relations between public institutions and the institutions of civil society, which implies their participation in drawing up of public policies, and decision-making process related to the public interest. But the reality of joint work between public and civil institutions is minimal, with the exception of rare meetings with ambiguous goals.

10. Are there effective remedies and appeals?

The Supreme Court, in its capacity as an administrative court, is the right authority to adjudicate in conflicts between associations and the Ministry of Interior.

**Part IV :
FUNDING AND TAXATION**

1. Are there any limitations on the rights of associations to receive and own property and funds? How?

Palestinian legislation does not impose any restrictions on receiving aid and funds or owning property. However, the law prohibits attaching conditions to funding and aid.

Article 31 of the same law obliges associations to deposit their monetary funds in their names in a bank or banks approved by authorities. Associations must inform the relevant ministry about the banks they keep their accounts with, and they can't keep cash sums in their offices that exceed their expenses for one month.

In addition to that, the Palestinian Ministry of Finance issued a memorandum in 5/9/2001, in accordance with instructions from the Ministry of Interior, to all banks working in Palestine to refrain from opening accounts for civil associations and institutions without approval from the Ministry of Interior. This order constitutes an additional illegal condition that is not stipulated by the law or the executive regulations.

In 24/8/2003, the Palestinian Ministry of Finance issued a memorandum, based on an order from the attorney general, to all banks working in Palestine to freeze all accounts belonging to some associations *"and not to release any money from their accounts without written advanced approval from the Ministry of Finance."* This decision involved 39 associations that operate in accordance with the law in the Gaza Strip.⁹

In 21/3/2004, the Supreme Court issued a judgment to cancel the Ministry of Finance's memorandum mentioned above allowing associations to access their moneys. Despite that, the Ministry of Finance circumvented the court decision attempting not to implement it through *"pretending to implement it in formality while keeping the mentioned associations' accounts essentially frozen."* In 27/3/2004, the Ministry of Finance issued a new memorandum asking all banks for *"a provisional freezing"* on the accounts belonging to associations mentioned in the previous memorandum, this time on the basis of a decree from the Palestinian president and orders from the Ministry of Interior. In 31/3/2004, the Ministry of Finance issued a memorandum (memorandum number 48) to all banks clarifying that disbursement from the accounts belonging to associations and institutions mentioned before should be based on a decision by the Ministry of Interior directly, without need for a memorandum or approval from the Ministry of Finance. In 6/4/2004, the Ministry of Finance issued another memorandum (memorandum number

⁸ For more information on associations forced to stop their activities, please the Report of Al - Haq et al-Mezan Center for Human Rights, 2/7/2007, www.mezan.org.

⁹ The Islamic Association (11 branches); Al-Salah Islamic Association (8 branches); The Young Muslim Women Association (11 branches); The Islamic Assembly (2 Branches); Al-Nour Charity association (formerly know as Prisoners Care Association); Students Friends Association; Center of Science and Culture Association; Zakat Al-Rahmah Committee; Al-Aqsa Charity Association; Charity Committee for Zakat and Aid; Social Charity Committee; Social Care Association.

56) stipulating that "all banks working in Palestine should take all legal measures to implement the court decision mentioned above." The next day the Ministry of Finance issued a new memorandum to all banks "to abide by its memorandum number 48 issued in 31/3/2003."¹⁰

2. Are there any restrictions that limit the right of associations to use funds in ways different than what their statutes stipulate?

Yes, there are restrictions. If that happens, the Ministry of Interior has the right to suspend or dissolve the association. Disposition of movable and immovable assets by associations in a manner different from that which is stipulated in their statutes is considered a crime of illegal disposition of public funds, which is punishable by penal law.

On the other hand, if an association disposes of its funds as stipulated in its statute, it can benefit from tax and customs exemptions. These exemptions are granted if the association has not spent funds in violation of its statutes within five years of receiving the funds. In this case, the association is reimbursed for all the taxes and customs it paid for the funds. On the other hand, if associations do not make use of their funds in accordance with their statutes, they lose all privileges and the right to benefit from tax exemptions and have to pay all required taxes and customs according to the Ministry of Finance's procedures. After five years of receiving the funds, associations can use what remains of their funds without limitations. However, many associations still have not been reimbursed for tax exemptions due to them from the Ministry of Finance.

3. Are there specific limitations on receiving foreign funds?

There are no restrictions in the law on receiving foreign funds. However, at signing the funding agreement, donors require opening a bank account exclusively for the project. This requires a memorandum issued by the Ministry of Finance to the relevant bank approving the creation of the account. In general, there are no restrictions on Palestinian associations. However, restrictions are usually imposed on foreign associations.

4. To what extent are those restrictions implemented?

We mentioned earlier in this report some problems happened when some associations belonging to Hamas Movement were targeted by decisions to freeze their accounts and to restrict them from receiving financial aid.

5. Do associations enjoy any financial or taxes privileges? To what extent?

The executive regulations address tax exemptions for associations. Article 51 of the executive regulations stipulates that associations are exempt from taxes and customs on their movable and immovable assets necessary to carry out goals stated in their statutes.

6. Are public funds made available to associations? How? Are these processes prone to discrimination?

There are no provisions in the law that require the state to fund associations. However, during the governments that were led by the Fatah Movement, Fatah authorities tried to control society by funding many associations from the public funds without including that in their reporting to the legislative council and other monitoring bodies. In other words, many public employees were funded and delegated to work for associations affiliated with the state party (Fatah) in an irregular manner. Estimates of the number of associations that received funding from the Ministry of Finance or the president's office until 2003, exceeds 130 associations.

Part V : OVERSIGHT, GOVERNANCE AND TRANSPARENCY

1 - What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, security apparatus)? How consistent are the activities of these authorities with the principles of freedom (example: article 16 of the Declaration)?

Article 6 of the law delegated to the relevant ministry the authority to monitor the work of associations. However, monitoring bodies multiplied and monitoring is practiced by many different ministries, or by the preventive security apparatus and the intelligence agency.

The Associations Law also commissioned Public Inspection Office to monitor associations (law number 17 of 1995, article 7/2). This office engaged in actual and serious monitoring until July 14, 2007.

A ministry was established for the affairs of civil associations in accordance with presidential decree number 2 of 1998. This ministry became a source of additional complications, especially after the issuance of presidential decree number 4 of 1999 in 6/10/1999 which delineated the authorities of the new ministry. The Palestinian Law of Charity Associations and Civil Institutions, which became operative in 31/3/2000, does not refer to this ministry, and it gives the authority for the registration of associations and monitoring of them to the Ministry of Interior, in addition to the relevant ministry. It is worth mentioning that this ministry was dissolved on 2003.

This authority could hinder the work of associations if it was abused through interpretation of laws and using it as a tool for investigations rather than monitoring. It also conflicts with the authorities of the office of financial and administrative oversight and the directorate of associations' registry.

2 - What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?

As we mentioned above, the penalty could be dissolving the association. There are also other criminal penalties related to associations' funds.

¹⁰ See press release issued by the Palestinian Center for Human Rights issued in April 8, 2004, and press releases issued by Al-Mezan Center for Human Rights issued in 22/2/2004, 21/3/2004, and 29/3/2004.

THE PALESTINIAN AUTHORITIES ARE CALLED UPON TO:**1. With regard to the political, democratic and human rights situation**

- Act in conformity with article 10 of the Basic Law which states that the Palestinian Authority is intent to adhere to international and regional treaties and conventions for the protection of human rights;

2. With regard to the laws and practices pertaining to associations and civil society organizations

- Transfer responsibility for the associations from the Ministry of the Interior to the Ministry of Justice.

Formation and Incorporation

- Reduce from seven to two the number of founding members needed to form an association;
- Ensure that the registration procedure for associations is limited to ascertaining that the requirements of the law have been met;
- Rescind the Presidential decree of 6/20/2007 which makes it mandatory for associations to register again;
- Put an end to the interference of the security services in the registration procedure and, generally, in the activities of associations.

Dissolution and suspension

- Grant exclusive competence to dissolve or suspend associations to the judicial courts;
- Accordingly, amend article 65 of Legislative Council Decision No 9 (2003) pertaining to the implementation decree No 1 of 2000, in order to take away from the Minister of the Interior the power to dissolve associations.

Organization and Operation

- Implement the existing legislation and the general principles of law in order to put an end to influence trafficking pertaining to the membership of associations and the attribution of unjustified advantages to associations.

Funding and Taxation

- Refund the tax and custom exemptions due to the associations for purchase they made, in accordance with the provisions of the law;
- Execute the decision of the Supreme Court of the Gaza Strip of March 21, 2004, which annulled the decree of the Palestinian Monetary Authority of August 24, 2003.

3. With regard to the climate required for the sustainable development of civil society

- Allow the reestablishment of the 54 associations that were illegally dissolved in the Gaza Strip by Hamas before and after its uprising and ensure that all the funds that were confiscated are reimbursed to them;
- Rescind the decision of the Fayad government at Ramallah to suppress 103 associations.

Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - Civil society landscape

In 1994, when the United Nations Human Rights Committee studied for the last time a periodical report submitted by Tunisia, the Committee expressed *its concerns with that country's law on associations that could be used to limit the enjoyment of freedom of association, as defined in Article 22 of the International Covenant on Civil and Political Rights, ratified by Tunisia.* Since then, as reported by regional and international human rights associations, constraints of all types upon the enjoyment of that right have multiplied.¹

Today, there are some 9,132 associations of all categories in Tunisia². They are active in all fields of activity of civil society. Yet few of those escape from government interference when they determine their goals and activities and select their leadership. Less than a dozen may be considered to be fully independent from the encroachment of the one-party state. Another dozen associations that are not officially recognized are compelled to operate without official authorization (and have therefore no offices, no legal addresses, no bank accounts, etc.). They all suffer from constant harassment by the security apparatus, the judiciary and government officials. It should be noted that, since 1989, no independent NGOs have been allowed to operate officially in Tunisia.

Given the present repressive frame of mind of the authoritarian government of Tunisia, it is not surprising that the authorities tend to see all independent NGOs as so many opposition groups. The legislation on associations was amended in 1992 in order to put even more pressure on existing independent associations as well as their members.

2 - Legislation

Tunisia is a signatory state of the International Covenant on Civil and Political Rights, in which it is stated that everyone shall have the right to freedom of association with others (Article 22) and that no restrictions may be placed on the exercise of that right "*other than those which are prescribed by law and which are necessary in a democratic society in the interests of national safety or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.*"

Article 8 of the Tunisian Constitution of 1959 states that *the freedoms of opinion, of expression, of the press, of publication, of assembly and of association are guaranteed and exercised subject to conditions established by law.* However, this constitutional guarantee is theoretical and the evaluation of the exercise of those freedoms is left to a legislative branch under the control of an omnipotent executive. It should be pointed out that amendments to the Constitution, including the one establishing a Constitutional Council, did not put in place an effective mechanism for controlling the constitutionality of laws, before or after their adoption.

Furthermore, Article 32 of the Constitution states that *all duly ratified international treaties take precedence over national laws.* In spite of that, Tunisian courts systematically refuse to give precedence to international conventions, maintaining that their role is limited to "*applying the law*". The Tunisian government continues to renege on its international commitments with the result that national laws are sometimes at variance with the provisions of the Covenant.

The law of November 7, 1959, that governs associations (Law n° 59-154) has been amended by the law of August 2, 1998, (establishing the procedure of "declaration" of the associations) and the law of April 2, 1992, (establishing a classification of associations according to their activities and their objectives).

Various types of associations exist in Tunisia, such as women associations, sports and cultural associations, fraternities, charities, associations of a general nature (*associations à*

¹ Report of Hina Jilani, U.N. Special representative on the situation of human rights defenders, March 17, 2007, A/HRC/4/37/Add.1

² For instance, the Association tunisienne des femmes démocrates (ATFD), the *Conseil national pour les libertés en Tunisie* (CNLT), the *Ligue tunisienne des droits de l'Homme* (LTDH). See (<http://www.tunisie.com/societe/associations.html>)

caractère général), etc. The category to which an association belongs must be indicated on the declaration document and in the notice published in the official gazette, *the Journal officiel de la République Tunisienne*.

The *association à caractère général* classification allows the Ministry of the Interior and government officials under that ministry to interfere with the very existence of the association as well as with its operations. For instance, an *association à caractère général* must accept as a member anyone who endeavours to respect its principles and decisions, unless the candidate to membership does not enjoy civic or political rights, or pursue activities that are incompatible with the goals of the association. At the time the law was drafted, the government had planned to flood the membership of the *Ligue tunisienne des droits de l'Homme* (LTDH) with new members that would have been supporters of the ruling party, and who could eventually have taken control of the executive bodies of that NGO. Likewise, the law states that senior executives of political parties may not at the same time be officials of an *association à caractère général*. Again, this was intended to destabilize the LTDH whose executive bodies included many opposition figures.

Part I: FORMATION AND INCORPORATION

1 – Does the system allow for non-declared or unincorporated associations?

Under Articles 29, 30 and 31 of the Law on associations, unofficial associations are prohibited and officials of such associations run the risk of being prosecuted before criminal courts.

2 – Is the registration system based on licensing or simple information/notification?

In theory, associations must go through the declaration process in order to be incorporated. Article 1 of the Law on association (Law n° 59-154 of November 7, 1959) states that *an association is a convention whereby two individuals or more permanently put in common their knowledge or their activities in pursuit of an objective other than merely pecuniary, and that the association is governed by the general principles of contractual law*. Courts have interpreted narrowly the term “permanently” in order to prevent the formation of NGOs that wish to pursue goals that are limited in time (e.g. political prisoners support committees, protest groups intent on launching hunger strikes, whose aims are limited both in scope and in time), and threaten the proponents of such associations with the penalties provided for in Articles 29 and 30 of the Law.

Individuals wishing to form an association must deposit a declaration of association and a list of founding members at the

seat of the *gouvernorat* or the *délégation*. The law states that a receipt is then to be issued.

The association is legally incorporated at the end of a three-month period. The association may not begin to operate before the delay is expired and before the publication of a notice in the *Journal officiel*.

3 – What are the bases upon which registration can be rejected (e.g. race, security, religion, politics)?

The Ministry of the Interior may object to the formation of an association. A refusal must be motivated. As a rule, the reason given will be a generic “contrary to the law”, with no details provided, despite the fact that there is little doubt that the real reason is political. Both the Conseil national pour les libertés en Tunisie (CNLT) and the Observatoire pour la presse, l'édition et la création (OLPEC) have faced that problem.

4 – How easy or difficult is the registration (e.g. time, cost, number of incorporators)?

The procedure for declaring an association is detailed in Article 3 of the Law on associations. The request must be deposited at the seat of the *gouvernorat* or of the *délégation* where the association is located. The founding members must give their name as well as the name, the purpose, the goal and the address of the association. Three of the five copies of the declaration must bear a fiscal stamp.

The law sets no time limit for the issuance of a receipt of declaration. Officials take advantage of that void to disrupt the process, preventing the publication of the required notice in the *Journal officiel* and therefore, the formation of the association. Even if the receipt is issued, the Ministry of the Interior may still object to the creation of an association by invoking a violation of a legal provision. As a rule, the only reason given is “contrary to the law”.

5 – Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative)?

If the Ministry of the Interior rejects the registration of the association or refuse to issue a receipt, the founding members may lodge an appeal for abuse of power before the administrative tribunal. In case the authorities refuse to publish the notice in the *Journal officiel*, an appeal may be lodge before the Prime Minister. Procedural delays are frequent in such matters. In any case, the association may not begin its activities before there is a decision in its favour. The net result is that a number of new associations operate “outside the law”, since they are labelled “unrecognized associations” by the authorities, a situation that leaves them in a precarious situation. That is the case of the Conseil national des libertés en Tunisie, L'Association internationale de soutien aux prisonniers politiques tunisiens, l'Amicale nationale des anciens résistants, l'Association tunisienne contre la torture,

l'Observatoire pour la presse, l'édition et la création, la Ligue des écrivains libres, l'Association des directeurs des radios libres, as well as the Syndicat national des journalistes. Under the Constitution, those associations should not be obliged to obtain an authorization to exist and operate.

6 – Does registration automatically entail obtaining a separate legal entity?

With registration, or more properly, with the publication of the notice in the *Journal officiel*, the association automatically acquires the status of a legal entity. However, only the president is entitled to represent the association in courts and intervene in legal proceedings.

The associations may initiate or intervene in legal proceedings, but only for the following:

- unpaid membership fees;
- the premises or furniture needed for the meeting of the association;
- the buildings needed to pursue the objectives of the association.

On the other hand, the associations may not initiate or intervene in legal proceedings in matters pertaining to funds given by the government or government bodies, unless the party concerned authorizes the proceeding. The associations may not associate themselves in a court action that is related to an objective of the association.

It is easier to initiate proceedings against an association. Following the amendment of 1992, anyone whose request to become a member of an *association à caractère général* has been denied may sue that association (more than 30 such suits have been introduced against the LTDH). That amendment had increased the precariousness of associations before the law and the government, which uses the judicial system for its own ends.

7 – Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust, a Wakf)?

There are no alternatives to the Law on associations. Foundations are not allowed, the only exception being the Fondation Temimi pour la recherche scientifique et l'information.

PART II : DISSOLUTION AND SUSPENSION

The Minister of the Interior may, in case of extreme urgency and in order to insure that public order will not be disturbed, issue a motivated order temporarily closing (for a maximum of 15 days) the premises used by an association and suspend all its activities as well as any meeting or gatherings of its members (Article 23).

The Minister of the Interior may ask the competent court of first instance to order the dissolution of any association whose activities seriously contravene provisions of the law on association; whose goals or activities undermine public order or public morality, or whose purpose is political (Article 24). In such a case, the Minister may request at any time the temporary closing of the association's premises and the suspension of all its activities.

In practical terms, the Minister will close the association's premises and prevent its member from meeting without bothering about the niceties of the law. For instance, the Minister has ordered the closing of 11 regional offices of the LTDH since September 2005 without bothering about legal formalities.

Leaders of associations who disregard the provisions of the Law on association are liable to the penalties provided for in Articles 29 and 30. Article 29 states that *any breach of the Law is punishable by a term of imprisonment of one to six months and a fine of 50 to 500 dinars. Individuals who facilitate the reunion of members of an association that is non-existent in the eyes of the authorities or which has been dissolved are liable to the same penalties.* Article 30 states that *anyone who directly or indirectly participate to the maintenance or the reconstitution of an association recognized as non-existent or which has been dissolved are liable to a term of imprisonment of one to five years and a fine of 1,000 to 10,000 dinars, or to one of those two penalties.*

PART III : ASSOCIATION AND OPERATION

1 – What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object (Are such documents imposed? to what extent?)

Forms issued by the Ministry of the Interior must be used for all declarations of association and whenever the statutes of the association are modified. Those forms, that are not mentioned in the legislation, require from the associations that they supply more information than what is provided for in the law. Any section, branch or detached premises of the association must be declared. Modifications to the internal rules are not subjected to the declaration procedure.

2 – How strict is the level of freedom of members to adhere to or leave associations?

According to the law, *any association à caractère général must accept as a member anyone who endeavours to respect its principles and decisions, unless the individual does not enjoy civic or political rights, or pursue activities that are incompatible with the goals of the association.* If the membership request is rejected by the association, the candidate may lodge an appeal before a court of first instance.



3 – Is there any interference in the corporate bodies : e.g. attendance of meetings (Board, General assemblies) by “supervisors”, elections ?

The law does not provide for the presence of “supervisors” in the corporate bodies. However, it is common practice for government officials to be present at the general assemblies or meetings of associations that are close to the government. They will also read “messages” and even issue instructions. Illegal corporate bodies have been forced on the Association des jeunes avocats and the Association tunisienne des magistrats, as well as on the so-called Authentically Governmental Associations (Organisations véritablement gouvernementales, or OVG) such as the Association tunisienne des mères or the Association de soutien aux handicapés Besma. “Supervisors” will frequently oversee the election process.

4 – Are there any restrictions (legal or de facto) promoting, limiting or banning participation of women in associational offices (e.g. Board)?

There are no provisions in Tunisian law that are discriminatory against women, or that would limit or prohibit the participation of women in associational offices. However, the weight of traditions limits the participation of women.

5 – Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

The law prohibits associations “of a political nature”. The Minister of the Interior has discretionary power when it comes to define that term. The Minister will intervene orally to prohibit activities and will avoid sending out written instructions that could be used in a court of law. If the association proceeds with its activities, the security forces may be used to block access to the premises.

6 – Is the association's right to freely assemble or organize private and public meetings, to move freely (including international travel) restricted in any way?

According to the law pertaining to public meetings and gatherings adopted on January 24, 1969, such gatherings may be held freely and are not subject to prior authorizations. Organizers must however deposit a notification at the seat of the governorat at least 72 hours prior to the event. If the meeting is held in Tunis, the notification must be deposited at the Ministry of the Interior. Private meetings may be held freely and are not subject to any formalities.

In practice, the Ministry of the Interior systematically disregards those provisions. The prohibition to hold a meeting is often unofficial and may take many forms:

- Oral messages given to the organizers by officials of the Ministry. As an example, the police official of the El Omrane

district in Tunis gave such a message to officials of the LTDH on April 14, 2006;

- Without prior notice, the premises where the meeting is to be held are surrounded by security forces;
- Owners of buildings where meeting are held are pressured to the point where they are compelled to break the lease by invoking fallacious pretexts (non-existent water damages or renovation works, premises already leased to someone else, etc.)

For instance, the Ligue Tunisienne des droits de l’Homme has been prevented to hold its congress since 2005. Recently, on May 26 and 27, 2007, the police prevented the holding of a conference on the Social forum at the headquarters of the LTDH.

Despite the fact that freedom of movement is guaranteed by the Constitution of 1959, the right to move freely inside or outside the country is often flouted. Police forces may be used to prevent members of an association to travel to the region where a meeting is to be held. In case of meetings outside the country, participants may be illegally prevented to travel, as was the case recently for two lawyers, Mr. Nouri, founder of AISSP, and Mr. Abbou.

7 – Are associations subjected to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

Independent associations see their access to the local media associations restricted. Officials of the media received instructions not to invite independent associations and ignore their press releases or opinions to national events or matters that are of concern to them. On the other hand, media groups will often launch campaigns that are hostile to independent associations and will slander their leadership as well as pro-democracy advocates. Such attacks are often launched against the LTDH and its leaders, such as Mokhtar Trifi and Khémais Ksila, as well as against the CNLC and officials of that association such as Sihem Ben Sedrine, Omar Mestiri and Raouf Ayadi. Other targets of such campaigns are Kamel Jendoubi, president of the CRLDHT and the EMHRN, Khemais Chammari, a former deputy and former vice-president of the LTDH, and Radhia Nasraoui, president of the Association de lutte contre la torture.

Publications are governed by the Press Law. They are subjected to the registration of copyright, and while provisions in that regard have been formally eased, they are still used to pressure major associations. The authorities act as if the registration of copyright process equated an authorization to publish. In that context, the printer, the publisher or the distributor may refuse to meet their obligations or deliver the printed material.

Censorship of the internet is widespread in Tunisia. For that reason, independent NGOs, such as the LTDH, CNLT and AISPT, face many difficulties in developing their web sites.

8 – Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

At the national level, the formation of any federation or networking of associations is subjected to the same rules as the formation of an association.

At the international level, networking with international associations can be assimilated to the creation of a foreign association. A foreign association is defined as an association of any type which has its headquarters outside the country, or, while headquartered in Tunisia, is headed by a board whose members are foreign nationals for at least half of them. These types of associations come under the supervision of the Ministry of the Interior. They may be created or may operate in Tunisia only after having obtained a special authorization (called *autorisation de siège*) delivered by the Minister, under recommendation of the Minister of Foreign Affairs (Article 17).

9 – Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

There are no consultations with independent associations during the decision-making process on matter of public interest.

10 – Are there effective remedies and appeals?

Keeping in mind the lack of independence of the judicial power, the remedies and appeals available to associations are theoretical only. Legal procedures undertaken by independent associations are systematically blocked such as was the case in cases concerning the CNLT or the Association tunisienne des jeunes magistrats.

PART IV : FUNDING AND TAXATION

1 – Are there any limitation on the right of associations to receive and own property and funds ? How?

Under the Law on associations of 1959, any “regularly incorporated” associations may, without any specific authorization, and outside funding provided by the government and government bodies, acquire, own and administer membership fees (that may not exceed 30 dinars, equivalent to about 15 euros), premises and material for its operations, as well as the buildings that are strictly necessary for furthering its stated objectives (Article 8).

The law does not prohibit donations from other sources than the Tunisian government. Such donations are not subjected to special rules. However, a decree of 1922 prohibits anyone from collecting funds from the public without prior authorization.

Offenders may be condemned to up to three months imprisonment. This provision has often been used against opponents and civil society actors, in particular the Ligue tunisienne des droits de l’Homme (LTDH).

2 – Are there any limitations on the right of associations to use the funds, other than by the conditions of their granting?

The level of funding granted by various government bodies to pro-government associations is impressive but remains undeclared. Article 9 of the Law on associations states that any association that receive such funds must submit a financial statement and related documents each year to the Ministry of Finance. The use of such funds is subjected to an annual verification process.

3 – Are there specific limitations on receiving foreign funds?

The legislation does not prohibit foreign funding. However, the law of December 10, 2003, also called the Law to *support international efforts in the fight against terrorism and money laundering*, drastically limits the possibility to acquire such funds. By adding new offences, procedures and penalties (that violate freedom of the press and freedom of expression) and by criminalizing the activities of independent associations, the new law restricts even more individual and public liberties. Following a decision of the Ministry of Finance, associations may now be placed under ongoing financial supervision. With the introduction of so called “prudent management” procedures that the NGOs must follow, NGOs have seen their access to funds reduced even more.

Article 68 prohibits *any type of support and funding of individuals, associations or activities related with terrorist offences or other illegal activities* (such as the activities of associations that are not in conformity with the Law of 1959). The new law introduces a number of procedures and penalties that may be applied to independent actors of civil society and that restrict their access to funding whatever their objectives. Thus, associations and political parties are prohibited from accepting donations or funding from unknown sources and are prevented from collecting membership fees above the ceiling established by law (30 dinars per year). Funds originating from outside the country may only be received through a recognized intermediary living in Tunisia. Cash funds may not exceed 5,000 dinars in value. Associations and political parties whose “turnover” is above a ceiling set by the Ministry of Finance must follow “prudent management” procedures that may result in various control measures at the request of that ministry: daily accounting, inventory of receipts, annual balance sheet. Non observance of those various control measures may result in the imposition of financial audit, the freezing of asset, jail terms and heavy fines.



All these measures constitute an unprecedented attempt at lumping together legitimate civil society activities with actions generally termed as terrorist, the aim being to dry up the sources of funding and muzzle independent associations through selective and arbitrary practices. The government invoked that law to oppose grants from the European Union under the European Initiative for Democracy and Human Rights (EIDHR), that would have been used for the modernization and restructuring of the LTDH, as well as for reforming the judicial system. The Tunisian government blocks those funds by invoking the provisions of Law 59-154 on associations and the decree of May 1922 pertaining to charitable associations recognized as being in the public interest, a situation that does not apply to the LTDH. That measure is contrary to the provisions of the Declaration for the protection of Human Rights Defenders, adopted by the United Nations in December 1998. The measure also violates the spirit and the letter of Article 2 of the association agreement between Tunisia and the European Union on the promotion of human rights (June 15, 2004).

4 – How effectively are these limitations on funding enforced?

Control on the use of funding granted to associations by government bodies is ineffective. A body devoid of any independence - the inspection division of the Ministry of Finance - has been granted near-discretionary powers of supervision. It should be noted that the provisions of the Law to fight terrorism have been used in 2005 to freeze the financial resources of the Institut arabe des droits de l'Homme.

5 – Do associations benefits from tax benefits? Under what conditions?

Associations do not enjoy any specific fiscal benefits.

Part V :

CONTROL AUTHORITY, GOVERNANCE AND TRANSPARENCY

1 – What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, and security apparatus)? How consistent are the activities of these authorities with the principles of freedom (check Principle 16 of the Declaration)?

Funding granted by the Tunisian government is under the supervisory control of the Ministry of Finance. As pointed out above, that control is unregulated in practice, the more so that the funds are often granted directly by the Office of the President of the Republic.

2 – Are accounts and other information transparently available to the public?

Only members of an association have access to the financial statements and other information concerning the management of the financial resources of those entities. The management of those associations that are close to the government (and who benefit from funding from various government bodies), often lack transparency and good governance.

3 – What penalties (e.g. criminal, fines, etc) and harassment measures are applied in case of violations?

The penalties are the same as those that apply to individuals who manage societies governed by civil law. In principle, provisions of the penal code pertaining to embezzlement, forgery and fraud, are applicable. It is however the government that decides to file a lawsuit or not. A discretionary power that is open to abuse.



THE TUNISIAN GOVERNMENT IS CALLED UPON TO:

1. With regard to the political, democratic and human rights situation

- 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 Tunisia, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Promote "a climate that will encourage the development of civil society by facilitating the creation of independent associations and by legalizing those that are now forced to operate illegally [...] new measures that will fully protect the freedom of opinion and expression, such measures consisting, among other things, in the revision and modification of a number of national laws, in particular those pertaining to the press code and the law on political parties", as recommended the United Nations Special Rapporteur on the freedom of expression in the course of his mission to Tunisia in December 1999.

2. With regard to the laws and practices pertaining to associations and civil society organizations

- Reform the Law on associations in order to guarantee the full enjoyment of freedom of association, and eliminate all discriminatory provisions, in particular those pertaining to the classification of associations and all those provisions that open the way to abuses of power by the Minister of the Interior;
- Guarantee the impartiality of the authorities regarding the various stages of life of associations, as well as all their endeavours, in order to ensure the equality of all citizens before the law in matters pertaining to the freedom of association;
- Guarantee, to associations and their members, effective access, within a reasonable time, to the judicial system regarding, in particular, remedies in case of abuse of power by the Minister of the Interior.

Formation and Incorporation

- Abolish the procedure of prior approval for the registration of associations and establish, *de jure* and *de facto*, the declaration system ; ensure, whenever the case arise, that the Minister will be able, without suspensive effect on the activities of the association, to initiate judicial proceedings to oppose the registration;
- Impose on the authorities the obligation to issue, within a short period, the receipt for the deposit of a registration request; ensure that, in case of non-response to the deposit by the authorities within a set period, the association will be deemed duly registered, which will allow the publication of the notice in the *Journal officiel*;
- Subject the registration of modifications of the statutes of the association to a simple declaration;
- Amend articles 29 and 30 that provide for a jail sentence for anyone who participates directly or indirectly to the maintenance or reconstruction of associations that are recognized as non-existent or dissolved.

Dissolution and Suspension

- Give to judicial tribunals exclusive competence to dissolve or suspend an association ;
- Guarantee access to an effective judicial remedy, with suspensive effect and within a reasonable period, in case of a dissolution pronounced by the authorities.

Organization and Operation

- Create the offence of violation of the right of assembly, applicable against any individual or government official who intervenes to prohibit the holding of a meeting without having been given a mandate to do so for a legitimate cause;
- Put an end to police surveillance, used to intimidate, of associations members and their premises;
- Bring to justice individuals who physically attack officials of associations;
- Lift all restrictions limiting access to telephone, fax, email and internet services;
- Put an end to all restrictions limiting the free movement of members of associations, except by a duly motivated judicial decision;
- Guarantee the access of associations to the public media (press agencies, radio, television, newspapers, etc);
- Put an end to internet censorship, in particular the blocking of sites that are critical of the government, and control over email. Repeal all legal constraints pertaining to the internet, in particular provisions of the laws governing the postal service and telecommunications;
- Put an end to abusive interference by public telephone operators (such as the interruption of the telephone communications of independent organizations)
- More generally, respect and protect the right to privacy of human rights defenders;
- Guarantee the possibility of accessing effective judicial remedies within a reasonable period in case of violation of the fundamental rights of members of associations and human rights defenders;
- Guarantee the enjoyment by associations of freedom of the press and freedom to publish, in particular by a fair implementation of the procedure on the registration of copyright, that should not include the requirement of prior authorization to publish;
- Widen the possibilities for association to initiate and take part in legal proceedings, in particular by authorizing the associations possessing legal personality to associate themselves to a court action in cases related to their objectives.

Funding and Taxation

- Abolish restrictions limiting the financing of associations, in particular by eliminating membership fee ceilings and by authorizing associations to resort freely to donations (public or private) in a transparent manner and by simply informing the authorities;
- Adopt and implement a system that will provide for the transparent and equitable distribution of public funds;
- Put an end to the practice of blocking or freezing the financing of associations (*Ligue tunisienne des droits de l'Homme*, *l'Association tunisienne des femmes démocrates*, *Association des femmes tunisiennes pour la Recherche et le développement*, etc.), in particular the financing granted by the European Union;
- Modify the provisions of the Law of December 10, 2003, also called the Law to fight terrorism and money laundering, in order end any confusion between terrorism and peaceful opposition.

3. With regard to the climate required for the sustainable development of civil society

- Put an end to all harassment measures against human rights organizations, in particular the *Ligue tunisienne des droits de l'Homme*, the *Conseil national pour les libertés en Tunisie*, the *Association de lutte contre la torture* and the *Association Internationale de Solidarité avec les Prisonniers Politiques*, and conversely, encourage those organizations to fulfil their mission of monitoring the respect of human rights;
- Encourage the participation of civil society to the decision-making process pertaining to policies of public interest.



Introduction

ENABLING ENVIRONMENT OF CIVIL SOCIETY - "THE GENERAL SETTING"

1 - Political, democratic and Human Rights Specific contexts

At the Helsinki European Council of December 1999, Turkey was officially recognised as a candidate country to the European Union (EU). This marked the beginning of a reform process in Turkey in the context of human rights and democracy. But despite the process of democratisation initiated for purposes of harmonisation with the EU's Copenhagen political criteria, problems in Turkey as regards human rights and democratisation remain unresolved during the last seven years.

Since 1999, a total of 8 harmonisation packages were introduced. These packages include amendments in Turkish Penal Code, Law on Fight Against Terrorism, Criminal Procedures Law, Administrative Procedures Law, Law on the Establishment & Procedures before State Security Courts, Press Law, Association Law, Political Parties Law, Law on Education and Teaching of Foreign Languages, Law on Directorate-General for Foundations and the Foundations Law.

Among amendments teaching in private courses and broadcasting on languages spoken in Turkey other than Turkish, the abolition of the sentence "legally banned languages" that existed in some laws, and enabling foundations to own property and providing the opportunity for renewal of the trial after the decision of the European Court of Human Rights, can be counted as significant amendments.

Another important fact, which is missed in evaluations, is that armed clashes in Kurdish areas had nearly come to an end in the period between 1999 and 2004. This fact facilitated the process of normalisation and boosted hopes of peace.

Constitutional and legislative amendments had positive effects on democracy and human rights. However, these felt short of bringing about structural changes in the State.

In the framework of the reform process, Turkey has signed a number of international instruments. However, regarding Turkey's fulfilling of its obligations under the instruments problems are being experienced in both legislative and implementation aspects.

As a matter of fact almost no step was taken and no serious change was introduced in such critical areas as the rule of law, the independence of the judiciary, the minority and cultural rights, the autonomy and democratisation of universities, the reduction of inter-regional disparities, reflecting the pluralistic nature of the society to legislative and executive power and seeking political solutions to the Kurdish problem.

Towards the end of 2004, positive conditions which had facilitated normalisation and laid a ground conducive to democratisation and improvements in human rights started to turn into negative in some respects. The re-emergence of armed clashes contributed to the re-strengthening of discourse on "fight against terrorism" and heightening the voice of nationalistic circles while facilitating the presentation of demands on cultural rights and peace as "support to separatism".

Between 2005 and 2007, no significant progress was made in democratisation and improvement in human rights situation. This period is rather marked as deterioration from the reform process. Developments during this period can be summarised below.

The amendments to the anti-terror law were adopted in June 2006 as a response to the persistence of the armed clash in the southeastern part of Turkey. Under the new law, the list of what constitutes a terrorist offence was extended and a wide definition of terrorism maintained. This has had an impact on associations dealing with the sensitive issue of the rights of the Kurds.

In this regards there are severe restrictions on freedom of expression. Several articles in the Turkish penal Code, in the new Anti-Terror Law and in the Law protecting Atatürk prevent the exercise of freedom of expression and prohibit it as 'Public denigration of Turkishness' (Article 301). Another restriction is found in the Article 220 of the Turkish Penal Code punishing persons who knowingly and willingly help an organization to commit a crime.

Since the enforcement of the new Turkish Penal Code in 2005, more than 100 individuals have been under trials. Although article 301 includes a provision that expression of thought intended to criticise should not constitute a crime, it has repeatedly been used to prosecute journalists, writers, publishers, academics and human rights activists for expressing non violent opinions.

As a result, the influence of the Armed Forces on the social and political life has increased between 2005 and 2007. Moreover, senior members of the Armed Forces have expressed their opinion on issues related to domestic and foreign policy including Cyprus, secularism and the Kurdish issue.

2 - Civil society landscape

According to data provided by the Department of Associations at the Ministry of Interior, there are 77110 associations and foundations acting in Turkey. 43% of these associations are located in five main cities of Turkey (Istanbul with 20,68%, Ankara with 10,9%, Izmir with 5,19%, Bursa with 3,77% and Kocaeli with 2,87%).

The number of associations and foundations dealing directly with human rights issues in general are rather limited in Turkey: Human Rights Association (IHD); Organisation of Human Rights and Solidarity for Oppressed People (MAZLUMDER); Human Rights Foundation of Turkey; Helsinki Citizens Assembly-Turkey; Amnesty International - Turkey; Human Rights Agenda Association.

The legal aid to victims of human rights violations are provided mainly by the Bar Associations. It is regulated by the Code for Lawyers. The latter mentions that the Board of Directors of the Bar Association is responsible for establishing and managing the legal aid offices. There is a total of 78 Bar associations acting in Turkey.

Combatting torture has been one of the main activities of human rights organizations. As such, the Human Rights Foundation of Turkey (TIHV) and the Human Rights Association (IHD) are very active. However, none of them is only specialized in torture issues.

There is a wide number of organisations dealing with women's rights issues. As an example, there are 36 Shelter Houses for women in Turkey. 20 of them are run by the State authorities (Social Services and Children Protection Institution) and 16 of them by municipalities and women organizations. In 2003 a study showed that there were a total of 300 women associations in Turkey. According to some sources, the number is now up to 500 throughout the country. The geographical distribution of women organisations is uneven and the majority is located in Istanbul and Ankara.

There are more than 100 organisations in Turkey dealing with children issues. In addition to these NGOs, there is also a network of 20 Bar Associations dealing with children rights. In Ankara, 9 NGOs dealing with children rights have established a Platform for Child Rights including International Children Centre.

The organisations dealing with disabled people are numerous over the country. As an example, Association for Handicaps consists of 61 branches throughout the country. There are four federations working on mental and physical disabilities, deafness and blindness. Acting as services providers, the right based approach is not commonly used by these organizations.

The number of organisations dealing with prisoners is limited. These organisations are established by family members of political prisoners, such as TAYAD and TUHADFED. No other NGOs devote its work solely to prisoners. However, most of human rights organisations and some children organisations carry out activities aiming at improving the conditions in prison.

There are also a number of associations and foundations defending the rights of minorities. Romas have recently started to get organized. Recognised minorities i.e. Armenians (48), Greeks (60), Jews (12), Keldanis (1), Bulgarians (1), Assyrians (1), Georgians (1) have their religious foundations under the tight scrutiny of the Directorate General for Foundations.

It is important to underline that certain human rights associations are subjected to judicial harassment by the authorities. Trials and investigations are regularly opened against some associations, which encounter serious problems regarding the procedures. The IHD case (Ynsan Haklarý Dernedi) is a characteristic example of this form of state harassment. Prosecutions are often based on arbitrary motivation and result in heavy financial penalties¹.

3 - Legislation

The Turkish Constitution was amended in 2004 and this amendment gives supremacy to the International Treaties over domestic laws.

¹ Cf Amnesty International, "Judicial harassment of human rights defenders Turkey - 'repeal one law, use another'", AI Index: EUR 44/036/2004, November 2004, available at <http://web.amnesty.org/library/Index/ENGEUR440362004?open&of=ENG-TUR>.

a) International instruments on Freedom of association ratified by Turkey

The most important International Instruments towards Freedom of Association are :

- the Universal Declaration of Human Rights (accepted by Turkey in 1949),
- the European Convention on Human Rights (ratified in 1954). But on May 10, 1990, Turkey formulated several reservations one of them being on freedom of expression and association. In 1991, 1992 and 1993, Turkey reduced progressively its reservations. In 2002, the emergency law was abrogated and on January 29, 2002, the last reservation was abolished. This is the most efficient convention signed by Turkey,
- the International Covenant on Civil and Political Rights (signed on August 15, 2000 and ratified on September 23, 2003), but Turkey formulated a reservation on article 27,
- Convention on the Rights of the Child (ratified in 1992). Turkey formulated 3 reservations on articles 17, 29, and 30.

b) Constitutional provisions

After decades of repression, and under the pressure of the European Community, the Constitution was amended in 2001. The article 33 of the Constitution of 1982, concerning the right to form an association, was amended by the Law n° 4121 of July 23, 1995, and then, by the Law n° 4709 of October 3, 2001. It grants the right to form an association without prior authorization.

c) National law on freedom of association

A new law on Associations was put into force in July 2004, which was "generally in line with international standards" according to the European Commission (Regular Report, 2006, p. 15).

The legal framework regulating the freedom of association consists in the following laws:

- Law No 5253 on Associations (23/11/2004)
- Regulation of Associations Law (2005)
- Law on Foundations No 2762 (1935)
- Foundations Regulations (1970) (for foundations established according to the Civil Code-last revision was made on 1991)
- The current draft law on foundations (pending approval in the Parliament)
- Provisions of the Civil Code pertaining to associations and foundations (Nos 56-117 of the Code 4722 concerning Civil Code)
- The General Statement on Corporation Tax (#83), which gives details about the criteria and conditions to obtain the status of public benefit for foundations.

Part I:

FORMATION AND INCORPORATION

1. Does the system allow for non-declared or unincorporated associations?

The legal framework does not recognise non-declared or unincorporated associations.

2. Is the registration system based on Licensing or simple information/notification?

The registration system is based on notification. In case the Statute of the association is approved then the association is entered into a Register.

3. What are the bases upon which registration can be rejected (e.g. race, security, religion, and politics)?

Registration can be rejected only if its object is contrary to the laws and ethics (Art. 56 § 2 Turkish Civil Code).

But, if the public authority finds irregularities in the documents submitted, it notifies the association to rectify these documents within 30 days. In case the association fails in rectifying the document, the public authority can inform the Public Prosecutor who can refer the case to the Court in order to proceed in the dissolution of the association.

4. How easy or difficult is the registration: (e.g. time, cost, number of incorporators)?

The Turkish Law on Associations requires a minimum of "*seven persons or legal entities*" to establish an association. This requirement "*arguably poses a practical obstacle to the formation of associations, particularly for those dealing with unpopular issues*"².

5. Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative)?

In case the registration is denied by the public authorities, the associations can appeal to courts and at last to the European Court of Human Rights.

6. Does registration automatically entail obtaining separate legal personality?

Yes. In case the association is violating the existing laws, the dissolution has to be pronounced by the Court. Therefore, the legal personality exists since the notification, even if the administration refuses to register the association.

² TÜSEV, Comparative Report on Turkish Association Law Provisions, September 2004.

7. Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust or a “Wakf”)?

Establishing a company was common in some fields and regions before the amendment of the Associations Law in 2004. However, after the legal reform, some women organisations decided to establish cooperatives in order to reduce the formalities.

**Part II:
DISSOLUTION AND SUSPENSION**

The Constitution defines in Article 33 § 4, regulating the Freedom of Association, the basis for dissolving or suspending associations and foundations.

1. What are the causes/grounds of dissolution/suspension?

The only grounds for dissolution or suspension are legal grounds: “Associations may be dissolved or suspended from activity [...] in cases prescribed by law” (art. 33, § 4, Constitution). The Law on Associations (2004) indicates the causes of dissolution:

- a - The use of certain names and signs in violation of the law (art. 29 Assoc. Law)
- b - Prohibited activities
 - Associations cannot carry out activities other than those indicated in the Statute as the objective of the association. (art. 30-a)
 - Associations cannot have, as its aims, goals or activities expressly restricted by the Constitution or the laws, and cannot execute acts which may constitute an offense according to the laws (art. 30-b Assoc. Law). For instance, the governor of Bursa referred a request to dissolve the association Rainbow Travesties, Transsexuals, Gays and Lesbians Protection, Solidarity and Cultural Association to the Public Prosecutor on the grounds that its goals and activities were conflicting with the Constitution (art. 33 and 41) and the Civil Code (art. 56). The governor of Istanbul has recently referred a request to dissolve the association Lambda Istanbul, which defends LGBT rights.
 - The associations cannot have military or paramilitary activities;
- c - Violation or breach of certain requirements in the notification form and attached documents (art. 60)
 - The language used should be Turkish. On April 20, 2006, the Court of first instance No 2 of Diyarbakir dissolved the association Diyarbakir Kürt-Der (Kurdish Association Diyarbakir). One of the reasons referred to was the use of the Kurdish language as a working language.

- By-laws, declarations and status, should be conform to what is requested by the Association Law and contain accurate information. Failing to recover of the contraries to the law is a ground for suspension or annulation.

2. What authorities pronounce these decisions (role of the Judiciary, Executive ...)?

Only the Judiciary pronounces dissolution or suspension decisions, according to Article 33-4 of the Constitution that stipulates: “Association may be dissolved or suspended from activity by decision of judge in case prescribed by law”.

But, the same article states that “In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may have power to suspend the association from activity”.

However, the public authority that suspended the association is obliged by the same constitutional article to submit its decision “for approval to the judge in charge of the case within 24 hours”. If the judge doesn’t pronounce a judgment within 48 hours, the “administrative decision shall be cancelled automatically”.

In case the administration finds violations in the declarations, regulation or statutes of an association, it has to inform the Public Prosecutor. The latter has the competence to sue the association before the Court for dissolution or suspension of activities.

3. Are there effective remedies and appeals?

The ordinary trial procedure is applicable in the actions to be proceeded before the civil courts pursuant to this Law (art. 18). The Associations can apply to Administrative Court with a demand to, for example “suspend the decision of the Administration”. If the Court decides to the disadvantage of the association, then the latter can appeal to the Council of State. The prosecution and investigation are carried out according to the provisions of the Law 3005 related to Trial Procedures in Flagrant Crimes, and do not depend on the location and time of the offense.

**Part III:
ORGANIZATION AND OPERATION**

1. What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (Are such documents imposed? to what extent?)

Although associations are free to draft and amend their own statutes and by-laws and to determine their own objectives, there are legal and practical limitations. The Department of

Associations at the Ministry of Interior has produced a template for the statutes of the associations published on its website. This template provides the associations with the general framework for their statutes. This template does not allow associations to establish structures of their choice. As a consequence, it interferes into the internal structure of the associations.

2. How strict is the level of freedom of members to adhere to or leave associations?

Freedom to adhere to and leave an association is laid down in the Association Law.

- A written notification is required (art. 66).
- Membership can also be automatically terminated if the member *"loses the qualifications required by the law or by the by-laws of the association"* (art. 65).
- Discharge from the association is also possible (art. 67) if motivated in accordance with the by-laws. In that case, objections are not admitted. But, *"if the reasons of discharge are not clearly indicated in the by-laws; a member may only be discharge on justified grounds"*. In this situation, *"an objection may be made to this discharge by arguing that it is not based on justified grounds"*. However, the law does not indicate the meaning of *"justified grounds"*.

3. Are there any interference in the corporate bodies: e.g. attendance of meetings (Board, General Assemblies) by "supervisors"?

There is no interference in relation to participation in meetings or elections.

4. Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. Board)?

The Association Law (art. 68) contains an article on equality which grants equal rights to the members and bans the discrimination based on language, race, colour, sex, religion, sect, lineage, society and class. However, de facto, participation of women in associational life is rather limited, except within women associations.

5. Are there any interference in the freedom of associations to decide on projects and activities? If yes, how and why?

There has not been any interference on projects and activities since the enforcement of the new Association Law of 2004.

6. Is the association's right to freely assemble or organize private and public meetings, move freely (including international travel) restricted in any way?

There is no restriction on organising private and public meetings. However, in practice, the Law on demonstrations and public meetings can apply for large demonstrations or public meetings. Furthermore, the Association Law does not hamper the freedom of movement of members of the association, either internationally or domestically.

7. Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?

In general, there are no limitations to access to the media, publish and develop websites. However, the LGBT organisations encounter some difficulties in developing websites.

8. Is the freedom of associations to cooperate and network with others limited (both domestic and international)?

There are some limitations in the Association Law on cooperation and networking.

9. Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

Attitudes and practices of officials, politicians, and the media against human rights defenders, representatives of the civil society and NGOs, bring about a lack of public confidence in human rights organizations and NGOs in general. Therefore, there is no real mediation that could support dialogue between the authorities and the civil society. There are no satisfactory mechanisms within the public administration that takes into account the opinion and recommendations of the civil society. The institutional structures through which the civil society could effectively oversee the legislative and executive activities are not functional.

10. Are there effective remedies and appeals?

The members of an association have the right to appeal to the Civil Court in case a decision from the Board.

Part IV:

FUNDING AND TAXATION

1. Are there any limitation on the rights of associations to receive and own property and funds? How?

There is no limitation on acquisition of real estate as long as it is done on the grounds of a decision taken by the Board, *"based on the authorization given by the general assembly"* (art. 22). However, the associations are liable to make a notification of the real estate purchased to the local administrative authorities within one month as of the entry date in the registry (art. 22). The aid collection by associations and foundations has strict rules. It requires a prior permission from the authorities. The authorities have recently frozen the funds of Amnesty International Turkey. AI had published its bank details on its website for potential donations. This procedure has been considered inconsistent to the law.

2. Are there any limitation on the rights of associations to use the funds, other than by the conditions of their granting?

The practice cannot be regarded as a limitation strictly speaking; however, all foreign funds beneficiaries should provide a copy of their projects to the Department of Associations within each province. Although there is no legal ground, officials occasionally audits all expenditures made in this context. This is an indication of the lack of confidence of authorities towards civil society organisations.

3. Are there specific limitations on receiving foreign funds?

The legal framework remains unduly restrictive in several aspects regarding international cooperation. While the Law on Associations specifically permits associations to engage in international activities and establish cooperation abroad (a significant improvement over the prior legal framework), the Association Regulations impose burdensome notification requirements on both associations and foundations, which could be confused with a prior governmental approval.

4. Do associations benefit from tax benefits? Under what conditions?

In general, associations are not exempted from taxes. Associations are paying tax of rent, income tax and other relevant taxes applied in good and services. The Council of Ministers decides, case by case, if the associations and foundations with granted public benefit status may be exempted from tax.

5. Are public funds made available to associations? How? Are these processes prone to discrimination?

Public funds are available restrictively. Besides, these funds are only available for associations and foundations with granted public benefit status which is discriminatory practice.

Part V:

OVERSIGHT, GOVERNANCE AND TRANSPARENCY

1. What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, security apparatus)?

How consistent are the activities of these authorities with the principles of freedom (check principle 16 of the Declaration)?

"The associations are obliged to submit the year-end results of their activities, income and expenditure transactions to the local administrative authority each year, before the month of April". (art. 19) When he thinks it is necessary, the Ministry of Interior or the local administrative authorities may start inspection to determine whether the association is operating in the direction of the object declared in the statute and whether the statutory records are kept in compliance with the laws. However, *"such inspections must be notified to the associations at least 24 hours in advance"*. Association members are obliged to provide all information, documents and records requested by the officers assigned with inspection duty, and to enable their access to the management building, premises and equipment.

In case of determination of illegal activity during the inspection, the Chief Prosecutor's Office is notified immediately by the local administrative authorities.

2. Are accounts and other information transparently available to the public?

Associations declare their accounts and other relevant information during their General Assemblies. Stricly speaking, it is not easy to affirm that all associations and foundations have transparency rules and principles.

3. What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?

In cases of violations, article 32 of the Association Law applies administrative fine, and even imprisonment sentences.

THE TURKISH GOVERNMENT IS CALLED UPON TO:**1. With regard to the political, democratic and human rights situation**

- 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 Turkey, and to take into account the relevant jurisprudence of the United Nations Committee on Human Rights;
- Ratify the following human rights instruments :
 - Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms that pertains to the general prohibition of discrimination on the part of public authorities
 - The First Optional Protocol to the International Covenant on Civil and Political Rights
 - The Optional Protocol to the United Nations Convention against Torture
 - The United Nations Convention on the Rights of Disabled People (signed by Turkey)
- Amend the Law on foundations to bring it in line with international norms on the freedom of association as set forth in the human rights instruments of the United Nations and the Council of Europe.
- Eliminate all forms of discrimination based on, inter alia, gender, race, language, religion, political opinions sexual orientations or membership to a national minority in all matters pertaining to the organizations of civil society; set up an adequate complaint mechanism.
- Strive to find a permanent solution that would resolve the Kurdish question in a peaceful manner.

2. With regard to the laws and practices pertaining to associations and civil society organizations

- Eliminate all distinctions between associations and general interest associations.

Formation and Incorporation

- Reduce from seven to two the number of founding members required to form an association.

Organization and Operation

- Abolish the legal framework at the base of discrimination pertaining to the language in the workplace;
- Withdraw from the government the capacity to control the decision process on the organization of associations.

Funding and Taxation

- Abolish the heavy penalties provided for in the Law on associations;
- Lift all restrictions on the fund-raising activities of associations;
- Allow greater freedom to associations on the use of foreign funds.

3. With regard to the climate required for the sustainable development of civil society

- Ensure, by way of an adequate consultation system, the participation of associations to the decision-making process on policies of public interest;
- Ensure the enjoyment by association of the freedom of expression, a component of their associative freedom.

by Thibaut GUILLET

Introduction

1. Freedom of association is an individual freedom protected by all the major international and European human rights instruments and by all the national Constitutions of the member states of the European Union.¹
2. Restrictions on freedom of association, as protected under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, have been interpreted narrowly by the European Court of Human Rights ("the ECtHR") to the effect that: «*only convincing and compelling reasons can justify restrictions on freedom of association [...] States have only a limited margin of appreciation.*»²
3. Furthermore, the importance of freedom of association within Europe is reflected in the fact that it is the sole region which has agreed on an international Convention guaranteeing the right of any association, which has its headquarters in the ratifying state to automatically enjoy the same legal capacity to act in another member State. The Convention of the Council of Europe on the Recognition of the Legal Personality of International Non-Governmental Associations (CETS No 124 of 24 April 1986) has been ratified by eleven states³ as of 1 September 2007.⁴
4. Supported by these guarantees, European citizens are very active third sector participants: among the 27 member States of the European Union the number of registered associations is estimated to be more than 3 million,⁵ representing on average 6 associations per 1,000 people (note that this fails to take into account that registration is usually not necessary in common law countries such as the UK and Ireland).⁶ Of these States some have particularly high numbers of associations: e.g. France has close to 800,000 registered associations encompassing 10 to 12 million volunteers;⁷ the United Kingdom has almost 500,000 *voluntary organisations* with 600,000 employees representing 2,2 % of the total workforce.⁸ It is estimated that 90% of Danish citizens are members of at least one association, and that 73% are members of several.⁹ Voluntary working time in Sweden is estimated at 480 million hours per year, the equivalent of 300,000 full time jobs and worth 8 million Euros;¹⁰ whereas Hungary hires more than 90,000 employees.¹¹ German associations are particularly active in the health and social sectors: they manage 40% of hospitals, 85% of youth clubs and 55% of old people's homes.¹²
5. However, despite its strong protection in law by European institutions and EU Member States and its widespread exercise by millions of citizens there are a number of disturbing trends that are undermining its enjoyment. In particular, the so-called "war on terror" has resulted in the proscription of a number of associations combined with restrictions on operations. This, together with other discriminatory measures has had a disproportionate impact on minorities.

¹ The United Kingdom does not have a codified constitution but integrates the provisions of the European Convention on Human Rights (ECHR), including Article 11 protecting freedom of association into domestic law through the *Human Rights Act 1998*.

² *Sidiropoulos and others v. Grèce*, E.Ct.HR Application No. 57/1997/841/1047, (10/7/1998), par. 40.

³ Austria, Belgium, Cyprus, France, United Kingdom, Netherlands, Greece, Former Yugoslav Republic of Macedonia, Netherlands, Portugal, Slovenia and Switzerland.

⁴ Moreover, on October 10, 2007, the Committee of Ministers of the Council of Europe has adopted a Recommendation on the legal status of non-governmental organisations in Europe (CM/Rec(2007)14): "This is the first international legal instrument that targets the legislator, the national authorities and the NGOs themselves. It aims to recommend standards to shape legislation and practice vis-à-vis NGOs, as well as the conduct and activities of the NGOs themselves in a democratic society based on the rule of law." (Please see: http://www.coe.int/t/e/legal_affairs/legal_co-operation/civil_society/Press%20release.asp#TopOfPage). However, Recommendations are not binding on member States.

⁵ *Guide de la liberté associative dans le monde, 183 législations analysées*, under the supervision of Michel Doucin, *La Documentation Française*, Paris, 2007, p. 576.

⁶ *Ibid.* p. 632 and 678.

⁷ *Ibid.* p. 622.

⁸ *Ibid.* p. 682.

⁹ *Ibid.* p. 606.

¹⁰ *Ibid.* p. 692.

¹¹ *Ibid.* p. 631.

¹² *Ibid.* p. 586.

Impact of 'war on terror'

6. Since 11 September 2001 (and even before this date), the global fight against terrorism has resulted in frequent wide ranging restrictions on many human rights across numerous countries, including in Europe. Whilst such restrictions have most conspicuously impacted on individual liberty and privacy (e.g. extending detention without charge or trial for terrorist suspects; psychological profiling, interception of communications),¹³ there has also been breaches of freedom of association and related rights to free expression and assembly.
7. Arguing that associations - whether officially created or not - can be used by individuals to organise and carry out terrorist acts, some States have blacklisted individuals and organisations suspected of supporting and/or carrying out terrorist acts, frozen of funds, and thus activities, or required them to publicly disclose their sources of funding. However, as will be seen below, the process by which such decisions are reached are often flawed lacking transparency and due process.

Restricting minority rights

8. In addition, the last few years have also witnessed an increase in the restrictions placed on minority associations, whether these are national, religious or sexual. Whilst the motives behind some restrictions are security driven, others (e.g. the prevention of gay rights marches in some Eastern European countries) have their roots in longstanding discriminatory attitudes and behaviour.
9. This study adopts the same format as those undertaken on the Southern and Eastern Mediterranean countries: the first section focuses on the formation and incorporation of associations, the second examines their suspension and dissolution, the third addresses their organisation and operation whilst the final one looks at funding and taxation. It is not an exhaustive survey but combines an analysis of particularly egregious legal restrictions that have been put in place with significant case studies of the impact felt by civil society.¹⁴

1. Formation and incorporation

10. Generally, laws governing the formation and incorporation of European associations are based on a "*principe déclaratif*" ("notification system"). Contrary to most of the South Mediterranean countries, where a group needs prior authorisation from authorities to form an association, this principle means in EU countries no such authorisation is required. Instead, the registration system is based on simple information/notification of the existence of such an association. As soon as authorities are informed, an association acquire a legal personality, which is distinct from that of its members and most likely to impact on the rights of third parties.
11. However, citing threats to national sovereignty and/or territorial integrity by minority movements, some States have refused to register some groups. Such cases occur particularly frequently, although not exclusively, in Southern Europe. In Greece, the group '*House of the Macedonian Civilization (Stegi Makedonikou Politismou)*' was refused incorporation on the grounds that its members opposed the Greek identity of the country's province of Macedonia, thereby threatening Greece's territorial integrity.¹⁵ A refusal on similar grounds occurred in Bulgaria, where the registration of group '*OMO Ilinden PIRIN*' was denied for the reason that '*its statutes and programmes run contrary to the nation's unity*' in that they were aimed at defending the Macedonian minority within the province.¹⁶
12. These restrictions have occurred despite the fact that international human rights case law requires that only "relevant and sufficient"¹⁷ criteria should be used to justify registration refusal. Specifically, "*campaigning in favour of a change in the legal and constitutional order is not in itself incompatible with the principles of democracy*" and the "*'opening' of a border [...] does not seem to jeopardize a country's integrity or national security.*"¹⁸ Refusing registration on the grounds that a group's name includes words from a minority language in its title has also been considered to increase the risk of a potential breach of the right to freedom of association.¹⁹ In contrast, the refusal to register an association whose only

¹³ The police detention for persons suspected of terrorist acts can last up to 28 days in the United Kingdom (Terrorism Act 2006, Chapter 11, section 23).

¹⁴ This study only focuses on European countries members of the European Union.

¹⁵ *Sidiropoulos and others v. Greece*, supra n.3.

¹⁶ *United Macedonian Organisation Ilinden - PIRIN and others v. Bulgaria*, E.Ct.H.R. application No59489/00 (20 October 2005).

¹⁷ *Sidiropoulos and others v. Greece*, supra n.3.

¹⁸ *Zhechev v. Bulgaria*, E.Ct.H.R. application No 57045/00 (21 June 2007) concerning the refusal to register the association "*Civil Society for Bulgarian Interests, National Dignity, Union and Integration - for Bulgaria*".

¹⁹ In its concluding observations concerning Greece, 25/04/2005, the United Nations Human Rights Committee "*notes with concern the apparent unwillingness of the Government to allow any private groups or associations to use associational names that include the appellation 'Turk' or 'Macedonian'*" (par. 20). 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.*" (CommDH(2006)13 / 29 March 2006 par. 44).

aim is to provide its members with the benefits attached to the qualification of national minority is legitimate.²⁰

13. Refusal also has to be placed on concrete evidence rather than supposition which, as noted by the European Court of Human Rights, can only be known by the State after an association has started functioning.²¹
14. When a refusal to register results in a violation of article 11 of the ECHR, the state must take all necessary measures to restore legality, including *"if the case arises, individual measures to put an end to the violation and erase its consequences with the aim to guarantee as much as possible restitutio in integrum (full compensation)."*²² This was the conclusion of the Committee of Ministers when monitoring the execution of the judgment in the refusal of the Bulgarian authorities to register the group «*OMO Ilinden PIRIN*.» However, despite repeated requests (the most recent being 7 February 2007) the Bulgarian government has continued to refuse to implement the judgment of the European Court and either to register the association and/or provide appropriate compensation.²³ On 23 August, the Sofia City Court rejected once again an application from the group; the case is now before the Supreme Court of Cassation.
15. Finally, it should be noted that, although European States do not generally restrict the ability of foreigners to form and participate in associations²⁴ - in conformity with article 3 of the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level of 5 February 1992,

ECTS No. 144²⁵ - the practice of Spain continues to cause concern. According to article 8 of the 'organic law on the rights and freedoms of foreigners in Spain and their social integration' of 22 December 2000, the right to freedom of association is limited to those foreigners who have been granted a resident's permit or leave to remain.²⁶ However, the law does grant the right to free judicial assistance to defend their rights to the sole legal foreigners.²⁷ This restriction has been expressly criticised by the Council of Europe's Commissioner for Human Rights in 2005.²⁸

2. Dissolution and suspension

16. Clearly, an association can be dissolved for internal reasons following a decision of its members. At the same time, external dissolution can be enforced if an association's activities are viewed as contravening relevant regulatory laws. However, such dissolution procedures are rare in Europe with national authorities only tending to intervene when the association acts in total contradiction of fundamental rights; for example, the pursuit of a racist goal.²⁹ Even in such cases, the justification is not always clear with some decisions apparently being more motivated by nationalist concerns than the protection of minority rights : e.g., the Greek Court of Cassation dissolved the association Turkish Union of Xanthi on the basis that *"its aim is illegal and contrary to Greek public order, since it is in contradiction with the international treaties signed in Lausanne (which only recognize the presence of a religious Muslim minority in the area of Western Thrace, and not a national Turkish minority).*

²⁰ *"In the instant case the refusal was not a comprehensive, unconditional one directed against the cultural and practical objectives that the association wished to pursue, but were based solely on the mention, in the memorandum of association, of a specific appellation for the association. It was designed to counteract a particular, albeit only potential, abuse by the association of its status as conferred by registration. It by no means amounted to a denial of the distinctive ethnic and cultural identity of Silesians or to a disregard for the association's primary aim, which was to "awaken and strengthen the national consciousness of Silesians" (Gorzeliak and others v. Poland, E.Ct.H.R., application No 44158/98, (17 February 2004) par. 105)*

²¹ *United Communist Party of Turkey v. Turkey, the E.Ct.H.R. argues that "Admittedly, it cannot be ruled out that a party's political programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the party's actions and the positions it defends. In the present case, the TBKP's programme could hardly have been belied by any practical action it took, since it was dissolved immediately after being formed and accordingly did not even have time to take any action" (United Communist Party of Turkey v. Turkey, application no. 133/1996/752/951, (30/1/1998) par. 58). It was confirmed recently in Bekir-Ousta v. Greece, E.Ct.H.R.application No 35151/05 (10 October 2007)*

²² CM/Inf/DH(2007)8, 7 February 2007.

²³ In his follow up report on Bulgaria of 2006, the Human Rights Commissioner of the Council of Europe further recommended to the authorities that *"appropriate measures be taken to allow the unrestricted exercise of the right of association by all minorities"* (CommDH(2006)6 / 29 March 2006 par. 28)

²⁴ In Lithuania, the nationality requirement was repealed in 2004 (CM/Monitor(2005)1vollfinalrevF / 11 October 2005 par. 101) ; similarly Belgium no longer imposes any such requirement following its condemnation by the European Court of Justice on 29 June 1999 (*Guide de la liberté associative dans le monde, 183 législations analysées*, p. 591, supra n.4)

²⁵ *"Each Party undertakes, [...] to guarantee to foreign residents, on the same terms as to its own nationals [...] 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 their interests. In particular, the right to freedom of association shall imply the right of foreign residents to form local associations of their own for purposes of mutual assistance, maintenance and expression of their cultural identity or defense of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association"*

²⁶ *«Todos los extranjeros tendrán el derecho de asociación conforme a las leyes que lo regulan para los españoles y que podrán ejercer cuando obtengan autorización de estancia o residencia en España.» (Ley organica 8/2000, 22 December 2000)*

²⁷ *Ángeles López Álvarez, Reflexiones acerca de la Ley Orgánica 8/2000 sobre derechos y libertades de los extranjeros en España y su integración social*

²⁸ *"the aliens and immigration legislation has been criticised in a number of quarters on the grounds, amongst others, that the rights of assembly, association, demonstration, joining a trade union and striking are limited to foreigners with a residence permit or leave to stay in Spain."* (Report of the Commissioner for Human Rights of the Council of Europe, March 2005, CommDH(2005)8 / 9 November 2005 par. 76)

²⁹ For example, France banned the association "Tribu Ka" on a charge of incitement of racial hatred (the association prohibited its meeting to non African people) in 2006 (*Guide de la liberté associative dans le monde, mentioned above, p. 622*)

*The reference to the Turkish identity does not reflect some remote Turkish origin but a current quality as members of a Turkish minority that would exist in Greece and would pursue the promotion within the Greek state of state interests of a foreign state and specifically Turkey. The association with its actions (...) gravely endangers Greek public order and national security (...) and raises a non-existent minority problem of 'Turks.'*³⁰

17. Even though outright dissolution might be rare, by freezing the assets of associations suspected of terrorism, recent counter terrorism laws have effectively suspended the activities of associations since it is clear that, without funds, an association cannot function properly.

Impact of 'war on terror': international and regional measures

18. Even before 11 September 2001, the United Nations Security Council, in the light of the takeover of Afghanistan by the Taliban, had adopted resolution 1267 (1999) requiring all states to "freeze funds and other financial resources [...] owned or controlled [...] by the Taliban [...] as designated by the Committee established by paragraph 6."³¹ Subsequently, on March 8th 2001, this Committee, known as the 'Sanctions Committee',³² and composed of all Security Council members, drew up a ('black') list of persons and entities suspected of terrorism whose financial assets shall be frozen accordingly.

19. Since 11 September 2001 attacks, the United Nations has adopted several measures to prevent terrorist groups from abusing freedom of association on the basis that terrorism, as well as posing a threat to global security, also undermines human rights, the rule of law and pluralist democracies. In particular, the Security Council has adopted Resolution 1373

(2001), which sets out the general framework for the global fight against terrorism, ordered States to freeze the funds of individuals and groups suspected of terrorism and tasked the Sanctions Committee with supervising the updating of the list of persons and entities suspected of terrorism whose financial assets shall be frozen (In fact, since September 11th, Sanctions Committee, established by resolution 1267 (amended different times) is the Committee in charge of updating the list of persons and entities suspected of terrorism whose financial assets shall be frozen).

20. Whilst the need to tackle the funding and support of terrorism cannot be denied, the process by which individuals and organisations are placed on the blacklist,³³ leaving aside the normal errors that will arise,³⁴ suffers from three major weaknesses. Firstly, the sanctions of freezing assets, which are criminal in nature, are determined by political rather than judicial bodies; secondly, the sanctions are adopted without those who are subjected to them being heard, or even notified; thirdly, they cannot be subject to judicial challenge since the Security Council did not provide any right of appeal against such decisions, and, in any event, its resolutions cannot be challenged in a court of law.³⁵ Removal from the list is only possible if all the members of the Sanctions Committee agree to it and, even then, the individual subjected to sanctions is neither heard nor informed of the evidence which led to his/her being put on the list.³⁶ In a recent Report of Dick Marty, MP at the Council of Europe, Syméon Karagiannis has commented this situation: "To demonstrate a lack of guilt without knowing what you have been held guilty for must not be easy" [NDTR unofficial translation].³⁷ Unsurprisingly, in the light of these failings, the process has been the subject of strong criticism, including by the United Nations Special Rapporteur on Terrorism and Human Rights.³⁸

³⁰ Source: <http://cm.greekhelsinki.gr>

³¹ Article 4, S/RES/1267 (1999).

³² As of 1 March 2007, no less than eleven sanctions committees were active, which were created by Security Council resolutions from 1993 (resolution 751 on Somalia) to 2006 (resolution 1718 on the Democratic People's Republic of Korea).

³³ Any state can suggest adding an individual on the black list. If none of the 15 members of the Security Council raise any objection within 5 days, sanctions are applied (source : *UN Approves Appeals over Terrorism Blacklist*, David Crawford, *Wall Street Journal*, 21 September 2006).

³⁴ For example, in July 2007, a seven year old child was subjected to a thorough check before taking a plane in Florida as his name was on the American list of dangerous persons on the basis that he had the same name as a man suspected of terrorism. (Source : AP) .

³⁵ In the case of *Yusuf et Al Barakaat International Foundation/Council and Commission*, T-306/01, of 21 September 2005, the Court of First Instance of the European Communities found that "there is no judicial remedy available to the applicant, the Security Council not having thought it advisable to establish an independent international court responsible for ruling, in law and on the facts, in actions brought against individual decisions taken by the Sanctions Committee. [...] In the circumstances of this case, the applicants' interest in having a court hear their case on its merits is not enough to outweigh the essential public interest in the maintenance of international peace and security in the face of a threat clearly identified by the Security Council in accordance with the Charter of the United Nations". Similarly, the European Court on Human Rights recently confirmed that "the Convention could not be interpreted in a manner which would subject the acts and omissions of Contracting Parties which were covered by UNSC Resolutions and occurred prior to or in the course of such missions, To do so would be to interfere with the fulfillment of the UN's key mission in the field including the effective conduct of its operations" (ECHR, *Behrami et Behrami v. France and Saramati v. France, Germany and Norway* (n° 78166/01), 31 May 2007).

³⁶ As of 15 August 2007, only nine persons have been taken off the list in 6 years; including two associates of Youssef Nada whose case is famous (source : «*Pour lutter contre le terrorisme, l'ONU a établi une « liste noire » aux confins du droit*», *Le Monde*, 17 août 2007).

³⁷ Syméon Karagiannis, in Report of Dick Marty, AS/Jur (2007) 14, 19 March 2007, par. 60.

³⁸ "The inclusion on the list must be subject to a certain number of procedural guarantees. First is the right to be informed." (Report of Martin Scheinin, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism A/61/267, para. 38).

21. However, despite these failings and criticism, the European Union, together with its members, in accordance with article 103 of the United Nations Charter³⁹ and article 307 of the Treaty establishing the European Community,⁴⁰ is obliged to implement decisions of the Security Council. Hence in order to implement resolution 1373 (2001), the European Union established, through two⁴¹ legal instruments, its own procedures for freezing the funds of associations suspected of terrorism: The Council Common Position 2001/931/CFSP of 27 December 2001 on 'the application of specific measures to combat terrorism' and the Council Regulation (EC) No 2580/2001 of 27 December 2001 on 'specific restrictive measures directed against certain persons and entities with a view to combating terrorism.'⁴² It could be noted that the European Parliament, which was not consulted on the process, criticized the procedure used by the Council in its Resolution "on the Council's decision of 27 December 2001 on measures to counter terrorism" of 7 February 2002.⁴³
22. One problem with these arrangements is that these two European instruments create two different 'blacklists' of associations. Firstly, the Common Position 2001/931/CFSP establishes in its annex a list of persons, groups and entities involved in terrorist activities and whose funds must be frozen. This list is updated every six months.⁴⁴ In addition, the Council's Decision 2001/927/CE which implement article 2 paragraph 3 of the Regulation (EC) No 2580/2001 establishes another list ('*The Council, [...] shall establish, review and amend the list of persons, groups and entities*' whose funds must be frozen). Since 2001, this list is updated twice a year.⁴⁵ Unsurprisingly, as is outlined below (see: paragraph 24), the names on these two lists differ.
23. The problems are further exacerbated by the fact that, according to article 46 of the Treaty on European Union, no judicial appeal is possible against Common Positions taken in the framework of the CFSP. However, actions for annulment can be brought against those Regulations of '*direct and individual*' concern to individuals and community Decisions before the Court of Justice of European Communities ("the ECJ"), under article 230 of the Treaty establishing the European Community.⁴⁶ It was on this basis that the case of *People's Mujahedin of Iran* was taken before the ECJ (see paragraph 26 below).
24. The impossibility of contesting such a list becomes all the more disturbing given that it has been adopted by a political body without any of the evidence being subject to independent and impartial judicial scrutiny: "*The list in the Annex [of Common Position 2001/931/CFSP] shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.*"⁴⁷
25. Moreover, such lists adopted through a Common Position discriminate against European associations suspected of terrorism since only non-European associations appear to be entitled to contest the possible consequences of being included, although not the inclusion itself. Indeed, the Common Position 2001/931/CFSP precise, in its index, blacklisted European associations come under article 4⁴⁸

³⁹ "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

⁴⁰ "The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty."

⁴¹ The Council adopted on 27 December 2001 a third instrument, the Common Position 2001/930/CFSP on 'the fight against terrorism'. It contains all the elements of Resolution 1373 (2001) but does not contain any provision on implementation.

⁴² Article 2 paragraph 3 of the Regulation (EC) No 2580/2001 is implemented by the Council's community Decision 2001/927/EC of 27 December 2001 (see par. 21)

⁴³ The European Parliament "*deplores the choice of a legal basis which falls under the third pillar for the definition of the list of terrorist organisations, thereby excluding all consultation and effective scrutiny both by the national parliaments and by the European Parliament, and also evading the jurisdiction of the Court of Justice [and] regrets that this Common Position, which defines the list of European and non-European terrorist organisations, can be updated at any moment by the Council without any consultation of Parliament*"

⁴⁴ The list currently in force is the one contained in the Council's Common Position 2007/448/CFSP of 28 June 2007 (see annex 2).

⁴⁵ The Council's Decision 2007/445/CE of 28 June 2007 is the one currently in force. (See Annex 2).

⁴⁶ "The Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties [...] Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former."

⁴⁷ Article 1 paragraph 4 of the Council's Common Position (2001/931/CFSP).

⁴⁸ Article 4 of Common Position 2001/931/CFSP: "*Member States shall, through police and judicial cooperation in criminal matters within the framework of Title VI of the Treaty on European Union, afford each other the widest possible assistance in preventing and combating terrorist acts. To that end they shall, with respect to enquiries and proceedings conducted by their authorities in respect of any of the persons, groups and entities listed in the Annex, fully exploit, upon request, their existing powers in accordance with acts of the European Union and other international agreements, arrangements and conventions which are binding upon Member States.*"

of this Common Position. However, in the cases *Segi and Gestoras Pro-Amnistia*⁴⁹ - two European associations - the European Court of Human Rights held inadmissible their claims since "the applicants are subject only to Article 4 Common Position 2001/931/CFSP. [However, article 4] does not add any new powers which could be exercised against the applicants [...] Consequently, the Court considers that the situation complained of does not give the applicant associations the status of victims of a violation of the Convention within the meaning of Article 34 of the ECHR." In other words, no action is possible for them before the ECtHR. In 2004, the two associations then turned to the ECJ, but on 7 June 2004, the latter declared it was not competent to decide on their case because the matter concerns police and judicial cooperation, which falls outside community issues.⁵⁰ The result is that European associations appear to be deprived of their right to an effective remedy.⁵¹

26. The two European 'blacklists' are drafted within a body called 'the clearing house' before being adopted by the European Foreign Ministers. The whole procedure and, in particular the obscure 'clearing house' body, has been criticised for its secrecy and lack of transparency.⁵² The 'clearing house' is composed of national intelligence services and does not appear on the organisational chart of the EU Council. Moreover, when the 'clearing house' establishes a new list of names, it is forwarded to the ambassadors of the Member States of the European Union who adopt it as A-point (*Agenda item without discussion*), i.e. automatically, without any further discussion.⁵³
27. On 13 December 2006, this lack of transparency and violation of the defendants' rights was condemned for the first time by the ECJ in the case *'People's Mujahedin of Iran'* (T-228/02) when it held that "the decision ordering the freezing of the OMPI's funds [by EU] does not contain a sufficient statement of reasons and that it was adopted in the course of a procedure during which the right of the party

concerned to a fair hearing was not observed, and that it is not in a position to review the lawfulness of that decision. Accordingly that decision must be annulled in so far as it concerns the OMPI." However, in complete violation of the legal decision of December 2006, the 'People's Mujahedin of Iran' appeared on the two new 'black lists' (both the Common Position and the Decision) adopted on 28 June 2007 ; the European Union claimed that it had this time fully respected its duty to inform by sending a letter of notification to each person and entities blacklisted.⁵⁴ On 11 July 2007, the confidential and inequitable nature of the procedure was again condemned in two further cases: *Jose Maria Sison /Council of the European Union*⁵⁵ and *Stichting Al-Aqsa / Council of the European Union*.⁵⁶ Further cases are pending (see annex 3).

Impact of 'war on terror': National measures

28. There are also concerns that some national authorities are adopting an overbroad approach to the designation of certain associations as supporting terrorism. On 7 June 2007 the Belgian Court of Cassation rejected the appeal of the association *Groupe Islamique Combattant Marocain* against its naming as a terrorist organisation by the government, although it had never committed, attempted to commit or even threatened to commit a terrorist act, on the basis that it was sufficient for the organisation to 'aspire' at perpetrating such acts : "Violation of articles 139 [definition of a terrorist group] and 140 [participation in terrorist activities or group] of the Penal Code is established despite the fact that the vocation of the group has not been materialised by any activity in preparation of a terrorist act" [NDTR Unofficial translation].⁵⁷ Such an analysis has been condemned by one commentator as amounting to 'assumed criminality',⁵⁸ thereby contradicting fundamental criminal law principles relating to the presumption of innocence.

⁴⁹ Applications No 6422/02 and No. 9916/02.

⁵⁰ Judgement T-333/02 7 June 2004; confirmed by ECJ 27 February 2007, case C-354/04 P.

⁵¹ It seems to be different for non-European associations since they come under article 2 and 3 of the Common Position 2001/931/CFSP relating to the freezing of funds, which affects the free movement of capital, a Community matter.

⁵² Source: *EU's secretive counter-terror group to face scrutiny* (EUobserver.com).

⁵³ It seems like a new procedure is currently ongoing (See document (10826/1/07 REV1) of the UE Council of 21 June 2007, which is, as of recently, considered as confidential).

⁵⁴ Since 29 June 2007, The Council gives "a statement of reasons [...] for each person or entity subject to an asset freeze", doc. 11309/07).

⁵⁵ Mr. Sison, former chairman of the Philippines' Communist Party, which military wing NPA is on the European blacklist of associations suspected of terrorism, who resides in the Netherlands, was protesting the fact that his social insurance had been suspended and his bank account frozen.

⁵⁶ In these two Cases, the Court notes that "certain fundamental rights and safeguards, especially the rights of the defence and the right to effective judicial protection, and also the obligation to state reasons, are in principle fully applicable to the adoption of a Community decision freezing funds pursuant to regulation 2580/2001. [In this case] those rights and safeguards were not respected by the Council in its adoption of the contested decisions. Reasons were not given for those decisions, which were adopted in the context of procedures in which the rights of the defence of the persons concerned were not observed and the Court itself was unable to review the lawfulness of those decisions [...] The Court concludes that the contested decisions must be annulled" (Press Release 47/07, Judgements of the Court of First Instance in cases T-47/03 and T-327/03)

⁵⁷ Annual Report of the Committee of Vigilance in the Fight against Terrorism (Committee T) – year 2006, p. 21.

⁵⁸ Terms used by Denis Bosquet about the outcome of the judgement of first instance, «Analyse de la première décision de justice rendue sur base de la loi belge du 27 décembre 2005, portant sur les modes d'investigation dans la lutte contre le terrorisme et la criminalité grave et organisée», p. 5.

29. Such an assessment could equally be applied to recent British legislation. *The Terrorism Act 2006* includes in the 'blacklist' of terrorist individuals and entities, persons who not just commit, participate in, prepare or instigate a terrorist act but who incite it. However, it is not necessary to prove incitement to show that an individual or organisation is consciously encouraging terrorism.⁵⁹ Instead, according to the Act, persons are responsible for the manner in which their statements can be received, whatever their intention might be!⁶⁰ On the positive side, the United-Kingdom does have a special mechanism for associations to appeal against their inclusion on the 'blacklist'.⁶¹
30. In some cases the inclusion of a particular association on a 'blacklist' is simply incoherent and contrary to the rule of law.⁶² On 8 July 2004, the French Court of Cassation⁶³ refused to extradite Amaya Recarte, spokesperson for the association Segi (an association appearing on the European 'blacklist' as it is considered the youth wing of Batasuna) to the Spanish judicial authorities, as was required by a European arrest warrant. This led Amnesty International to conclude that: *"It would seem therefore that, while France must have agreed to the inclusion of Segi on the list (as such a decision requires unanimity), in practice France does not consider their activities to amount to terrorist offences that require prosecution. This discrepancy calls into question not only the consistency of states' practices but also the legitimacy of the lists themselves"*⁶⁴
31. Thus, the obligation to ensure that any measures - whether criminal or civil - taken against an association suspected of terrorism have a strong basis in law is particularly significant in relation to some organisations, e.g. those working on behalf of the rights of others⁶⁵ or opposition movements⁶⁶ since suspicions are automatically raised that they are being penalised because of their activities.
32. In light of these different (but by no means exhaustive) examples, there is a clear issue of the lack of proportionality between the measures taken and the actual or perceived threat frequently combined with an absence of due process and transparency. Both the 'assumed criminality' principle and the criminalisation of opposition movements are legitimate causes for concern and show how easily the rule of law in Europe can be subverted.

3. Organisation and operation

33. According to article 11(2) of the ECHR, the exercise of freedom of association is not absolute but can be subjected to limitations, provided that they are *"prescribed by law and [...] 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 qualifying provision has been interpreted narrowly by the European Court of Human Rights when it held that *"States have only a limited margin of appreciation" in applying article 11(2)*.⁶⁷

⁵⁹ «A person commits an offence if: (a) he publishes a statement to which this section applies or causes another to publish such a statement; and b) at the time he publishes it or causes it to be published, he (i) intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or (ii) is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offences.» (Part 1 - Terrorism Act 2006).

⁶⁰ Two of the associations prohibited under the *Terrorism Act 2000*, are accused of 'incitement to terrorism', as provided for by the *Terrorism Act 2006* (*Al Gurabaa and Saved Sect or Saviour Sect*).

⁶¹ "In United Kingdom, the proscribed organisation or any person affected by the organisation's proscription may apply to the Secretary of State to remove the organisation from the list. Proscribed organisations can at any time make an application to the Secretary of State for de-proscription. Should an application be unsuccessful, the organisation or any person affected by their proscription can then appeal to the Proscribed Organisations Appeal Commission (POAC), set up under section 5 and schedule 3 of the *Terrorism Act 2000*. A party to that appeal may bring a further appeal to the Court of Appeal on a question of law with the permission of the Commission or the Court of Appeal. There may also be an appeal on a question of law in connection with proceedings brought before the Commission under the *Human Rights Act 1998*, by virtue of section 6(1) of the *Terrorism Act 2000* as applied by section 9 of that Act."

⁶² In the United Kingdom and Denmark, controversy has surrounded the proposed prohibition of the organisation *Hizb ut-Tahrir*, a radical association created over 50 years ago with members throughout the Muslim world, the organisation seeks to establish an Islamic society in the Middle East. Germany dissolved the association after 11 September 2001, considering that it was an Islamic movement seeking the destruction of Israel. Politicians in the United Kingdom have attempted several times to have the association proscribed but at time of writing it remains a lawful entity.

⁶³ Cour de Cassation (chambre criminelle), Amaya Recarte, 08/07/2004.

⁶⁴ Amnesty International report, AI Index: IOR 61/013/2005, *"Counter-terrorism and criminal law in the EU"*, p.16.

⁶⁵ The association Greenpeace Belgium is currently subject to a complaint for 'criminal conspiracy' for having demonstrated (peacefully) against Electrabel facilities at the end of December 2006.

⁶⁶ A case in point rose after Bahar Kimyongür was accused of being the chief of a terrorist and criminal organisation *the Revolutionary People's Liberation Army/Front/Party* (DHKP/C), an association which appears on the European Union's 'blacklist' and which, although it is engaged in armed struggle in Turkey, has never resorted to violence in another State. Bahar Kimyongür claims sympathy towards DHKP-C without being a member of it (according to him, he simply *"collaborated to the information office close to this organisation as a translator and attaché"*), but the Belgian Court of Appeal of Gand gave him the quality of *"head of a terrorist and criminal organisation without consideration for the nature of its daily occupations which could be legal. Indeed a perfectly legal activity can constitute a terrorist crime, particularly when in carrying out such activity one participate in any way to terrorist activities, be it through the provision of data or material means to a terrorist group, or by giving any source of funding to any terrorist activity, when the person is aware that his/her participation contributes to crimes being committed by a terrorist group"*. On 19 April 2007, the Belgian Court of Cassation quashed the decision of the Court of Appeal of Gand, which had sentenced Bahar Kimyongür to five years imprisonment.

⁶⁷ *Sidiropoulos and others v. Greece* supra n.3, par. 40.

Impact of 'war on terror'

34. Despite this strict approach, and the fact that a number of international instruments relating to counter-terrorism guarantee freedom of association,⁶⁸ many states have used the 'war on terror' to introduce a number of restrictions on freedom of association which has impacted significantly on the ability of several civil society organisations to operate effectively.
35. In the UK, the *Prevention of Terrorism Act 2005* empowers the Home Secretary to issue control orders against any individual suspected of taking part in activities linked with terrorism, when necessary for public safety. These measures which can effectively amount to house arrest, infringe not only a person's liberty and freedom of movement but also communication and association.⁶⁹ Such restrictions are all the more concerning given that participation in terrorist activities, as defined under the Act, need not be based on concrete actions by the individual themselves, but can also include the provision of assistance to individuals who are only suspected of committing acts or intending to do so.⁷⁰ Such a definition is overly broad, vague and subjective.
36. The law acknowledges that some of the restrictions are potentially incompatible with article 5 of the ECHR as regards the right to personal liberty and security thereby requiring a possible derogation. Consequently, the law provides for two types of control orders - derogatory measures and non-derogatory measures - each with a different procedure. On 1 August 2006, the English and Welsh Court of Appeal confirmed the decision of the High Court which had declared void and null many of the non-derogatory measures.⁷¹ Although no breach of freedom of association was found, since this was not raised by the victims, it is

doubtful whether the control order restrictions would meet the test of the European Court on Human Rights when it held that courts, in assessing any limitations on article 11 in respect of the fight against terrorism, "*must, with due regard to the circumstances of each case and a State's margin of appreciation, ascertain whether a fair balance has been struck between the individual's fundamental right to freedom of expression and a democratic society's legitimate right to protect itself against the activities of terrorist organisations*"⁷² requiring a '*test of necessity*' to be undertaken to ascertain whether the limitations meet answered a pressing need in a democratic society.

Restricting minority rights

37. Associations for the defence of minorities, in particular national ones, have also been subject to disproportionate limitations, including on some occasions harassment, by state authorities.⁷³ In the case *Ouranio Toxo vs Greece*, physical violence as well as destruction of the headquarters - the mayor of Florina has reportedly participated to those actions - of an association whose declared aims included the defence of the Macedonian minority living in Greece, the European Court of Human Rights found a violation of freedom of association stating that "*mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to "democratic society", even though it may provoke tensions. The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas*"⁷⁴
38. The ECtHR has also ruled that minorities' right to exercise freedom of expression (an "*essential foundation of a democratic society*"⁷⁵ according to the Court), corollary

⁶⁸ For instance, the Convention of the Council of Europe for the Prevention of Terrorism of 16 May 2005, STCE no. 196, which entered into force on 1 June 2007, affirms already in its preamble (as well as in its article 12) that the Convention "*is not intended to affect established principles relating to freedom of expression and freedom of association.*" Similarly, the EU reference text, the Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA), specifies in its preamble "*Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.*"

⁶⁹ See article 1, paragraph 4 : "*In this Act "control order" means an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism [...] Those obligations may include, in particular [...] a restriction on his association or communications with specified persons or with other persons generally.*"

⁷⁰ Section 1 par. 9 *Prevention Terrorism Act 2005* "(a) the commission, preparation or instigation of acts of terrorism; (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so; (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so; (d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity; and for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally." Section 1 par. 9 *Prevention Terrorism Act 2005*.

⁷¹ Case *Secretary of State for Home Department vs JJ; KK; GG; HH; NN; & LL*, No. T1/2006/9502, 1 August 2006.

⁷² *Zana v. Turquie*, E.Ct.H.R., Application 18954/91 (25 November 1997), par. 55.

⁷³ In his report of 5 June 2007, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Intolerance Mr. Doudou Diène, mentions that: "*the Head of the Appeals Prosecutor's Office stated during a radio interview that all Roma were criminals and announced that "perpetrators, instigators and accomplices" of Roma people who had helped them in a case concerning the alleged forced expulsion of Roma families in the Makrigianni area of Patras would be "called on to take the stand", specifically including among this group representatives of Greek Helsinki Monitor.*" (A/HRC/4/19/Add.1, p. 18).

⁷⁴ *Ouranio Toxo v. Greece*, E.Ct.H.R. Application No 74989/01 (20 October 2005) par. 40.

⁷⁵ *Handyside v. United Kingdom* 1976 1 EHRR 737.

of freedom of association, must also be subject to strictly defined limitations whether legal⁷⁶ or practical.⁷⁷

39. Besides, freedom of assembly - other corollary of freedom of association - may be subjected to restrictions. In a case *Stankov and the United Macedonian Organisation Ilinden*, in relation to the prohibition by authorities of the holding of commemorative meetings organised by the applicant association at the same time and place as official ceremonies,⁷⁸ the ECtHR held that: *"the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory - thus demanding fundamental constitutional and territorial changes - cannot automatically justify a prohibition of its assemblies [...] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."*
40. Furthermore, sexual minorities have been particularly subjected to breaches of their right to freedom of assembly in a number of Eastern European countries. For example, the ECtHR, in finding a violation of article 11 ECHR by Poland following the banning of two 'Equality Marches' by homosexual rights associations in June 2005 in Warsaw and in November 2005 in Poznan on the grounds that these parades posed a threat to public security stated that *"a genuine and effective respect for freedom of association and assembly [...] is of particular importance for persons holding unpopular views or belonging to minorities."*⁷⁹ Despite this positive ruling and other criticism by authoritative human rights bodies gay rights marches have continued to be subject to harassment and intimidation.⁸⁰

4. Funding and taxation

41. In Europe - as in other regions - the strictest controls and monitoring of associations' activities relate to their financial

operations. Whilst this is to be expected and is necessary it should not be used to unfairly penalise some associations solely on the basis of their aims and activities as opposed to their financial probity.

Controls at the international level

42. As outlined above (see section 2), European States have adopted measures to freeze the funds and financial assets of individuals, groups and entities involved in terrorist activities. However, in addition, on the grounds that terrorists and terrorist organisations use associations to collect and distribute funds, secure logistical support, encourage the recruitment of terrorists or support their activities, the Financial Action Task Force (which is an intergovernmental body, of which several European States are members⁸¹ and independent of the OECD) has developed tools to promote national and international policies aiming at combating money laundering and terrorist financing. One of FATF's many recommendations to date is of particular relevance: Special Recommendation VIII on non-profit organisations (NPOs), adopted in 1990, revised in 1996 and 2003.⁸² Among others comments, the Interpretative Note to the Special Recommendation (30 May 2007) states that *"NPOs should be licensed or registered. This information should be available to competent authorities"*. This article should not be used as a pretext to substitute the *"principe déclaratif"* ("notification system") with a *"prior authorization"* approach. FATF has a mutual evaluation Programme to assess how member states are meeting their commitments.⁸³
43. In addition to FATF, the European Union has also developed tools to bar access to terrorists from an association's financial resources. An example is the European Commission's Communication *'The Prevention and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector'* adopted on 29 November 2005, which includes in its annex *'a Framework for a Code of Conduct for NPOs to enhance Transparency'*

⁷⁶ In Slovakia, law 300/2005 on the offence of defamation entered into force on 1 January 2006. The offence is punishable by a prison sentence (*Guide de la liberté associative dans le monde*, mentioned above, p. 686).

⁷⁷ In Greece, in July 2007, a new broadcasting law has issued that speaking language in radio broadcasting shall dominantly and preferentially be in Greek; which can be interpreted as limitation on freedom of media and expression (OSCE document, HDIM.NGO/135/07, 26 September 2007).

⁷⁸ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, E.Ct.H.R., Applications No 29221/95 and 29225/95 (2 October 2001), par. 97.

⁷⁹ ECHR, *Baczowski and others v. Poland*, application No 1543/06, 3 May 2007, par. 64.

⁸⁰ See in particular the follow-up report of the Commissioner for Human Rights of the Council of Europe (CommDH(2007)13 / 20 June 2007, par. 51 s.) and the report by the Special Representative of the UN Secretary General on Human Rights Defenders, 22/3/2006, E/CN.4/2006/95/Add.1, p. 188.

⁸¹ Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Luxembourg, Portugal, Spain, Sweden, United Kingdom and the European Commission.

⁸² The Interpretative Note to the Special Recommendation (30 May 2007) states that in order to prevent misuse of NPOs by terrorists, the only 'effective' approach is one that 'involves' no less than four elements "a) Outreach to the [NPO] sector [on the issue of financing of terrorism] b) supervision or monitoring, c) effective investigation and information gathering and d) effective mechanisms for international co-operation".

⁸³ In 2006, for instance, FATF was happy to say that Special Recommendation VIII is 'fully respected' in Italy, where *"The Bank of Italia has issued operating guidelines regarding nonprofit organizations in July 2003 which require all financial intermediaries to pay special attention to the quality of associates, the beneficiaries and country of destination of donations as well as to possible inconsistencies between transactions and the subjective profile of the client. It also recalls the obligation to immediately declare all suspicious transactions to the UIC. In addition, NPOs are subject to the general obligation to transfer funds through authorized financial intermediaries for all transfers of €12,500 and more and to the obligation to declare cross-border transfers."* (FATF, mutual evaluation programme, report of Italy, 2006, p. 92).

and Accountability in the Non-profit Sector to Prevent Terrorist Financing and other Types of Criminal Abuse.’⁸⁴ It also invites member States to carry out oversight of the non-profit sector and suggests that ‘[t]he oversight role could either be dedicated to a single public body or entrusted to existing authorities or to self-regulatory bodies’. How the proposed codes of conduct will be drafted and implemented (the European Commission foresees a meeting of experts for first quarter 2008) to ensure protection for freedom of association is particularly significant.⁸⁵

44. Whilst controls and monitoring of associations’ activities related to their financial operations is perfectly understandable and justified in terms of civil society good governance such oversight should be transparent, fair and objective and not be used to disproportionately penalise associations for political reasons. Moreover, the whole debate on the financing of terrorism through associations is only relevant to a very small percentage of the three million associations currently active in the European Union.

Controls at the national level

45. Associations wishing to send funds abroad are subjected to increased surveillance. In France, donations or legacies made to a foreign entity or State by associations, foundations or congregations require an order of authorisation from the Interior Minister upon recommendation from the Foreign Minister.⁸⁶ In Denmark, the association Al-Aqsa was recently accused of providing funds to Hamas, the Palestinian organisation on the European ‘blacklist’ of terrorist entities. The association constantly denied those allegations, claiming that the money transferred to the *Islamic charitable Society and the World Assembly of Muslim youth* was for humanitarian purposes. On 26 March 2007, a court found in favour of the association. However, the case is currently on appeal. On September 19th, the firm “Fighters and Lovers” which sends the income from selling T-shirts to the associations FARC and PLFP - two associations on the European blacklists - was charged under article 114 B of Danish Criminal code, with offences potentially punishable with up to 6 years imprisonment⁸⁷ The case has yet to be heard but, it should be noted that the Danish Law on counter-terrorism includes an explanatory report which obliges the judiciary to take into account the need to respect human rights when making its decisions.⁸⁸

46. The accounts of associations closely linked to religious groups have been subjected to particularly close scrutiny in France. Article 19 of the law of 1905 on the separation of Church and State specify that, in order to benefit from donations or legacies, cultural associations must have as exclusive aim the exercise of a religious cult.⁸⁹ In 2005, the *Centre français pour le Culte Musulman* created, following advice from the authorities, a foundation “with a capital supplied in a balanced and diverse manner by members of the congregation as well as national enterprises and foreign countries which support the French model and whose deposits are transferred to the Deposit and Consignment Office (*Caisse des Dépôts et Consignations*)” [NDTR unofficial translation]⁹⁰ Yet, despite this, the foundation has been subjected to close control by the authorities, as reflected in article 16 of the foundation’s statutes providing that “the proceedings of the executive board mentioned in article 13 [on the resources of the foundation] and 14 [on the amendments to the statutes of the association] of the present statutes are only valid after approval by the government.”

47. Whatever measures that are put in place to hold associations accountable they must neither be discriminatory nor unnecessarily undermine the public perception of their credibility and ultimately their legitimacy.

Conclusion

Despite the relatively high level of protection and enjoyment of freedom of association in Europe, this short survey demonstrates that it is susceptible to increasing pressures from recent political and demographic trends requiring extra vigilance from governments, the courts and civil society.

It is absolutely essential for States to refrain from using the fight against terrorism as an excuse to criminalise opposition movements. If Europe really wants to defeat terrorism, it must do so by respecting of the Rule of Law and Human Rights, otherwise it will merely create a breeding ground for new radical movements.

Similarly, it is fundamental for States to fully respect the enjoyment of the freedom of association of groups which defend minority rights. Indeed, there is no democratic society without “pluralism, tolerance and broadmindedness” (*Handyside v. United Kingdom* 1976 1 EHRR 737).

⁸⁴ COM/2005/0620 final.

⁸⁵ On the adoption of the code of conduct, see the observations of the Swedish section of the International Commission of Jurists (25 August 2005) or the observations of the AEDH (15 September 2005).

⁸⁶ Article 3 of order 66-388 of 13 June 1966.

⁸⁷ Article 114 A : “the person, or group of person, who, directly, or indirectly, provide an economical support or transport or collect funds or make available funds to one of the person who execute or prepare to execute one of the action listed in article 114 [which defines terrorism] is punish to imprisonment up to 10 years”.

⁸⁸ Please see: http://www.djoef.dk/online/?Mlval=view_artikel&action_ID=3&ID=1708 (Only in Danish).

⁸⁹ This was reiterated in note No NOR/INT/A/04/00089/C of the Interior Ministry, 19 July 2004.

⁹⁰ Statement by Dominique de Villepin, Former French Prime Minister, 20 March 2005.

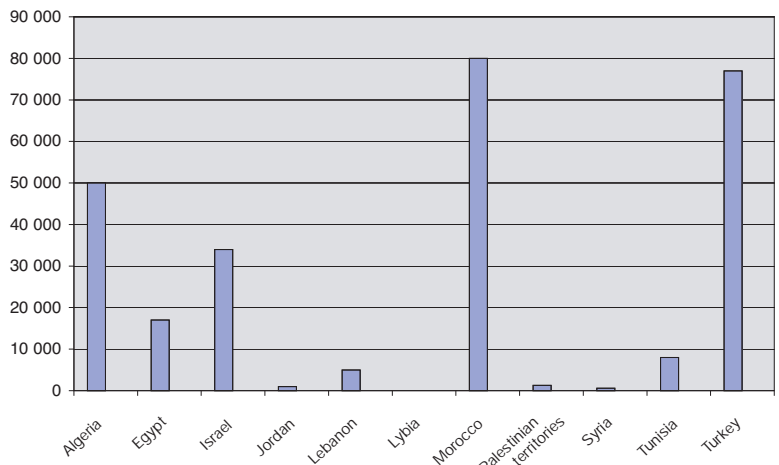
WE CALL UPON:**- The United Nations and European Union bodies:**

- To ensure the implementation of the ECRI Recommendation no.8: "Legislation and regulations, including legislation and regulations adopted in connection with the fight against terrorism [should be] implemented [...] in a manner that does not discriminate against persons or groups of persons, notably on grounds of actual or supposed 'race', colour, language, religion, nationality, national or ethnic origin; [...] particular attention [must be paid] to guarantee in a non discriminatory way the freedoms of association, expression, religion and movement".¹
- To amend the procedure of the inclusion of a terrorist entity on a 'blacklist' of organisations suspected of terrorism; such a list must be decided and updated by means of independent and impartial judicial scrutiny and after due hearing of the parties: inclusion in the list should be subject to effective legal remedy.
- To adopt a general comment on the rights to freedom of association and peaceful assembly in the framework of the fight against terrorism, in accordance with the recommendations of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism (A/61/267, p. 22).

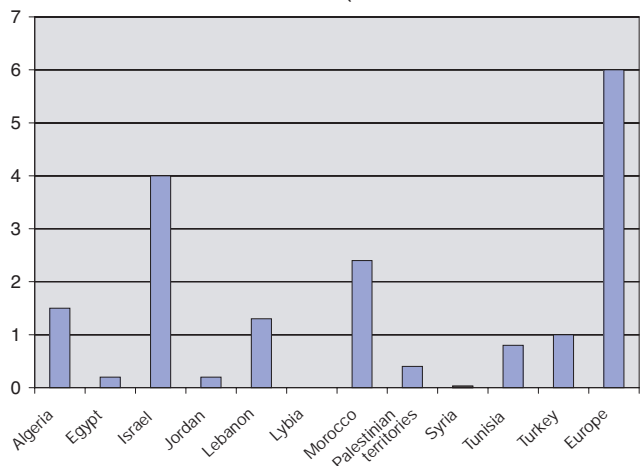
- The Governments of European Union member states:

- To effectively implement and respect the United Nations Declaration on Human Rights Defenders, in particular article 1: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".
- To not "resort to derogation measures with respect to the rights to freedom of assembly and association [...] the measures limiting these rights provided for in ICCPR are sufficient to fight terrorism effectively." (UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism, A/61/267, p.7).
- To define clearly, precisely and as narrowly as possible the scope of application of any counter-terrorism measures which could infringe, directly or indirectly, on associations' activities, in order to fully respect the principle of rule of law and fundamental human rights, as well as to avoid affecting non-terrorist groups or persons who have not directly participated in a terrorist act.
- In the case of a finding of a violation of article 11 of the ECHR by the European Court of Human Rights, to implement the decision fully and without delay, including, if required, by immediately allowing registration of the association concerned.

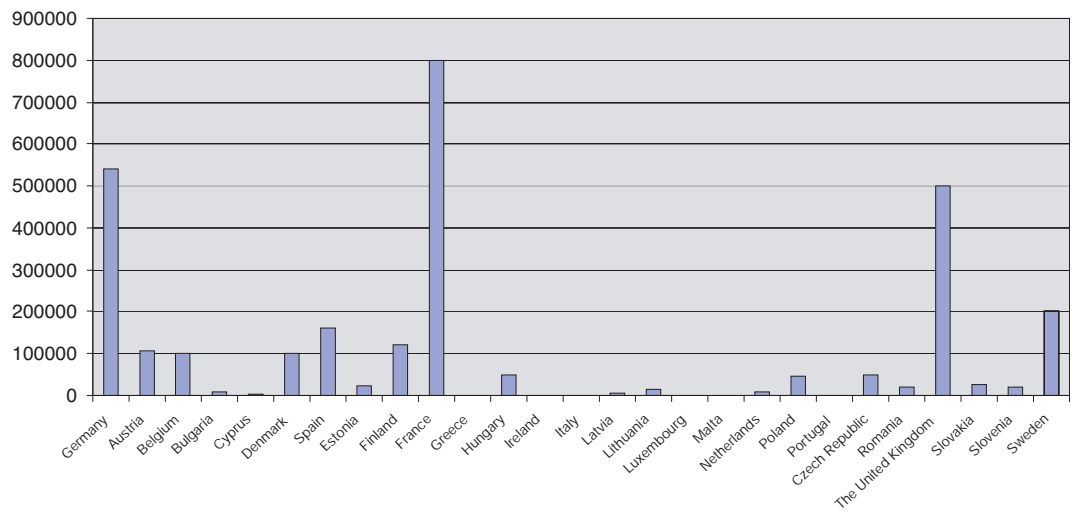
¹ ECRI general policy recommendation on 'Combating Racism while Fighting Terrorism, ECRI (2004) 26, 17 March 2004.



Country	Number of associations
Algeria	50 000
Egypt	17 000
Israel	34 000
Jordan	1 006
Lebanon	5 000
Libya	8 000
Morocco	1 300
Palestinian territories	600
Syria	8 000
Tunisia	77 000
Turkey	77 000



Country	Number of associations per 1 000 inhabitants
Algeria	1,5
Egypt	0,2
Israel	4
Jordan	0,2
Lebanon	1,3
Libya	2,4
Morocco	0,4
Palestinian territories	0,03
Syria	0,8
Tunisia	1
Turkey	6
Europe	6



Germany	540 000
Austria	107 000
Belgium	100 000
Bulgaria	10 000
Cyprus	2 000
Denmark	101 000
Spain	160 000
Estonia	22 350
Finland	120 000
France	800 000
Greece	49 000
Hungary	49 000
Ireland	49 000
Italy	6 130
Latvia	14 000
Lithuania	14 000
Luxembourg	200
Malta	9 000
Netherlands	45 000
Poland	50 000
Portugal	20 000
Czech Republic	500 000
Romania	25 000
The United Kingdom	20 470
Slovakia	200 000
Slovenia	200 000
Sweden	200 000

* : Datas from «guide de la liberté associative dans le monde, 183 législations analysées», sous la direction de Michel DOUCIN, La documentation française, Paris, 2007.

	ICCPR	ICESCR	CERD	CEDAW	CAT	MWC
Algeria	12/12/89	2/12/89	15/03/72	21/06/96	11/10/89	1/08/2005
Egypt	14/04/82	14/04/82	4/01/69	18/10/81	26/06/87	1/07/2003
Israel	3/01/92	3/01/92	02/02/79	2/11/91	2/11/91	-
Jordan	23/03/76	3/01/76	29/06/74	31/07/92	13/12/91	-
Lebanon	23/03/76	3/01/76	12/12/71	16/05/97	4/11/2000	-
Libya	23/03/76	3/01/76	4/01/69	15/06/89	15/06/89	1/10/2004
Morocco	3/08/79	3/08/79	17/01/71	21/07/93	21/07/93	1/07/2003
Syria	23/03/76	3/01/76	21/05/69	27/04/2003	18/09/2004	1/10/2005
Tunisia	23/03/76	3/01/76	4/01/69	20/10/85	23/10/88	-
Turkey	23/12/2003	23/12/2003	16/10/2002	19/01/86	1/09/88	1/01/2005

STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES by the 11 countries from East and South Mediterranean

- CCPR:** The International Covenant on Civil and Political Rights
- ICESCR:** The International Covenant on Economic, Social and Cultural Rights
- CERD:** The International Convention on the Elimination of All Forms of Racial Discrimination
- CEDAW:** The Convention on the Elimination of All Forms of Discrimination against Women
- CAT:** The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- MWC:** The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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

Introduction

The objective of this illustrative table is to describe in a simple and rather basic manner, on the basis of information presented in the country report, the main characteristics of the effective exercise of freedom of association in those countries considered in the report¹.

The report on *Freedom of association in the Euro-Mediterranean region* calls for regular updates. The current table provides a basis to facilitate the development of a set of detailed and relevant indicators tailored to the region, through regular updates and in-depth analysis. Once identified, these indicators will be used to assess the state of freedom of association at a particular point in time, as well as the exact extent of progress and setbacks in this area in the region and in each of the countries covered.

For the first stage, of an illustrative nature, only five criteria were chosen. Although they are not exhaustive, these five elements are considered as being particularly representative of the level of respect for and implementation of freedom of expression in law and in practice. For each of them, a distinction is drawn between:

- **In GREEN (light colour) a system of freedom, for countries in which the overall situation is satisfactory: respect or little serious violations of internationally recognized standards and principles;**
- **In RED (dark colour) a regime of control or repression, for countries in which the overall situation is not satisfactory: lack of respect or numerous serious abuses against internationally recognized standards and principles.**

The five selected elements, which mainly follow the outline of the country reports, are the following:

- **Independent associations: Are there associations which are independent from the authorities and which, despite possible difficulties, manage to exist and work?**

In order to correctly interpret the table, it should also be underlined that freedom of association is often influenced, directly or indirectly, by other legislations, not specifically related to the right of freedom of association, or by other country-specific issues. Hence, the functioning of **Palestinian** associations cannot be considered without taking into account the recent internal conflict, the overwhelming and destructive impact of Israeli occupation and the implementation of Israeli military occupation laws in addition to the Palestinian legislation; on the other hand, the situation in **Israel** is marked by the impact of the anti-terror legal apparatus (the Emergency (defence) Regulations, the Ordinance on the Prevention of Terrorism, the Law for the Prohibition of Terror Funding and some provisions of the penal code); in **Egypt**, the state of emergency, constantly renewed since 1981, accompanied and facilitated the imposition of ever increasing restrictions on freedom of association; in **Turkey**, the Kurdish issue and the multiple restrictions stemming from it, including on the language to be used and the objectives of the associations, pervade in the whole Turkish legislation and consequently in the daily life of associations working towards a solution to the Kurdish problem or in support of Kurdish rights; in **Libya**, freedom of association lies within the context of a non-existing civil society, where the exercise of any fundamental freedom is conditional -amongst others- to respecting the "Principles of the Revolution". Thus, the Libyan State only conceives civil society as a support or even an appendage of the regime, and prohibits any demonstration of independence: similarly, the **Syrian** legislation, especially on the state of emergency, and practice mainly revolve around the defense of the Baath party and regime in place. As a result, associations are seen as either supporting the regime, in which case they are authorised, or as enemies of the state due to their independence, in which case they are not authorised and repressed most of the time; in **Morocco**, despite a legislation and practice much more conducive to freedom of association, the constitutional structure of the State, and consequently the central figure of the King, and the inviolability of the national territory with regards to the issue of Western Sahara, are two issues which resonate in the Moroccan legislation as a whole and limit the freedom of many associations in practice: in **Algeria**, the consequences of the civil war continue to have an impact on the life and activities of associations at many levels. The Charter for Peace and National Reconciliation of 2005 and its large set of prohibitions and restrictions with corresponding sanctions, have become a major obstacle to the work of human rights association: in **Jordan**, security concerns led to the adoption of a series of texts, in particular the Law on Public Meetings and the Law on the Fight against Terrorism, which restrict the associations' room to manoeuvre and limit some of their rights: lastly in **Tunisia**, despite a rather formally liberal law on associations, the authorities' practice reflects the constant struggle against associations and activists considered to be in the opposition. This relentlessness is expressed through harassment, surveillance and control measures, censored means of communication, limitations on movements, defamation campaigns and sometimes even the closing down or dismantling of the most vocal associations, in the context of a widespread use of the judicial system as an instrument of power by the regime. These elements led us to insert a 6th column in the table entitled 'other elements' which is at this stage still basic, but will be developed and refined in more details in the next editions of the Report on Freedom of Association in the Euro-Mediterranean Region.

¹ Except for European countries which could not be included here, due to their great number and the diversity of their legislations and situations, and to the fact that the chapter on Europe does not aim at providing a detailed analysis of the situation in each European State.

This very general criterion can be used to pinpoint those countries which prevent the emergence of an independent civil society through various repressive and coercive measures. However, it cannot be used by itself to distinguish between countries with a dynamic civil society, subject to a low level of constraints, from those in which independent associations are few, weak and facing multiple obstacles and constraints and finally from those in a middle-ground situation.

- **Authorisation:** Do associations wishing to establish themselves need prior authorisation by the administrative authorities or can they form and work on the basis of a simple declaration?

It is worth mentioning here that not only are legislative provisions taken into account, but so is administrative practice, which, in some countries, amounts to imposing prior authorisation in effect, sometimes in contradiction with the law.

- **Dissolution:** Can associations be dissolved by an administrative decision against which there is no judicial remedy both effective and suspensive?

- **Interference:** Does the administration have the power, by law or in effect, to interfere in the appointments and decisions of the executive bodies as well as in the daily management of the association's activities, beyond the limits generally accepted by international standards and prescribed by law, especially in the area of financial reporting?

- **Foreign funds:** Are associations subject to prohibitions or appreciable restrictions of access to funds or donations from foreign sources?

In the future, it will be desirable to extend the number of criteria identified in order to include further aspects of law and practice in the area of freedom of association.

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