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The Rise and Impact of Government-Organised Non-Governmental Organisations (GoNGOs): another tool of repression of independent civil society

Case studies on Algeria, Egypt and Turkey

EuroMed Rights

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Acronyms

ACHPR – African Charter on Human and Peoples’ Rights

ACHR – Arab Charter on Human Rights

CSO – Civil society organisation

ECOSOC – United Nations Economic and Social Council

ECHR – European Convention on Human Rights

EU – European Union

EuroMed Rights – The Euro-Mediterranean Human Rights Network

GoNGO – Government-organised non-governmental organisation

HRD – Human Rights Defender

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ILO – International Labour Organisation

NGO – Non-governmental organisation

OHCHR – Office of the United Nations High Commissioner for Human Rights

OSCE – Organisations for Security and Co-operation in Europe

UN – United Nations

WHRD – Women human rights defender

International Framework on Freedom of Association

International Human Rights Instrument	Ratification Status		
	Algeria	Egypt	Turkey
ACHPR	Ratified	Ratified	N/A
ACHR	Ratified	Ratified	N/A
ECHR	N/A	N/A	Ratified
ICCPR	Ratified	Ratified	Ratified
ICESCR	Ratified	Ratified	Ratified
Eight Fundamental ILO Conventions	Ratified	Ratified	Ratified

Introduction

Government-organised non-governmental organisation ('GoNGOs') are a growing threat to the functioning of a healthy democracy in numerous countries, especially where civil society is already under attack.

GoNGOs undermine the work of independent non-governmental organisations ('NGOs'). They act as an alternative to independent civil society organisations who are deliberately targeted by governmental actors and overwhelmed with restrictive measures. GoNGOs not only push independent civil society actors outside the policy space by crowding out the legitimate voices, but also spread counter human rights narratives and provide legitimacy for the governments that support them at the international and national level. This narrative diminishes the seriousness of rights violations of the governments that support them. In addition, GoNGOs are also used as a tool to harass and/or intimidate independent civil society actors in spaces where their free expression is most needed.

This report aims to expose the legal and de facto restrictions to civic space in three countries of the European-Mediterranean region, notably Algeria, Egypt and Turkey. It aims to document the environment in which GoNGOs emerge and operate, as well as provide an analysis of the legal framework concerning the right to freedom of association in those countries. The report also presents specific case studies to better reflect the practical challenges faced by civil society actors and how GoNGOs affect their work. The report draws conclusions and makes recommendations for decision-makers at the international level, particularly the EU and UN, on how to better support independent civil society while also holding them accountable for practices and policies enabling the activities of GoNGOs. EuroMed Rights considers this report as the very first step towards launching a comprehensive debate at regional level and within international fora, on the role, spread and impacts of GoNGOs.

Methodology and scope of the study

This study is based on the desk research of an external consultant, information gathered by EuroMed Rights and its partner organisations in Algeria, Egypt and Turkey and a total number of six online/phone interviews conducted between December 2020 and January 2021 with civil society representatives and experts based in the selected countries (including human rights organisations, trade unions and researchers - see the relevant case studies for details relating to each interview). The interviewees were selected, in consultation with EuroMed Rights' partner organisations, in a way to capture the expertise and first-hand experiences which may be relevant to the focus of this study.

The scope of this research is limited to the role and impacts of GoNGOs in terms of creating barriers in registering/establishing NGOs, engaging in dialogue with the authorities and accessing funding. It focuses on the GoNGOs deliberately created and/or supported by the governments and does not aim to document other impacts that stem from the government control and scrutiny over NGOs, which may adversely affect their independence from the public authorities.

EuroMed Rights expresses its gratitude to its partner organisations for their valuable support during the research activities, as well as the civil society representatives and other experts who agreed to share their views and analysis with us.

Executive Summary

This study seeks to examine the role, spread and impacts of GoNGOs in the European-Mediterranean region, with a specific focus on Algeria, Egypt and Turkey, given the key issues in relation to GoNGOs and the legal and de facto restrictions on civic space in these three countries. It explores the main practises put in place to undermine independent CSOs' survival: from the barriers to registration of NGOs, to access to dialogue with the authorities, and access to funding, as well as highlighting the difficulties experienced by women's rights organisations and trade unions in the selected countries. The following are the main findings of the study in this respect.

Independent civil society actors are targeted by restrictive laws and abusive practices, including barriers in registering their NGOs, access to funding, and access to dialogue with the authorities:

Our research portrays an environment where civil society actors are prevented from freely exercising their right to freedom of association due to restrictive laws, arbitrary practices of the authorities and active harassment through stigmatisation and criminalisation. In Algeria, the Law 12-06 imposes severe restrictions on civil society activities, including obtaining authorisation/approval of the authorities for the formation of NGOs, receiving foreign funding and cooperating with foreign or international NGOs, and sets forth measures such as suspension of activities, dissolution, fines and prison sentences. In Egypt too, Law 149 puts in place a system of governmental oversight over civil society, including by imposing significant restrictions on formation, funding, scope of permitted activities, cooperation with international entities, as well as the internal governance of NGOs. While the legislation in Turkey was until recently generally in line with the international standards, with the exception of several over-bureaucratic administrative and fiscal requirements, the amendments adopted in 2020 represent a major setback for the full exercise of freedom of association.

For trade unions, too, the environment remains restrictive and hostile in all three countries. In Algeria and Egypt, the legislation and its arbitrary implementation pose major barriers for the registration of independent unions as well as the conduct of their activities without government interference, curbing trade union pluralism. On the other hand, in Turkey, the major restrictions lie within practices such as active harassment of trade unionists by employers and state actors, through dismissals, intimidation and criminalisation. These are also widespread in Algeria and Egypt.

In all three countries, civil society actors and human rights defenders ('HRDs') are deliberately targeted by the abusive implementation of vaguely worded criminal provisions and face judicial harassment along with prolonged and arbitrary detention. The charges used against civil society actors and HRDs are similar in nature and include defamation of the president and public institutions, membership of terrorist organisations, propaganda for terrorist organisations and incitement to violence. In Algeria, recent legislative changes created a new offence criminalising receiving funds for activities likely to undermine "state security, stability, or normal functioning of [state] institutions", "the fundamental interests of Algeria" or "public security and order". In Egypt too, severe penalties are applicable to organisations receiving foreign funding with the aim of harming national interest, national unity and independence, or public peace. The vague wording of these provisions opens the door for claims that the funding of peaceful civil society activities is harmful to a country's interests. Finally, dissemination of false news is another offence abusively used to target civil society actors and HRDs for their free expression in both countries.

- Pro-government organisations are created and/or promoted by the authorities. These organisations enable the spread of alternative human rights narratives and also act as agents of governmental oppression:

While independent civil society is under constant attack, overwhelmed with restrictive measures, and pushed out of the spaces for dialogue, organisations with close ties to the authorities are equipped with resources, and their activities are promoted by the authorities as an alternative to independent civil society. These organisations perform the primary role of 'participating' in policy and decision-making processes and represent the 'preferable', less critical civil society voice at the national and international level. They spread alternative human rights narratives in those spaces and create an impression of civil society participation and support for government policies and practices. This mission is in some cases undertaken by organisations founded with the active support of government actors, and, in other cases, by organisations in political alignment with government. Such actors are prevalent in the women's rights spaces in Algeria and Turkey. While independent women's rights groups are deprived of opportunities for dialogue and influencing policies, GoNGOs are very much present in those spaces to "ensure" stakeholder participation and legitimise the alternative narratives, which in fact deny and/or do not address the human rights issues on the ground. In other cases, state bodies that have a mandate to protect fundamental rights but are not equipped with institutional guarantees of independence from political power assume this duty to defend government policies at the national and international fora, such as Egypt's National Council for Women.

GoNGOs and/or other government-aligned actors are also active in the trade union space. Both in Algeria and Egypt, official trade union federations are under the heavy influence of political power and undertake the mission to support government policies in the labour rights space, including towards the ILO. These official federations have mostly turned their back to the genuine demands of workers, and their deliberate failure to stand up for workers' rights leaves their members without adequate protection in case of violation of their rights. Thus, their very existence, being imposed as the sole representative of workers, is a threat to the independent trade union movement. In Turkey, while there are no official trade union federations, government-aligned trade unions are promoted by the employers and the authorities as a preferred alternative to more outspoken and critical trade unions. Members of more outspoken trade unions are, in turn, systematically harassed by employers - to the point of their unlawful dismissal, and their demonstrations/strikes are consistently met with a crackdown by the authorities. This applies to all three countries.

Finally, GoNGOs are also used as a tool to harass and/or intimidate independent civil society actors and HRDs, and to silence them in spaces where their free expression is most needed to expose human rights violations on the ground. This trend is particularly noticeable in the field of labour rights. In Egypt and Algeria, anyone aiming to launch an independent movement in defence of labour rights risks oppression and being reported to security officials by state-aligned federation's representatives. In Egypt, there have been reports of independent trade unions having been pressured to join the official trade union federation. Through such direct and indirect practices, official trade unions enable and enhance the oppression of trade unionists and labour rights defenders.

The report concludes with a series of recommendations for the EU and the UN specifically relating to Algeria, Egypt and Turkey, however they are of general applicability to other countries.

Recommendations to the EU

To the European Parliament:

- I. To keep the shrinking civic space in the European-Mediterranean region on its agenda and to continue monitoring the situation, with a view to assessing the role and impacts of GoNGOs on civic space; to issue specific recommendations to countries of concern; and to follow up on its resolutions and the recommendations issued therein;

- II. To reiterate its call on Member States to halt exports of surveillance technology and security equipment.

To the Subcommittee on Human Rights and Committee on Foreign Affairs:

- I. To continue monitoring the situation of civil society and HRDs, particularly the role and impacts of GoNGOs in civic space in the European-Mediterranean region; organise country visits and follow-up visits to document the situation on the ground; to directly engage with independent civil society on the ground; and to publish the evidence they collect, and issue strong recommendations to improve the environment for civil society.

To the European Commission, its Commissioner for Neighbourhood and Enlargement, the European External Action Service, its High Representative for Foreign Affairs and the Security Policy, and the EU Delegations in the respective countries:

- II. To systematically monitor respect for the right to freedom of association and restrictions on civic space, including the role and impacts of GoNGOs in the European -Mediterranean region as part of the European Southern Neighbourhood Policy;
- III. To firmly condemn the laws and practices undermining independent civil society activity and openly express concerns regarding the role and impacts of GoNGOs on restricting civic space, also in their policy dialogue with the respective Governments, including the annual human rights dialogue, based on information provided by independent civil society;
- IV. To give effect to the provisions of the European Parliament resolutions in relation to the deteriorating situation of civil society and HRDs.
- V. To conduct a public and comprehensive review, including an ex-ante human rights impact assessment, of all forms of financial support and/or all trainings provided by the EU in order to guarantee that EU support does not facilitate or contribute to human rights violations in those countries; more generally, to ensure that human rights and civil society support are key components of the EU's financial and economic cooperation; and to follow up on, and monitor, the implementation of the EU Action Plan for Human Rights and Democracy as well as the EU Guidelines on Human Rights Defenders;
- VI. To actively support independent civil society and stand by targeted HRDs and CSOs; to create opportunities for independent civil society's meaningful engagement in international and national fora; to put in place flexible financial support mechanisms which are also accessible to non-registered NGOs, including the existing mechanisms such as emergency funding and rapid response measures and protection mechanisms for CSOs and HRDs at risk.

Recommendations to the UN

To the UN Human Rights Council:

- I. To monitor the shrinking civic space in the European-Mediterranean region, with a view to assessing the impacts of GoNGOs on civic space; to issue specific recommendations to relevant countries in this regard; and to follow up on its resolutions and the recommendations issued therein;
- II. To pay particular attention to the participation of GoNGOs in the processes for civil society input, including during the Universal Periodic Review and Human Rights Council sessions, and make sure

that independent civil society actors are well represented and have meaningful opportunities to contribute to such processes;

- III. To closely monitor the implementation of the recommendations issued in the context of the last Universal Periodic Reviews regarding freedom of association and restrictions of civic space.

To the UN Special Procedures, including the UN Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and of Association, on the Situation of Human Rights Defenders, on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, and on Freedom of Opinion and Expression:

- I. To closely monitor and condemn when necessary the spread and interference by GoNGOs in the civic space and any other restrictions of freedom of association and assembly in the Euro-Mediterranean region.
- II. To include the role and impacts of GoNGOs in civic space in the European-Mediterranean region in their reports to the UN Human Rights Council; and, specifically to the Special Rapporteur in Freedom of Peaceful Assembly and Association, to issue a thematic report in the role and impacts of GoNGOs in halting and restricting civil society activities as well as the free exercise of freedom of association;
- III. To request invitation, if not already granted; or to follow up on previous requests to conduct a country visit; and – in case an invitation is granted by the authorities – to organise a country visit with a view to documenting legal and de facto restrictions on civil society activities and having meaningful engagement with independent CSOs and HRDs on the ground.

1. Algeria

a. Legal Framework and Restrictive Practices

Shrinking Civic Space & Influence of GoNGOs in Civic Space

Algeria experienced a large wave of anti-government protests in recent years, demanding political change and transition to a more democratic system. Since the start of the mass protests known as “the Hirak Movement”¹ in February 2019, the authorities have dispersed peaceful demonstrations and arbitrarily detained and judicially harassed numerous protestors, HRDs, civil society actors and journalists, especially after their suspension of all demonstrations in 2020 due to the global pandemic.² Algerian authorities have also been using the Covid-19 pandemic as a pretext to further restrict the rights to freedom of expression and assembly. Simultaneously with this crackdown, a constitutional reform process was initiated, which was seen as an attempt to cease the momentum of the democratisation movement without offering genuine reforms³.

The restrictive legal environment poses a barrier to the registration and operation of independent NGOs. While they are burdened with bureaucratic requirements and face criminalisation on a daily basis, governmental actors have established/promoted relations with other actors to provide them legitimacy when “civil society participation” is needed. Those organisations have also been active during the process leading up to the constitutional referendum of November 2020, in an attempt to provide legitimacy to the reforms proposed by the Government, which were heavily criticised by the democracy movement⁴.

International Treaties & Constitutional Framework

Algeria is party to a number of human rights treaties, including ICCPR, ACHPR and ACHR, all of which recognise freedom of association. Article 53 of Algeria’s Constitution, as revised in November 2020⁵ after a referendum with record low turnout⁶, enshrines freedom of association and ensures that NGOs are formed upon declaration⁷. Furthermore, dissolution of NGOs is only permissible by a court order.

Law no. 12-06 relating to Associations (2012)

Freedom of association is mainly governed by the Law no. 12-06 relating to Associations, adopted in 2012⁸ (“Law 12-06”), which imposes severe restrictions on freedom of association and fails to respect Algeria’s international obligations. The Law 12-06 is not in line with the Constitution of Algeria, particularly following

1 See, Amnesty International, Algeria Monitor: Algérie-Le Hirak sous surveillance, available at : <https://www.amnesty.org/en/latest/campaigns/2019/12/algeria-hirak-protests/>

2 See, EuroMed Rights, Algeria: The Hirak Movement Quarantined, not the Arrests! (June 17, 2020), available at: <https://euromedrights.org/publication/algeria-the-hirak-movement-quarantined-not-the-arrests/>

3 See Sofian Philip Naceur “Protestors still call for genuine democracy in Algeria”, (December 6, 2020) available at: <https://www.dandc.eu/en/article/why-constitutional-referendum-did-not-end-algerias-political-crisis>

4 See the Case Study #1 “Women’s Rights Organisations in Algeria – A Struggle for Equal Rights” and the relevant interview; and Sofian Philip Naceur “Protestors still call for genuine democracy in Algeria”, (December 6, 2020) available at: <https://www.dandc.eu/en/article/why-constitutional-referendum-did-not-end-algerias-political-crisis>

5 <https://www.joradp.dz/TRV/FConsti.pdf>

6 EuroMed Rights, Algeria’s Constitutional Revision: Window-Dressing Only? (November 17, 2020), available at: <https://euromedrights.org/publication/algerias-constitutional-revision-window-dressing-only-2/>

7 Amnesty International, Public Statement – Algerian Draft Constitution: Human Rights Concerns MDE 28/2601/2020, p.6 (June 25, 2020), available at: <https://www.amnesty.org/download/Documents/MDE2826012020ENGLISH.pdf>

8 Law no. 12-06 relating to Associations (*Loi n° 12-06 du 18 Safar 1433 correspondant au 12 janvier 2012 relative aux associations*) published in the Official Gazette of Algeria no. 02 on January 15, 2012, available at: <https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/F2012002.pdf>

the amendments of 2020, and must be replaced by a legislation that is more enabling and conducive to civil society activities⁹.

The Law 12-06 adopts a regulatory approach to civil society and requires prior authorisation and/or approval of the authorities for many essential activities and procedures, including the establishment of an NGO, the receipt of foreign funding and cooperation with foreign or international NGOs, and sets forth measures such as suspension of activities, dissolution, fines and prison sentences¹⁰.

The Law 12-06 provides an authorisation-based system for the establishment of NGOs rather than by declaration. Following the adoption of the law in 2012, all NGOs were required to re-register (Article 70). The registration may be denied, on the basis of fairly vague criteria, if the purpose is deemed “contrary to basic national values and to law and order, public morality and the provisions of existing laws and regulations” (Article 39)¹¹. If the authorities do not respond to the application within the period provided by the law, the NGO is deemed to be legally constituted, but it still requires waiting until receiving the registration acknowledgment before it can begin to operate legally (Article 11)¹².

In practice, the authorities often fail to register independent NGOs in a timely manner and withhold the receipts proving the submission of an application, which leaves them in a legal limbo, without proof of their legal existence and unable to open a bank account, register their employees or conduct other tasks necessary for their operations¹³. Furthermore, many international donors, including the European Commission and foreign embassies, require legal status to enter into funding agreements¹⁴; thus, denial of registration also creates barriers in terms of access to funding. Prominent human rights organisations which were registered before the Law 12-06 such as the Algerian League for the Defence of Human Rights (*Ligue Algérienne de défense des droits de l’Homme, LADDH*) and Youth Action Rally (*Rassemblement Action Jeunesse – RAJ*) have not yet been able to obtain their official registration¹⁵. Furthermore, anyone operating an un-registered NGO, including an NGO awaiting registration, is punishable by up to six months of imprisonment (Article 45) and a fine of up to 300,000 DA (approximately 1,800 EUR) (Article 46). These punitive provisions allow the government to effectively prevent NGOs, that are denied registration, from operating.

The Law 12-06 also imposes severe restrictions for the receipt of foreign funding and deprives NGOs of a financial resource that is critical for their operations. A cooperation agreement between the respective governments is the prerequisite for receiving funding or any type of contribution from any foreign mission or NGO, and any specific funding request must also be approved by the relevant authority (Article 30). There are additional restrictions on cooperation with foreign NGOs, which is only allowed with the prior authorisation of the authorities (Article 23). Furthermore, only the “approved” associations may join foreign NGOs pursuing the same or similar objectives with them, after informing the Ministry of Interior (Article 22). The latter also seeks the opinion of the Ministry of Foreign Affairs and has 60 days to oppose the application (Article 22).

The Law 12-06 also enables the authorities to exercise oversight over NGO activities through the requirement to inform the authorities after each general assembly meeting and provide the minutes of the meeting along with activity and financial reports (Article 19).

9 Amnesty International, Public Statement – Algerian Draft Constitution: Human Rights Concerns MDE 28/2601/2020, p.6 (June 25, 2020).

10 For example *see*, UN Human Rights Committee, Concluding Observations CCPR/C/DZA/CO/4, p.10 para.47 (August 17, 2018), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DZA/CO/4&Lang=En

11 EuroMed Rights, Memorandum: Assessment of Law 12-06 Of 12 January 2012 on Associations (February 14, 2012), available at: <https://euromedrights.org/publication/memorandum-assessment-of-law-12-06-of-12-january-2012-on-associations/>

12 EuroMed Rights, Memorandum: Assessment of Law 12-06 Of 12 January 2012 on Associations (February 14, 2012).

13 Human Rights Watch (HRW), Algeria: Bureaucratic Ploys Used to Stifle Associations (March 30, 2014), available at: <https://www.hrw.org/news/2014/03/30/algeria-bureaucratic-ploys-used-stifle-associations>; CIVICUS & Ibn Khaldoun Center for Research and Maghrebi Studies, Joint Submission to the UN Universal Periodic Review 27th Session of the UPR Working Group, p.4 para.2.4 (September 22, 2016), available at: <http://www.civicus.org/images/CIVICUS%20Algeria%203rd%20UPR%20Cycle.pdf>.

14 HRW, Algeria: Bureaucratic Ploys Used to Stifle Associations (March 30, 2014).

15 HRW, World Report 2019 Algeria – Events of 2018 (2019), available at: <https://www.hrw.org/world-report/2019/country-chapters/algeria>.

NGOs may be dissolved, or their activities may be suspended merely by an administrative decision on the basis of broad criteria that can be misused. For instance, an NGO may see its activities suspended or it may be dissolved if it is shown that it interferes in the internal affairs of the country or violates national sovereignty (Article 39). It may also be dissolved if it is shown that it has received funding from foreign missions or NGOs in violation of Article 30 or performed activities other than those stipulated in its bylaws (Article 43). Those provisions significantly affect NGOs' ability to criticise the public authorities and conduct its human rights work independently.

Criminalisation of Civil Society Actors: Penal Code

In addition to the provisions of Law 12-06 suffocating independent civil society, multiple provisions of the Penal Code effectively restrict freedom of association and freedom of speech of civil society actors and HRDs. In April 2020, amendments¹⁶ were introduced to the Penal Code, which further tightened the restrictions on civil society. The amendments were adopted without an opportunity for a parliamentary debate, and stakeholder participation was not ensured in the drafting process of the amendments¹⁷.

Provisions such as defaming the President (Article 144 bis), insulting Islam (Article 144 bis 2) and offending public institutions (Article 144) are often used to harass and target civil society actors and HRDs¹⁸. The amendments in April 2020 increased the penalties for defamation if the offence takes place "*at a time of a public health lockdown or a natural, biological or technological catastrophe or any other form of catastrophe*"¹⁹.

Amendments also created a new offence criminalising the receiving of funds for activities "*likely to undermine state security, stability, or normal functioning of [state] institutions,*" or undermine "*the fundamental interests of Algeria*" or "*public security and order*"²⁰. If the funds are received within the framework of an association, then the person in question may be punished by a prison sentence of up to 14 years, double the regular prison sentence foreseen for such acts (Article 95 bis)²¹. Finally, the amendments also introduced another offence, which punishes wilful dissemination of false news or news likely to undermine public security or order (Article 196 bis). The provision leaves a wide margin of discretion to the authorities since the concept of false news is not defined thereunder²².

Trade Union Activities: Labour Relations Act no. 90-11 and Law no. 90-14 on Trade Union Rights

Trade union rights are, in principle, recognised under Articles 69 and 70 (as well as Article 53) of the Algerian Constitution. Algeria has ratified the majority of ILO Conventions, including Freedom of Association and Protection of the Right to Organise Convention No. 87 and Right to Organise and Collective Bargaining

16 Law no. 20-06 on amendments to Penal Code (Loi n° 20-06 du 5 Ramadhan 1441 correspondant au 28 avril 2020 modifiant et complétant l'ordonnance n° 66-156 du 8 juin 1966 portant code pénal) published in the Official Gazette of Algeria no. 25 on April 29, 2020, available at: https://www.mfdgi.gov.dz/images/pdf/textes_reglementaires/F2020025.pdf

17 MENA Rights Group, Algeria: Penal code amendments restrict freedoms of expression and association (July 2, 2020), available at: <https://menarights.org/en/articles/algeria-penal-code-amendments-restrict-freedoms-expression-and-association>.

18 For more information on cases of intimidation based on defamation and insult, please see, Amnesty International, "Algeria: End relentless targeting of government critics" MDE 28/2951/2015 (December 4, 2015), available at: <https://www.amnesty.org/download/Documents/MDE2829512015ENGLISH.pdf>

19 International Center for Not-For-Profit Law, Civic Freedom Monitor: Algeria, available at: <https://www.icnl.org/resources/civic-freedom-monitor/algeria>.

20 International Center for Not-For-Profit Law, Civic Freedom Monitor: Algeria.

21 Ibid.

22 MENA Rights Group, Algeria: Penal code amendments restrict freedoms of expression and association (July 2, 2020).

Convention No. 98²³. However, the legislation is neither in line with constitutional nor international standards. A new draft Labour Code has been under preparation and consultation since 2011²⁴.

Law 90-14 allows the establishment of independent trade unions on paper. While the registration is formally by declaration, in practice, the authorities withhold receipts that they are supposed to issue within one month, leaving the trade unions in a legal limbo²⁵. Even when a trade union is successfully registered, it still faces threats of interference in their internal affairs²⁶ and even dissolution²⁷. Any structural relations with political parties are banned, and trade unions are not permitted to receive any form of funding from them (Article 5). Financial sources of trade unions are limited (Article 24), the main source being membership fees with no access to foreign funding, and only the most representative union at the national level is entitled to state funding (Article 49). Furthermore, the Law 90-14 allows the authorities to regularly prohibit strikes on vague grounds such as being likely to “lead to a serious economic crisis”²⁸.

b. Case Study #1: Women’s Rights Organisations in Algeria – A Struggle for Equal Rights²⁹

In parallel to the government crackdown on civil society and its arbitrary implementation of the already restrictive Law 12-06 on Associations, women’s rights organisations have been facing restrictions of their freedom of association, including difficulties in registering their organisations and conducting their activities freely. Well-established women’s rights organisations have seen their offices sealed, in an attempt to undermine their work for advancing women’s rights.

In February 2018, the premises of two women’s rights organisations, the Feminist Association for Personal Development and Exercise of Citizenship (*Association Féministe pour l’Epanouissement de la Personne et l’Exercice de la Citoyenneté* – *AFEPEC*), and Algerian Women Claiming their Rights (*Femmes Algériennes Revendiquant leurs Droits* – *FARD*) were sealed on the grounds that they were operating without registration³⁰. Both organisations had obtained legal status under the previous law but were required to re-register under the Law 12-06 and submitted the necessary documents for re-registration respectively in 2012 and 2014³¹. After huge mobilisation and support by civil society actors, they were allowed to re-open in March 2018. Yet, many other prominent and long-lasting human rights organisations have been experiencing similar issues in obtaining their legal status, and some are still left in limbo. There have been other instances where women’s rights organisations encountered difficulties in organising activities and events, which were

23 See, ILO, Ratifications for Algeria, available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102908

24 Danish Trade Union Development Agency & the Confederation of Danish Industry, Labour Market Report Algeria, p.4 (2020), available at: <https://www.ulandssekretariatet.dk/wp-content/uploads/2020/06/LMR-Algeria-2020-final-version1.pdf>.

25 Algerian Civil Society Coalition Report For The Universal Periodic Review Of Algeria, p.6, para.35 (September 2016), available at: <https://www.euromedrights.org/wp-content/uploads/2017/02/Joint-report-EPU.pdf>.

26 Algerian Civil Society Coalition Report For The Universal Periodic Review Of Algeria, p.7, para.37 (September 2016).

27 Fondation Alkarama, Rapport soumis au Comité des droits de l’homme dans le cadre du quatrième examen périodique de l’Algérie, p.21 (June 4, 2018), available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/DZA/INT_CCPR_CSS_DZA_31353_F.pdf.

28 Fondation Alkarama, Rapport soumis au Comité des droits de l’homme dans le cadre du quatrième examen périodique de l’Algérie, p.21 (June 4, 2018).

29 This case study is based on desk research and the interview conducted on December 29, 2020 with three representatives from the Tharwa N’Fadhma N’Soumeur Association. It is a feminist association established in Algeria in 1997 with the objective to abolish Family Code and advocate for civil and equal rights for women.

30 La Fédération Euro-méditerranéenne contre les disparitions forcées & L’Association Djazairouna, Rapport Alternatif a L’attention Du Comité Des Droits De L’homme Des Nations Unies 123ième Session, p.18 (2018), available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/DZA/INT_CCPR_CSS_DZA_31618_E.pdf.

31 FARD representatives reported that they indeed obtained a receipt in 2014, proving that the authorities received their file, and they did not received any notice prior to sealing of their offices. On the other hand, AFEPEC’s receipt was withheld by the authorities for two years and finally delivered in 2014. See, HRW, Algeria: Feminist Groups Arbitrarily Suspended (March 19, 2018), available at: <https://www.hrw.org/news/2018/03/19/algeria-feminist-groups-arbitrarily-suspended>.

arbitrarily cancelled by the authorities without any valid explanation. For instance, venues cancelled on them at the very last moment, reportedly upon pressure by the authorities³².

In addition to the harassment they face at organisational level, women's rights defenders have also been repeatedly criminalised³³. Women have faced police violence, arbitrary detention and judicial harassment, particularly for participation in the democracy movement. Indeed, women have been in the forefront of the demonstrations, demanding an end to gender-based violence and all forms of legal and *de facto* discrimination, along with the broader demands of systemic change in Algerian politics³⁴. In addition to criminalisation by the state actors, they have also experienced threats of physical violence and aggression by non-state actors as well as the accusations of dividing the movement³⁵. As usual, women's rights defenders not only had to struggle against the government crackdown on civil society actors but also fight against the patriarchy and the backlash from the society. Furthermore, in the aftermath of the amendments to the Penal Code in 2020 criminalising "*receiving funds for activities likely to undermine state security*" as well as "*dissemination of false news likely to undermine public security or order*" civil society actors, including women's rights defenders, have been continuously suppressed for expressing their thoughts online.

While independent women's rights organisations are being drowned in legal barriers and other repressive practices, governmental actors create their own civil society organisations, including in the women's rights space, who are not connected with the movement on the ground. According to the testimonies of our sources, these organisations do not go any further than the bare minimum, that is, opposing physical violence against women, and neither mobilise against institutional forms of discrimination nor demand equal rights. Despite the inadequacy of the legislation in protecting women against violence – which includes a pardon clause "allowing" women to pardon the perpetrators before the courts³⁶ – these organisations support the legislation and other policies of the Government, which in turn provides legitimacy for the latter. Our sources reported that the same organisations have also actively supported and campaigned in favour of the constitutional amendments, which were submitted to referendum in November 2020, in an attempt to provide legitimacy to the reforms proposed by the Government. The women officially invited to policy consultations are usually there to create an illusion of women's voices being adequately represented, yet those women do not actively advocate for equal rights, according to our sources. Independent women's rights organisations, on the other hand, are not invited to take part in the policy-making processes, and they have to proactively submit their input if they would like to be involved. The environment remains much less enabling for those who go beyond advocating against violence against women by demanding equal rights and the abolition of the laws reinforcing discrimination.

Despite the above-mentioned challenges, many prominent civil society organisations, including women's rights organisations, prioritise organising at the community level and building a movement on the ground, which is the most effective method of activism and which provides them with the legitimacy they need. Thanks to the support of the women on the ground, and with the momentum provided by the active

32 In May 2016, Djazairouna Association had to change the venue of its seminar on women's rights three times: first, the hotel booked for the accommodation of the participants and the seminar cancelled the reservation saying that the venue is not available anymore; then, a restaurant had to refuse them after it was threatened by the authorities with closure; finally, the seminar was organised in the premises of the association. See, la Fédération Euro-méditerranéenne contre les disparitions forcées & L'Association Djazairouna, Rapport Alternatif à L'attention Du Comité Des Droits De L'homme Des Nations Unies 123ième Session, p.18 (2018).

33 For example see, Front Line Defenders, Arbitrary detention of woman human rights defender Amel Hadjadj (November 28, 2019), available at: <https://www.frontlinedefenders.org/en/case/arbitrary-detention-woman-human-rights-defender-amel-hadjadj>.

34 Amnesty International, Algeria 2019, available at: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/algeria/report-algeria/>. For a declaration by Algerian feminists and women's rights defenders see, Mediapart, Femmes algériennes: «Nous réaffirmons notre détermination à changer le système» - Déclaration suite à une réunion de femmes à Alger le 16 mars 2019 (March 31, 2019, available at: <https://blogs.mediapart.fr/jean-marc-b/blog/310319/femmes-algeriennes-nous-reaffirmons-notre-determination-changer-le-systeme>.

35 The Observers – France24, Women's rights activists in Algeria threatened with acid attacks (April 5, 2019), available at: <https://observers.france24.com/en/20190405-algeria-women-rights-activists-threats-acid-attacks>.

36 See, Law no. 15-19 modifying and completing the Penal Code, published in the Official Gazette on December 30, 2015 (Loi n° 15-19 du 18 Rabie El Aouel 1437 correspondant au 30 décembre 2015 modifiant et complétant l'ordonnance n° 66-156 du 8 juin 1966 portant code pénal), available at: <https://www.joradp.dz/FTP/JO-FRANCAIS/2015/F2015071.pdf>.

democracy movement in Algeria, they continue their activities, determined to attain equal rights for women in Algeria.

c. Case Study #2: Crackdown on Trade Union Plurality and Independent Trade Unionists³⁷

Until trade union pluralism was recognised by the Constitution of 1989 in Algeria, the General Union of Algerian Workers (*Union Générale des Travailleurs Algériens – UGTA*) was the only union that workers could join³⁸. UGTA was founded in 1956 as one of the first Algerian trade unions and played a significant role in the history of trade unions in Algeria³⁹. In the post-independence period, the UGTA strived to remain critical of the regime; however, only a few years later, it became an apparatus of the State, with a right to veto over the election of leadership positions of the union⁴⁰. While this has not prevented workers organised under the UGTA from carrying out numerous major strikes, the UGTA has turned its back to workers' demands and resistance over the years⁴¹. In October 2020, one month before the constitutional referendum, UGTA started to campaign in favor of the changes proposed by the government⁴².

The Law no. 90-14 (1990) reiterated the recognition of trade union pluralism; many autonomous trade unions have since emerged both in the public and private sectors. Yet, the UGTA preserved its privileges, and the State continued to impose the UGTA as the sole representative of workers in decision-making fora⁴³. Indeed, autonomous trade unions have been excluded from the tripartite social dialogue in Algeria, which is comprised of the Government, the employers and the UGTA as the sole representative of trade unions⁴⁴. The UGTA also represents workers of Algeria at the International Labour Conference of ILO as the official delegate of workers⁴⁵. The autonomous unions' attempts to establish confederations, on the other hand, have been denied by the authorities on the grounds that the Law 90-14 only provided for the establishment of trade unions by workers in the same profession, branch or sector⁴⁶.

Many autonomous trade unions and confederations have been facing difficulties in registration: according to article 8 of Law 91/31 amending and supplementing Law 90/14 on the exercise of the right of association stipulates that, following the submission of the complete application for union constitution to the supervisory authorities, a registration receipt must be delivered by the latter within 30 days of file submission.

The authorities purposely withhold registration receipts, without which trade unions cannot legally represent workers⁴⁷. There is no formal procedure of appeal if the registration receipt is not handed out by the authorities, which opens the doors to abuse⁴⁸. In other cases, the authorities require additional information or ask for modification of their statutes, but in many cases the authorities refuse to issue the receipt even

37 This case study is based on desk research and the interview conducted on [...] with a civil society representative active in the trade union movement.

38 Nacer Djabi with the cooperation of Fadhila Akkache, Hocine Zobiri and Samir Larabi, Trade Unions in Algeria – History, Survey and Options, p.6 (January 2020), available at: library.fes.de/pdf-files/bueros/algerien/16908.pdf

39 Samir Larabi, Algeria's Trade Unions: A History published in the report titled "Trade unions and the Algerian uprising", p.9 (June 2020), available at: https://www.tni.org/files/publication-downloads/tradeunions_algerianuprising_0520_hires-1.pdf.

40 Nacer Djabi with the cooperation of Fadhila Akkache, Hocine Zobiri and Samir Larabi, Trade Unions in Algeria – History, Survey and Options, p. 5 (January 2020), available at: <http://library.fes.de/pdf-files/bueros/algerien/16908.pdf>

41 Samir Larabi, Algeria's Trade Unions: A History, p.10-11 (June 2020).

42 Aboubaker Khaled, Constitution : en toute impunité, 1^o UGTA fait campagne pour le « oui », (October 10, 2020)

<https://maghrebemergent.net/constitution-en-toute-impunite-lugta-fait-campagne-pour-le-oui/>

43 Samir Larabi, Algeria's Trade Unions: A History, p.11 (June 2020).

44 Nacer Djabi with the cooperation of Fadhila Akkache, Hocine Zobiri and Samir Larabi, Trade Unions in Algeria – History, Survey and Options, p. 15 (January 2020).

45 See, International Labour Conference, Final List of Delegations, 108th Session, Geneva (June 21, 2019), available at:

https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_703542.pdf.

46 Nacer Djabi with the cooperation of Fadhila Akkache, Hocine Zobiri and Samir Larabi, Trade Unions in Algeria – History, Survey and Options, p. 8 (January 2020).

47 HRW & EuroMed Rights, Algeria: Workers' Rights Trampled (March 27, 2014), available at: <https://www.hrw.org/news/2014/05/27/algeria-workers-rights-trampled>.

48 Nacer Djabi with the cooperation of Fadhila Akkache, Hocine Zobiri and Samir Larabi, Trade Unions in Algeria – History, Survey and Options, p. 8 (January 2020).

after those additional steps are taken⁴⁹. Without legal status, trade unions cannot collect membership fees, rent an office, open a bank account, file court cases or organise events⁵⁰. For instance, the General and Autonomous Confederation of Workers in Algeria (*Confédération Générale des Travailleurs Algériens – CGATA*), which filed its application in 2013, has been trying to obtain its legal status since then⁵¹. It has been denied registration by the authorities on the allegations that it did not fulfil the legal requirements⁵². ILO Committees have repeatedly called the authorities to proceed with the registration of CGATA, and others who were denied registration, due to the fact that the reasoning of the authorities was based on a reading of the legislation that is not in conformity with relevant ILO Conventions⁵³. Furthermore, on 4 December 2019, CGATA's Algiers office, which also serves as the office of National Autonomous Union of Public Administration Staff (*Syndicat National Autonome des Personnels de l'Administration Publique – SNAPAP*), was sealed by the police for carrying out "unauthorised activities"⁵⁴.

In addition to the barriers to register their organisations, trade unionists also face intimidation, harassment and criminalisation for both exercising their right to freedom of association and for their participation in the mass democracy movement, the *Hirak*⁵⁵. Indeed, trade unionists were a driving force for the *Hirak* movement, both in their individual capacity and at the trade union level. Many trade unionists have been facing harassment by the authorities for their support of the movement through actions such as calls for general strikes⁵⁶. At the same time, they have been labelled as "foreign agents" by the pro-government media for their participation in the democracy movement⁵⁷.

Another prominent example of the harassment is the case of Kaddour Chouicha, a member of SNAPAP, member of the executive committee of CGATA and the Vice-President of LADDH. He was arrested in December 2019⁵⁸. On the same day, he was fined and condemned to one year imprisonment for his social media posts and participation in a peaceful assembly on the grounds of "incitement", "*exposing documents which may threaten national security*" and "*defamation of the President*"⁵⁹. He was granted conditional release on health grounds in January 2020, and eventually acquitted in March 2020⁶⁰. Although he was eventually released, his harassment is evidence of the crackdown on trade unionists and more generally on HRDs. This is a grave violation of Article 53 of the Law 90-14 which stipulates that trade unionists are protected from discrimination by their employers based on their trade union membership or activities, including dismissals, transfers and disciplinary actions. Nevertheless, in practice, summary dismissals for involvement in trade union activities are widespread. The ILO has urged the authorities several times to reinstate dismissed

49 HRW & EuroMed Rights, Algeria: Workers' Rights Trampled (March 27, 2014).

50 HRW, World Report 2017 Algeria – Events of 2016 (2017), available at: <https://www.hrw.org/world-report/2017/country-chapters/algeria>.

51 Amnesty International, Algeria 2019.

52 ITUC, 2020 ITUC Global Rights Index, p.42 (July 16, 2020), available at: https://www.ituc-csi.org/IMG/pdf/ituc_globalrightsindex_2020_en.pdf.

53 See, ILO Committee of Experts on the Application of Conventions and Recommendations, Observation (CEACR) - adopted 2019, published 109th ILC session (2021), available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:4023463:NO.

54 InsutriALL Global Union et al., Global unions call for urgent ILO intervention in Algeria (February 11, 2020), available at: <http://www.industrial-union.org/global-unions-call-for-urgent-ilo-intervention-in-algeria>.

55 InsutriALL Global Union et al., Global unions call for urgent ILO intervention in Algeria (February 11, 2020), available at: http://www.industrial-union.org/sites/default/files/uploads/documents/2020/expressing_great_concern_over_union_rights_violations_in_algeria_11-02-2020.pdf

56 For instance, the harassment of Raouf Mellal, president of the Trade Union Confederation of Productive Workers (COSYFOP), has reportedly intensified after the Confederation's involvement in the *Hirak* movement and successful calls for strikes in 2019. Furthermore, on February 5, 2020, COSYFOP headquarters in Algiers were sealed by the police. Similarly, Hamza Kherroubi, president of a COSYFOP-affiliated union, was arrested after expressing his support for the general strike called by COSYFOP in December 2019. He was charged with "incitement" and sentenced to one year imprisonment. For more information see, openDemocracy, In Algeria, a dangerous crackdown on independent trade unions (February 6, 2020), available at: <https://www.opendemocracy.net/en/north-africa-west-asia/algeria-dangerous-crackdown-independent-trade-unions/>.

57 InsutriALL Global Union et al., Global unions call for urgent ILO intervention in Algeria (February 11, 2020).

58 See, EuroMed Rights, Algérie: Kaddour Chouicha, Victime d'une Justice Expéditive (December 12, 2019), available at:

<https://euromedrights.org/fr/publication/algerie-kaddour-chouicha-victime-dune-justice-expeditive/>. ee also, HRW, Algeria: Prominent Rights Defender Imprisoned on Election Eve (December 12, 2019), available at: <https://www.hrw.org/news/2019/12/12/algeria-prominent-rights-defender-imprisoned-election-eve>.

59 EuroMed Rights, Algérie : Kaddour Chouicha, Victime d'une Justice Expéditive (December 12, 2019).

60 Front Line Defenders, Kaddour Chouicha acquitted (March 9, 2020), available at: <https://www.frontlinedefenders.org/en/case/imprisonment-kaddour-chouicha#case-update-id-11152>.

unionists and halt their harassment⁶¹. What's more, employment is necessary to hold trade union office, which means that dismissals are also abused by employers to interfere within trade union activities⁶².

As the authorities continue to curb trade union pluralism by denying registration and systematically harassing trade unionists, the UGTA maintains its privileged position. It continuously endorses government policies both explicitly, by expressing its open support, and implicitly, through its role in suppressing the independent trade union movement. Most recently, the UGTA took a pro-government stance in the ongoing political crisis, organising a rally in their support in November 2019⁶³.

Trade unionists and labour rights defenders have been at the forefront of the struggle for a more democratic Algeria that also respects workers' rights. International support – particularly from the actors who can exert pressure – is needed more than ever to ensure that independent trade unions, as well as civil society at large withstand the oppression and continue their fight for a functioning democracy with due respect for fundamental rights.

The research and interviews have shown that both the legal framework and practices severely restrict the freedoms of expression, association and assembly of independent civil society in Algeria. At the same time, their work is undermined by the presence of GoNGOs who legitimise the acts of the government by providing the 'civil society participation', such as supporting legislative amendments which are detrimental to certain groups, such as women. The work of Trade Unions are also restricted by the absence of pluralism: the law requires that workers obtain government approval to form a union, and the Ministry of Labor must approve or disapprove a union application within 30 days and harsh sanctions are imposed for organising or joining an organisation not officially recognized: such as imprisonment up to two months and/or a fine of 5,000 to 50,000 Algerian dinar. In all instances, the delay in formally registering organisations and trade unions act as procedural obstacles which limit the work of ICS, their access to funding and the possibility of prosecution.

61 For example see, Provisional Record No.5A(Rev.) (Part 1) Report of the Committee on the Application of Standards - Part 1: General report, para. 319 (August 30, 2019), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_711293.pdf; also see, ILO Committee on Freedom of Association, Interim Report no. 392 – Case no. 3210 (Algeria) - Complaint date: 26-APR-16, para. 216 (October 2020), available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4059175#D.

62 Provisional Record No.5B (Part 2) Report of the Committee on the Application of Standards - Part 2: Information and reports on the application of Conventions and Recommendations, p.36 (June 21, 2019).

63 Freedom House, Freedom in the World 2020 – Algeria, E3 (March 4, 2020), available at: <https://freedomhouse.org/country/algeria/freedom-world/2020>.

2. Egypt

a. Legal Framework and Restrictive Practices

Shrinking Civic Space & Influence of GoNGOs

Civil society and HRDs in Egypt operate in a highly repressive environment. They regularly face smear campaigns, harassment, intimidation and surveillance by security forces,⁶⁴ unfair trials and prolonged arbitrary detention as well as torture, enforced disappearance and even death in custody.⁶⁵ The families of individuals are also harassed and arrested, so as to intimidate the HRD, as in the case of Mohammed Soltan⁶⁶. Stakes are very high for many independent civil society actors to freely continue their legitimate human rights work without fear of retaliation. Their activities may also be challenged by freezing of the organisational and personal assets, sealing of their offices and dissolution of the organisation. As a result of the intensified crackdown, today many civil society organisations struggle to survive, let alone maintain their activities. Indeed, the only ones that might be able to freely operate under this restrictive and controlling environment are the organisations that are willing to adapt their activities to government priorities and adopt the official government narrative on human rights. However, even GoNGOs and organisations that are not considered to be working in contentious fields can end up being targeted by the regime.⁶⁷

While there have been some opportunities for CSOs to engage in policy dialogue, the hostile environment is a major barrier against participation of civil society actors in such spaces and their free expression. In many cases, attempts to reform problematic laws were rushed with no transparency and meaningful participation, usually as mere cosmetic changes before the landmark dates of international reviews of Egypt's human rights record.

International Treaties & Constitutional Framework

Egypt is a signatory to ICCPR, ACHPR and ACHR, all of which recognise freedom of association. The right to freedom of association is provided under Article 75 of the Constitution of Egypt. Accordingly, only citizens have the right to form NGOs, which acquire legal personality upon declaration. The Constitution also foresees protections such as conducting activities free from government interference and free from the threat of dissolution by an administrative decision without a court order. Article 93 provides that international human rights conventions shall have force of the law after publication⁶⁸. However, neither the constitutional nor the legislative framework in Egypt is fully in line with international standards. The legislation is far from upholding freedom of association and adopts a rather restrictive approach.

64 For instance, in December 2019, Gamal Eid, the executive director of the Arabic Network for Human Rights Information (ANRHI), was physically assaulted by around 10 people, who were believed to be security officers. The HRD was beaten, threatened with pistols, and thrown paint on his face and clothes. He was previously attacked in October 2019 by armed man in plain clothes. See, HRW, Egypt: Rights Activist Assaulted – Second Attack on Gamal Eid Since October (December 30, 2019), available at: <https://www.hrw.org/news/2019/12/30/egypt-rights-activist-assaulted>. For further information on the smear campaign against him please see, Joint Statement, Egypt: The Campaign Against Gamal Eid Must Stop! (June 22, 2020), available at: <https://euromedrights.org/publication/egypt-the-campaign-against%e2%80%a1fgamal-eid-must-stop/>.

65 EuroMed Rights, Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security, p.7 (February 2018), available at: <https://euromedrights.org/wp-content/uploads/2018/03/EuroMed-Rights-Report-on-Counter-terrorism-and-Human-Rights.pdf>.

66 <https://egyptwatch.net/2020/06/15/egyptian-authorities-raid-houses-of-mohamed-soltans-family/>; https://www.washingtonpost.com/world/middle-east/egypt-biden-sissi-arrests/2021/02/16/44b2ef40-7062-11eb-a4eb-44012a612cf9_story.html

67 For example, the landmark case 173/2011 included MAAT, a GoNGO. This ongoing process is a major sword of Damocles hanging over independent human rights NGOs in Egypt, even though it seems that the regime is aiming to pivot away from using the NGO law to use the counter-terrorism provisions instead to crack down on CSOs (e.g. case 855/2020).

68 <https://www.loc.gov/law/foreign-news/article/egypt-new-law-enacted-regulating-activities-of-nongovernmental-organizations/>

Scrutiny over NGO Activities: Law no. 149 Regulating the Exercise of Civil Work

Law no.149 Regulating the Exercise of Civil Work⁶⁹, adopted in 2019, maintains the restrictive provisions of the draconian 2017 NGO Law no.70, with only minor changes, and puts in place a system of governmental oversight over civil society, including by imposing significant restrictions on formation, funding, activities, cooperation with international entities, as well as internal governance of NGOs⁷⁰. Under the conditions set by the Law no.149, it is impossible for an independent NGO to freely operate, advocate against human rights violations and criticise the government without fear of retaliation.

Law no.149 requires registration of all NGOs including those who were registered under the previous legal regime and bans the activities of unregistered NGOs⁷¹. It also deems invalid any other license issued by an incompetent administrative body and thus prevents civil society organisations from registering as a company or law firm, which has been the common practice to bypass the restrictive provisions that apply to associations (Article Four)⁷².

While the registration is by notification of the Ministry of Social Solidarity, the process is not only burdensome and time-consuming but also allows the Ministry to reject registration for a 60-day period on the basis of broad criteria (Article 9)⁷³. The authorities' power to reject an application in fact amounts to an authorisation-based registration system, blatantly violating the Constitution⁷⁴. Additional obstacles are foreseen for international and foreign NGOs seeking to operate in the country, including obtaining an operating permit defining the scope of their activities (Article 65)⁷⁵.

Under the Law no.149, NGO activities are expressly limited, and only those "in the fields of societal development" are permitted (Article 14). Furthermore, engagement in political, partisan and union activities is banned, as well as activities that "violate the public order, public morals, national unity or national security" (Article 15). Approval by the Central Agency for Public Mobilization and Statistics is needed for conducting field research, opinion polls and publishing their results (Article 15/j). Furthermore, prior permission by the Ministry is required before cooperation in any form with a foreign entity (Article 19). Sanctions for non-compliance with the above stated provisions may include severe fines for individuals involved in those activities (Articles 94/3 and 95/4), suspension of activities of the NGO (Article 45/5) and even dissolution (Articles 47/6, 47/8, 48/2 and 48/6)⁷⁶.

Additionally, Egyptian authorities are also entitled to unduly interfere with the internal affairs of NGOs through inspections and other mechanisms that allow them to contest any decisions (Article 34) and even challenge the appointment of new board members (Article 38). Representatives of the Ministry may enter an NGO's premises "to monitor its activities, review its records, and inspect the administrative, technical and financial aspects of its work" (Article 30). Refusal to enable officials to monitor and examine the activities may result in severe fines (Article 95/2) and even dissolution of an NGO (Article 47/5).

In parallel, access to funding and management of assets are subjected to restrictions under the Law no.149. NGOs are obliged to notify the Ministry within 30 days upon the receipt of foreign funding; the Ministry has 60 days to object, during which the NGO cannot use the funds (Article 27). The notification includes detailed

69 For an unofficial English translation of the Law see, International Center for Not-For-Profit Law, Law No. 149 on Regulating the Exercise of Civil Work, available at: <https://www.icnl.org/resources/library/law-no-149-on-regulating-the-exercise-of-civil-work>.

70 See, Amnesty International, Egypt: Draft New NGO Law Retains Repressive Essence of Old One (July 16, 2019), available at: <https://www.amnesty.org/download/Documents/MDE1207152019ENGLISH.pdf>

71 International Center for Not-For-Profit Law, Civic Freedom Monitor: Egypt, available at: <https://www.icnl.org/resources/civic-freedom-monitor/egypt> (last access: Dec 8, 2020).

72 EuroMed Rights, Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security, p.17 (February 2018).

73 International Center for Not-For-Profit Law, Civic Freedom Monitor: Egypt.

74 See, Amnesty International, Egypt: Draft New NGO Law Retains Repressive Essence of Old One, p.2 (July 16, 2019).

75 For more information see, International Center for Not-For-Profit Law, Civic Freedom Monitor: Egypt.

76 International Center for Not-For-Profit Law, Civic Freedom Monitor: Egypt.

information about the donor, funds, a detailed budget for each activity to be funded and a feasibility study of the activity⁷⁷. No specific grounds are provided for objection to the funding request, upon which an NGO must return the funds⁷⁸. Similar notification requirements are also in place to receive funding from domestic sources (Article 24). Failure to comply with those requirements may result in individual fines as well as suspension of activities (Article 45/5) and dissolution (Article 47/1, 47/3, 47/8 and 48/3-5). In addition, NGO resources are deemed “public funds” (Article 23), which are subject to a higher level of scrutiny under Egyptian law⁷⁹.

In addition to the measures such as suspension of activities and dissolution⁸⁰, Further, the Law also imposes fines as high as one million Egyptian Pounds (approximately EUR 52,000) on both NGOs and individuals involved in its activities for non-compliance with certain provisions (Articles 94-95).

Criminal Provisions: Penal Code, Counter-Terrorism Laws and Others

The restrictive framework built by the Law no.149 is enhanced by the provisions of the Penal Code, Counter-Terrorism Laws, Emergency Law, Cybercrimes Law and others, which pose a threat to fundamental freedoms and criminalise legitimate civil society work as well as expression of dissent. While the prison sentences under the NGO Law were abolished in 2019 with the Law no.149, civil society actors still face the severe risk of being sentenced to imprisonment under the criminal provisions of the above-stated laws.

Provisions on insult and defamation of public authorities (Articles 179, 184-186) as well as the provision on publishing false news or information (Article 80/d) under the Penal Code are often being used to silence civil society actors and HRDs⁸¹. Most worryingly, amendments to Article 78 of the Penal Code in 2014 increased the already severe penalties applicable to organisations receiving foreign funding allegedly harming national interests, national unity and independence, or public peace⁸². The vague wording may be interpreted in a way to deem the funding of peaceful civil society and human rights activities as harmful to the country’s interests⁸³. Such acts are disproportionately punished by life sentence and severe fines, effectively deterring civil society actors from conducting their peaceful human rights work due to fears of prosecution.

77 Ibid.

78 Ibid.

79 Ibid.

80 Law no. 149 provides broad grounds, which are open to abuse by the authorities, for the suspension of the activities of NGOs by the authorities (Article 45), which should be approved by the court within seven days, and dissolution of an NGO by court order (Article 47-48), upon the request of the authorities.

81 In a crackdown against the Egyptian Initiative for Personal Rights (EIPR), three prominent HRDs were detained in November 2020 over the abusive charges of “joining a terrorist group”, “disseminating false statements to undermine public security”, and “using the internet to publish false news” as a result of their human rights work. *See*, EuroMed Rights, Egypt: Solidarity with the Egyptian Initiative For Personal Rights! (November 26, 2020), available at: <https://euromedrights.org/publication/egypt-solidarity-with-the-eipr-urged-by-human-rights-community-in-open-letter-to-ambassadors-and-diplomats/>. Another example is the case of Mohamed Ramadan, a human rights lawyer who also worked for the Arabic Network for Human Rights Information (ANHRI). He was arrested on December 10, 2018. He was placed in pre-trial detention the following day over the baseless charges of “spreading false news”, “joining a terrorist group and promoting his ideas”, “using social media to propagate the goals of a terrorist group” and “possessing pamphlets and yellow vests to call for protests against the government similar to the ‘Yellow Vest’ protests in France” for posting a picture of himself on social media wearing a yellow vest. His arbitrary pre-trial detention was repeatedly renewed until he was provisionally released on December 2, 2020. His judicial harassment continues to date. For more information *see*, the Observatory for the Protection of Human Rights Defenders (“the Observatory”), Urgent Appeal EGY 005 / 1218 / OBS 142.1 – Egypt: Conditional release and continuing judicial harassment of Mohamed Ramadan (December 3, 2020), available at: <https://www.fidh.org/en/issues/human-rights-defenders/egypt-conditional-release-and-continuing-judicial-harassment-of>.

82 International Service for Human Rights (“ISHR”), Cairo Institute for Human Rights Studies & Committee for Justice, Briefing Paper Universal Periodic Review: The Situation of Human Rights Defenders in Egypt, p.1 (March 2019), available at: https://www.ishr.ch/sites/default/files/documents/upr_egypt_final.pdf.

83 Indeed, Article 78 was used as a legal weapon against prominent civil society organisations under the high-profile foreign funding case no. 173. Numerous well-established civil society organisations have been targeted under this case for their allegedly incriminating funding and legal status: the assets of some organisations and their executives were frozen, travel bans were issued and some organisations were dissolved. *See*, EuroMed Rights, Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security, p.15-16 (February 2018); Joint NGO paper, Background on Case No. 173 – the “foreign funding case” Imminent Risk of Prosecution and Closure (March 23, 2016), available at: <https://www.fidh.org/en/region/north-africa-middle-east/egypt/background-on-case-no-173-the-foreign-funding-case-imminent-risk-of>.

In 2015, Egypt introduced two new anti-terrorism laws, in addition to the Anti-Terrorism Law no. 97: the Terrorism Entities Law no. 8 and the new Anti-Terrorism Law no. 94⁸⁴. The former includes a sweeping definition of “terrorists”, allowing peaceful civil society activities to be labelled “terrorism”, and enables courts to label any person “terrorist”⁸⁵. Individuals affected may see their assets frozen⁸⁶. Similarly, Anti-Terrorism Law no. 94 includes a broad definition of terrorism⁸⁷. It is unsurprising that the allegation of belonging to a terrorist group is one of the most frequently used accusations against civil society actors, HRDs and political opponents⁸⁸.

Legal Framework on Trade Union Rights

Egypt has ratified all eight fundamental ILO Conventions, including Conventions no. 87 and no. 98. Yet, the Trade Union Act no. 213 (2017) poses serious hurdles to freedom of association and restricts the free establishment and functioning of independent trade unions, in contravention of Article 76 of the Constitution recognising the right of workers to form trade unions⁸⁹. All independent trade unions were dissolved under this law and required to re-register⁹⁰. The Trade Union Act was amended⁹¹ by Law no. 142 in 2019, decreasing the minimum number of workers required for forming a union, in response to criticism voiced by the ILO⁹². Prison sentences under the Act were also abolished, but fines were increased.⁹³ Excessive and unreasonable requirements for registration remain⁹⁴. Furthermore, it was reported that even the few improvements brought about by the Act are not implemented by the authorities in practice⁹⁵.

b. Case Study #3: Crackdown on Women’s Rights Organisations⁹⁶

Similar to many other segments of the civil society, women’s rights organisations are severely affected by the repressive environment. The general hostile environment combined with the wide-spread sexual violence in detention and custody⁹⁷ as well as in public spaces⁹⁸ makes human rights work even more challenging for women. Women’s rights defenders, especially feminist women, also face hostility within civil society for openly criticising the patriarchal power structures within the movement and bringing up cases of sexual harassment. Furthermore, equal rights for women are not seen as a priority agenda for some civil society actors, which isolates feminist groups and their demands. Despite those challenges, there are numerous

84 EuroMed Rights, Finding Scapegoats: Crackdown on Human Rights Defenders and Freedoms in the Name of Counter-terrorism and Security, p.13 (February 2018).

85 Ibid.

86 Ibid.

87 Ibid.

88 Ibid.

89 Front Line Defenders, Striking Back: Egypt’s Attack on Labour Rights Defenders, p.16 (January 2019), available at: https://www.frontlinedefenders.org/sites/default/files/frontline_defenders_egypt_english_online.pdf.

90 Front Line Defenders, Striking Back: Egypt’s Attack on Labour Rights Defenders, p.16 (January 2019).

91 Middle East Monitor, Egypt approves amendments to law regulating trade unions (May 29, 2019), available at: <https://www.middleeastmonitor.com/20190529-egypt-approves-amendments-to-law-regulating-trade-unions/>.

92 ITUC, 2020 ITUC Global Rights Index, p.26 (July 16, 2020).

93 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions’ Freedoms January 1st – December 31st 2019, p.5 (January 13, 2020), available at: <http://www.ctuws.com/en/content/draining-year-report-about-violations-trade-unions-freedoms-january-1st-december-31st-2019>.

94 ITUC, 2020 ITUC Global Rights Index, p.26 (July 16, 2020).

95 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions’ Freedoms January 1st – December 31st 2019, p.5 (January 13, 2020).

96 This case study is based on desk research and the analysis shared by Mozn Hassan from Nazra for Feminist Studies, who was interviewed on December 21, 2020. Nazra was officially founded in 2007 by a group of feminists and have been focusing on women’s human rights and their right to safety, particularly putting the issue of sexual violence on the political agenda, and providing psychological, medical and legal support to survivors. Nazra and Mozn Hassan’s work was recognised internationally by various awards, including the Global Fund for Women’s inaugural Charlotte Bunch Human Rights Award in 2013, Right Livelihood Award in 2016 and International Hrant Dink Award in 2020.

97 For more information see, International Federation for Human Rights (“FIDH”), Exposing state hypocrisy: sexual violence by security forces in Egypt (May 19, 2015), available at: https://www.fidh.org/IMG/pdf/egypt_report.pdf.

98 For more information see, FIDH & Nazra for Feminist Studies & New Women Foundation & Uprising of Women in the Arab World, Egypt: Keeping Women Out – Sexual violence in the public sphere (April 16, 2014), available at: https://www.fidh.org/IMG/pdf/egypt_sexual_violence_uk-webfinal.pdf.

brave and resilient women's rights defenders actively advocating for the advancement of women's rights, yet the recent years have seen prominent women's rights organisations being deliberately harassed to the point of scaling down or ceasing their activities⁹⁹.

The harassment faced by Nazra For Feminist Studies and its director and co-founder Mozn Hassan is a striking example. Nazra has always been under the spotlight as a feminist organisation, but the repression gained momentum in recent years. Mozn Hassan has been facing baseless accusations under the case no. 173, known as the foreign funding case, and risks life imprisonment if the case is brought to trial¹⁰⁰. She has been prevented from traveling outside Egypt since 2016¹⁰¹. Both her personal and the NGO's assets were frozen by court order in January 2017 based on accusations including "*inciting and calling for the irresponsible liberation of women*" under the same case¹⁰². This was the first time the assets of a women's rights association, which is registered under the Ministry of Social Solidarity, were frozen in Egypt, setting a harmful precedent¹⁰³. The appeal submitted to challenge the travel ban and the assets' freezing was rejected in July 2020¹⁰⁴. Similar to other organisations/individuals who have seen their assets frozen under this case, Nazra had to close its offices due to financial difficulties in March 2018 and continues to operate on a voluntary basis¹⁰⁵, (aiming to build a resilient movement that matches with the reality on the ground). The case is still pending. According to Mozn Hassan, the case wasn't brought to trial thanks to the solidarity shown within and outside Egypt. However, the prolonged judicial harassment itself paralyzes Nazra and other independent CSOs being charged under this case and has a chilling effect on others.

The public targeting of Nazra as well as the smear campaigns in the media, spreading false information on the women's rights movement, affected their interventions with survivors of gender-based violence as well as their relationship with women human rights defenders (WHRDs). Some did not want to take the further risk of associating themselves with Nazra. Furthermore, freezing of their assets and closure of their offices inevitably affected their capacity to continue providing much needed services to women. This meant depriving numerous women in Egypt from the support and security they require in access to justice, rehabilitation and equal rights.

The National Council on Women ('the Council'), a government entity invested with the task of empowering women and ending discrimination, did not speak up against the harassment of prominent women's rights

99 For instance, it was reported that the Ministry of Social Solidarity has been withholding the permission, under the new Law no. 149, to feminist organisations to receive funding, on the grounds that an executive by-laws has to be published before such permissions can be issued. As a result of this practice, many feminist NGOs were not able to operate as usual due to financial difficulties and had to let go majority of their staff and close down their offices, and there is no clarity to when the by-laws would be released. See, The coalition of Egyptian Feminist Union & Alliance for Arab Women, Shadow NGO Report on Egypt's Periodic Report to The Committee on the Elimination of Discrimination against women – 79th CEDAW Pre-Session (October 2020), available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=EGY&Lang=EN.

100 ISHR, Egypt | Woman defenders face harassment, possible life imprisonment (March 29, 2018), available at: <https://www.ishr.ch/news/egypt-woman-defenders-face-harassment-possible-life-imprisonment>. Similarly, Center for Egyptian Women's Legal Assistance (CEWLA) and its co-founder and a feminist lawyer Azza Soliman have been targeted under the same case. Both the assets of Azza Soliman and her law firm were frozen in November 2016. CEWLA's programs were also denied approval by the Ministry, which meant that the organisation could not access the funds tied to those programs, and as a result, they experienced financial difficulties in paying their staff members. See, EuroMed Rights, Alert: Travel Ban & Asset Freeze on Azza Soliman (November 21, 2016); Global Fund for Women, Taking back justice with grassroots women in Egypt (April 2016), available at: <https://www.globalfundforwomen.org/grassroots-women-in-egypt-take-back-justice/>.

101 Nazra for Feminist Studies, The Summon of Feminist and Woman Human Rights Defender Mozn Hassan to Investigation within the Context of the NGO Foreign Funding Case (June 18, 2018), available at: <https://nazra.org/en/2018/06/summon-mozn-hassan-investigation-within-context-ngo-foreign-funding-case>.

102 ISHR, Cairo Institute for Human Rights Studies & Committee for Justice, Briefing Paper Universal Periodic Review: The Situation of Human Rights Defenders in Egypt, p.2 (March 2019).

103 Nazra for Feminist Studies, The Summon of Feminist and Woman Human Rights Defender Mozn Hassan to Investigation within the Context of the NGO Foreign Funding Case (June 18, 2018).

104 The Observatory, Urgent Appeal EGY 004 / 0616 / OBS 049.13 – Egypt: Rejection of the appeals of Nazra for Feminist Studies and its Executive Director Ms. Mozn Hassan (July 20, 2020), available at: <https://www.fidh.org/en/issues/human-rights-defenders/egypt-rejection-of-the-appeals-of-nazra-for-feminist-studies-and-its>.

105 EuroMed Rights, Egypt: Closure of the Office Nazra for Feminist Studies (March 20, 2018), available at: <https://euromedrights.org/publication/egypt-closure-office-nazra-feminist-studies/>.

defenders¹⁰⁶ despite calls for action by broader civil society¹⁰⁷. While the establishment of the Council in 2001 was a welcome development to advance women's main concerns, the Council from the beginning has only had a very limited mandate. Due to these institutional deficiencies, the Council cannot go any further than advancing the Government's narrative¹⁰⁸. In a context where civil society is unable to openly criticise this narrative without risking imprisonment for free expression, the Council's narrative prevails and remains unchallenged. While the Council was involved in drafting a law to address gender-based violence, it was done without the meaningful participation and cooperation of women's rights groups, particularly independent feminist groups¹⁰⁹. Furthermore, the Council also ignored the violations against women committed by the security forces¹¹⁰. Without broader engagement with civil society, the Council inevitably becomes a tool to reinforce the State's narrative on women's rights.

On the other hand, the Council is vested with the mandate to report to international bodies and is quite active in international fora, including at the UN level. The Head of the Council represented Egypt in the official delegation to the UPR in 2019 as well as the CEDAW review in 2020. At the same time, independent women's rights defenders were prevented from traveling to the reviews.

Despite the incredibly hostile environment and various challenges, women's rights organisations continue advocating to strengthen Egyptian women both at the national and international level. Due to the solidarity they receive, especially from other regional and international organisations with a feminist perspective, they are still able to draw attention to women's rights violations in the country. If those independent organisations do not receive broad support, the narrative of the Government will have no alternatives.

c. Case Study #4: A Movement Wiped Out by the Authorities – Independent Trade Unions in Egypt¹¹¹

For decades, the state-aligned Egyptian Trade Union Federation (ETUF) was the only officially recognised union in Egypt and it has actively defended the Government's position on many issues concerning labour rights and even opposed to workers' strikes.¹¹² Independent trade unions gained partial recognition after the 2011 uprising, in line with the 2014 Constitution, but their registration and engagement with state actors have been more and more restricted after 2015.¹¹³ Our source reported a large-scale crackdown by the authorities against independent trade unions during this period. Even though trade union pluralism was theoretically recognised by the 2017 Trade Union Act, vaguely worded provisions of the Law opened the door for severe and arbitrary restrictions on workers' right to organise. Today, ETUF continues to be recognised as the "sole representative of the workers" by the authorities while it does very little to advocate for enhanced protection of labour rights. To the contrary, ETUF acts as an extended arm of the regime, defending and

106 HRW, Egypt: Spate of 'Morality' Prosecutions of Women (August 17, 2020), available at: <https://www.hrw.org/news/2020/08/17/egypt-spate-morality-prosecutions-women>.

107 Nazra for Feminist Studies, منظمات نسوية تطالب المجلس القومي للمرأة بضرورة التدخل بشأن الهجمة الأخيرة على المنظمات غير الحكومية (March 27, 2016), available at: <http://nazra.org/node/467>.

108 For instance, the Council was criticised for issuing a document on Women and Terrorism, which describes how women as mothers and wives can combat terrorism. For more information see, the Tahrir Institute for Middle East Policy, Egypt's National Council for Women: A Substitute for Civil Society? (July 15, 2016), available at: <https://timep.org/commentary/analysis/egypts-national-council-for-women-a-substitute-for-civil-society/>.

109 The Tahrir Institute for Middle East Policy, Egypt's National Council for Women: A Substitute for Civil Society? (July 15, 2016).

110 The Tahrir Institute for Middle East Policy, Egypt's National Council for Women: A Substitute for Civil Society? (July 15, 2016).

111 This case study is based on desk research and the interview conducted in January 2021 with an Egyptian researcher focusing on economic and social policies in Egypt.

112 Front Line Defenders, Striking Back: Egypt's Attack on Labour Rights Defenders, p.11 (January 2019).

113 For a more detailed analysis see, HRW, Egypt: Unshackle Workers' Right to Organize (April 30, 2016), available at: <https://www.hrw.org/news/2016/04/30/egypt-unshackle-workers-right-organize>.

legitimising state policies affecting labour rights¹¹⁴ and playing a crucial role in the harassment of outspoken workers on the ground.¹¹⁵

Concurrently, independent trade unions continue to face major restrictions - to the point of threatening their very existence. Despite the amendments in 2019 and various interventions by the ILO, the legislation falls short of protecting the right to organise in Egypt. In July 2019, various meetings were organised between the Ministry of Labour Force and trade union representatives in order to address the pending problems, including the arbitrary implementation of the law and denial of registration of independent unions, but no progress has been achieved despite commitments by the Ministry.¹¹⁶

Numerous independent unions have been facing significant challenges aimed at withholding their legal status. As of December 2019, at least 27 independent unions were awaiting their official status after seeking re-registration.¹¹⁷ Independent unions are asked by the authorities to submit documents that are not listed in the law, such as approval by the business owners, and/or to hold a new general assembly meeting¹¹⁸. The authorities continue to interfere with the internal affairs of the unions through other practices, such as refusing by-laws developed by trade unions and imposing instead the model regulations produced by the Ministry.¹¹⁹ The authorities also arbitrarily prevent general assembly meetings from taking place on time, disqualify candidates running for the elections, or refrain from approving certain decisions¹²⁰. Furthermore, pressure is exerted on many unions to join ETUF¹²¹. These practices effectively prevent workers from exercising their freedom of association.

In parallel to the rising military-led authoritarianism since 2013, workers have also faced severe repression and harassment on an individual level¹²². Most prominent trade unionists and labour rights defenders are either in jail or at risk, according to our source. Strikes have been regularly banned and workers arrested by police forces¹²³. The increasing military control over large parts of the economy has further intensified the

114 For instance, according to the reports of the Center of Trade Unions and Workers Services, during the ILO 108th Conference in 2019, the secretary general of the ETUF defended the improvements achieved since the adoption of the Trade Union Act no.213 of 2017 before the ILO Committee on the Application of Standards. On the other hand, representative of the Center of Trade Unions and Workers Services highlighted in her speech at the Conference the draconian conditions of the Law no.213 and the accompanying oppressive practices. For more information *see*, Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions' Freedoms January 1st – December 31st 2019, p.8 (January 13, 2020); Public Services International, Law no. 213 is still an issue for independent unions in Egypt (June 14, 2019), available at: <https://publicservices.international/resources/news/-law-no-213-is-still-an-issue-for-independent-unions-in-egypt?id=10091&lang=en>.

115 According to the Front Line Defenders' report published in 2019, the ETUF's workplace representatives are rarely known to the members, and the latter is not informed about their rights by the union, which contributes to the oppression of the workers. Furthermore, any attempts by HRDs to organise an independent movement are reported to security forces, according to the same report, which was also described by our source as the usual practice of the ETUF. *See*, Front Line Defenders, Striking Back: Egypt's Attack on Labour Rights Defenders, p.11 (January 2019).

116 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions' Freedoms January 1st – December 31st 2019, p.10 (January 13, 2020).

117 ITUC, 2020 ITUC Global Rights Index, p.26 (July 16, 2020).

118 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions' Freedoms January 1st – December 31st 2019, p.22 (January 13, 2020).

119 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions' Freedoms January 1st – December 31st 2019, p.8 (January 13, 2020). *See also*, Social Justice Platform, Trade Unions Law & Implementing Regulations Contravene the Constitution & International Conventions, p.15 (October 15, 2018), available at: <https://sjplatform.org/trade-unions-law-implementing-regulations-contravene-the-constitution-international-conventions/?lang=en>.

120 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions' Freedoms January 1st – December 31st 2019, p.24-25 (January 13, 2020).

121 Center of Trade Unions and Workers Services, A Draining Year: Report about the Violations of Trade Unions' Freedoms January 1st – December 31st 2019, p.8 (January 13, 2020).

122 For instance, Haytham Mohamadein, a lawyer, a prominent labour rights defender and a member of El-Nadim Centre for the Rehabilitation of Victims of Violence, have been repeatedly detained by the authorities on several occasions. Most recently, he was detained in May 2018 over the charges of "aiding a terrorist organisation" and "calling for an illegal protest". Since then he was conditionally released and re-detained several times and was even forcibly disappeared. *See*, FrontLine Defenders, Detention and Prosecution of Haytham Mohamadeen (last update on May 12, 2020), available at: <https://www.frontlinedefenders.org/en/case/detention-and-prosecution-haytham-mohamadeen#case-update-id-11506>. Also *see*, MENA Rights Group, Egyptian lawyer and human rights activist Haitham Mohamadein detained since May 12, 2019 (last update on May 12, 2020), available at: <https://menarights.org/en/caseprofile/egyptian-lawyer-and-human-rights-activist-haitham-mohamadein-detained-may-12-2019>.

123 ITUC, 2020 ITUC Global Rights Index, p.26 (July 16, 2020).

crackdown on the labour movement, and outspoken labour rights defenders have been targeted with prosecution by military courts¹²⁴.

To date, the environment remains extremely hostile towards civil society, including labour rights defenders despite the authorities' counter narrative in international fora. The above-mentioned grave violations against trade unions – and civil society more generally – have been ignored and/or not met with an adequate response by the international community, due to their strategic economic and military partnership with the Government of Egypt.

In Egypt, civil society is limited by the use of procedural measures relating to the registration requirement. However organisations and individuals are subjected to judicial harassment including charges related to the broadly worded 'terrorism' offence. Individuals face detention, disappearances and harassment (including of their families). The imposition of travel bans and of assets freezes against human rights defenders and organisations is a common pattern of harassment increasingly used by the Egyptian authorities against human rights defenders in the country. Accusations relating to foreign funding also leads to both personal and organisational funds being frozen. When it comes to Trade Unions, all independent unions were dissolved in March 2018 and given 60 days to reregister their organisation based on new arbitrary requirements established in Law no. 213/2017 on Trade Unions. Out of 1,000 independent unions, only 122 were able to successfully register their status under the new law and within the timeframe. Harsh restrictions exist on the right to elect representatives and self-administer in full freedom: the government can request the removal of the executive committee of a trade union if it has provoked work stoppages or absenteeism in a public service or community services (Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, Art. 70(2)(b)).

GoNGOs in Egypt are free from intimidation and harassment as long as they are following the government line on human rights and other issues. They serve to reinforce government proposals for legislative amendments which seek to limit rights, as in the case of women's rights.

124 Front Line Defenders, *Striking Back: Egypt's Attack on Labour Rights Defenders*, p.14 (January 2019).

4. Turkey

a. Legal Framework and Restrictive Practices

Shrinking Space for Dialogue & Creation of Pro-Government NGOs

The authorities in Turkey, target independent civil society with repressive laws and practices, whilst they promote an alternative human rights narratives and support organisations that can work “easily” with the authorities in the policy space. In addition to relentless attempts to stigmatise and criminalise independent civil society organisations, the latter has also been pushed out of policy and decision-making spaces in the recent years, and the opportunities for dialogue with the authorities have significantly shrunk. Instead, other organisations with closer ties to the government were given priority in terms of access to resources and cooperation with the authorities.

International Treaties and Constitutional Framework on Freedom of Association

According to Article 33 of the Constitution of Turkey, everyone is free to form associations and become a member of an association without prior permission. In line with the international standards, limitations to the freedom of association are prescribed by law and only in the interests of national security, public order, the prevention of crime, the protection of public health or morals or the protection of the rights and freedoms of others. Article 33 also ensures that associations can only be shut down by court order. Those principles both apply to associations and foundations, the two types of NGOs formally recognised in Turkey.

Turkey is a party to the ECHR and ICCPR, and both instruments recognise freedom of association. In accordance with Article 90 of the Constitution of Turkey, duly ratified international treaties on fundamental rights prevails in case of a conflict between the law and the treaty provisions. Thus, the Constitution of Turkey places the international standards above the law in relation to fundamental rights, including freedom of association.

Legislative Framework: Laws on Associations and Foundations

The Law on Associations¹²⁵ along with the Law on Foundations¹²⁶ are the main legal texts governing the structure and management of associations and foundations in Turkey, in addition to other laws and regulations comprising civil, fiscal, administrative as well as criminal provisions that apply to civil society organisations. While the legislation is not fully in line with international standards and at times unnecessarily burdens civil society organisations with bureaucratic requirements, the most problematic is the implementation of the laws and the administration’s arbitrary practices rather than the legislation itself.¹²⁷ The hostile environment, in which civil society operates, causes legitimate concerns of deliberate targeting by the authorities and abuse of power to harass outspoken civil society actors.

In 2020, there were significant legislative changes that raised concerns among the civil society actors. In accordance with the amendments to the Law on Associations in March 2020¹²⁸, the associations are required to disclose the names of all their members with the authorities within 45 days following the start and/or end of the membership. Those amendments, entered into force in March 2020, raised concerns about profiling

125 Law no. 5253 on Associations (*Dernekler Kanunu*) published in the Official Gazette no. 25649 and dated 23 November.

126 Law no. 5737 on Foundations (*Vakıflar Kanunu*) published in the Official Gazette no. 26800 and dated February 27, 2008.

127 For more information about the relevant legislation in Turkey see, International Center for Not-For-Profit Law, Civic Freedom Monitor: Turkey, available at: <https://www.icnl.org/resources/civic-freedom-monitor/turkey> (last access: December 7, 2020).

128 Article 21-24 of the Law no. 7226 Amending Certain Laws (*7226 sayılı Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun*) published in the Official Gazette (duplicate) no. 31080 and dated March 26, 2020

and blacklisting of civil society members by the authorities and may alter freedom of association¹²⁹. Furthermore, on 27 December 2020, the Parliament passed the “Law no. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction”¹³⁰, which goes beyond its alleged objective to comply with the relevant international standards¹³¹ and introduces amendments to several laws, including the Law on Associations. The Law no. 7262 enables the Minister of Interior to pre-emptively dismiss the executives and staff members of an association, who are being prosecuted over terrorism-related crimes, and a trustee is appointed by the court in their place (Article 30/A of the Law on Associations). The amendments also intensify the auditing of associations’ finances (Article 19 of the Law on Associations) and impose increased fines on unauthorised online fund-raising campaigns (Article 29 of the Law on Collecting Aid¹³²). Furthermore, the Law no. 7262 was elaborated without the meaningful participation of the stakeholders, in particular civil society organisations, who were directly concerned with the amendments brought to the Law on Association. In an environment where civil society actors regularly face trumped-up criminal investigations, these amendments would pose a serious hurdle to the freedom of association.¹³³

Legal Framework on Trade Union Activities

Articles 51-54 of the Constitution of Turkey recognise the right to establish trade unions without prior authorisation as well as the right to collective bargaining and strike. While Turkey has ratified all eight fundamental ILO Conventions, including Convention no.87 and no.98, domestic legislation is not fully in line with the international standards. The Law on Trade Unions and Collective Agreements,¹³⁴ falls short to protect trade unionists from anti-union discrimination and dismissals. Combined with the harassment of trade unionists by the authorities and employers, the legislation and the practice pose serious hurdles to the freedom of association of workers.

Closure of CSOs and Trade Unions during the Emergency Rule

Article 33 of the Constitution ensures that associations and foundations can only be closed down by court order. During the emergency rule, declared following the coup attempt on July 15, 2016 and ended on July 18, 2018, many associations and foundations were closed down by the Executive’s emergency decrees on their alleged connections with terrorist organisations. According to the reports of the Inquiry Commission for State of Emergency Measures, at least 1,410 associations, 109 foundations and 19 trade unions were closed down by emergency decrees and without a court decision¹³⁵. Those numbers also included human rights organisations working on a variety of issues including women’s rights, children’s rights and access to justice. The assets of those organisations were confiscated by the authorities without any form of compensation. Emergency measures could not be challenged before the Judiciary or any other administrative body, until the Inquiry Commission was established following constant international criticism on access to justice by the victims. However, the Inquiry Commission was heavily criticised by civil society and not seen by the latter as

129 For more details see, Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, Opinion on the Compatibility of Amendments to the Turkish Law on Associations with European Standards CONF/EXP(2020)2 (April 2020), available at: <https://rm.coe.int/expert-council-conf-exp-2020-2-opinion-amendments-to-turkish-law-on-as/16809e4387>

130 Law no. 7262 (*Kitle İmha Silahlarının Yayılmasının Finansmanının Önlenmesine İlişkin Kanun*) published in the Official Gazette no. 31351 (5th edition) and dated December 31, 2020,.

131 The said objective of the Law no. 7262 is to comply with the relevant UN Security Council Resolutions, including the resolutions 1267 (1999), 1988 (2011), 1989 (2011), 2253 (2015) and 1373 (2001), as well as the 2019 report of the Financial Action Task Force. See, Financial Action Task Force, Anti-money laundering and counter-terrorist financing measures: Turkey – Mutual Evaluation Report (December 2019). Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

132 Law on Collecting Aid no.2860 (*Yardım Toplama Kanunu*) published in the Official Gazette no.18088 and dated June 25, 1983.

133 For more information see, IHOP, Assessment of the Bill For the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction (December 22, 2020), available at: <https://ihop.org.tr/kitle-imha-silahlarinin-yayilmasinin-finansmaninin-onlenmesine-iliskin-kanun-teklifine-dair-degerlendirme/>

134 Law no. 6356 on Trade Unions and Collective Agreements (*Sendikalar ve Toplu İş Sözleşmesi Kanunu*) published in the Official Gazette no. 28460 and dated November 7, 2012.

135 Inquiry Commission, Activity Report 2019, p.14 (January 31, 2020), available at: https://soe.tccb.gov.tr/Docs/OHAL_Report_2020.pdf.

an independent body that can provide a meaningful, effective, and impartial remedy to the victims¹³⁶. Indeed, many affected civil society actors haven't had access to any meaningful remedies to date.

Access to Funding

NGOs are allowed to receive foreign funding and only required to notify the authorities upon the receipt (Article 21 of the Law on Associations and Article 25 of the Law on Foundations). Nevertheless, in the aftermath of the attempted coup in July 2016, the organisations receiving foreign funding were put under the spotlight and portrayed as “foreign agents” and “terrorists” on pro-government media and by high level governmental officials. Indeed, a major donor was criminalised¹³⁷ in the aftermath of the attempted coup on the trumped-up accusations of “financing the nation-wide Gezi protests” in 2014, which eventually led them to cease their activities in Turkey¹³⁸. As a result of such developments, many civil society organisations have been concerned about receiving foreign funding, which is required for their most essential activities. It is important to note that civil society in Turkey is highly dependent to funding provided by international organisations considering that there are no comparable domestic funding options available to independent civil society. Government's financial resources are usually distributed to those with closer relations with the authorities and less critical of the latter. Moreover, individual donations are not a viable option for civil society, as fundraising campaigns require prior permission (Article 6 of the Law on Collecting Aid)¹³⁹. Further, as denounce by the European Commission 2020 report¹⁴⁰, public funds are not distributed in a transparent way and the distribution process does not allow for the full involvement of civil society organisations and other stakeholders at every stage.

Criminalisation of Civil Society Actors: Penal Code & Anti-Terror Law

Different segments of civil society in Turkey have been facing judicial harassment and arbitrary detention for decades, but the harassment of civil society, as a whole, reached an alarming level following the attempted coup in July 2016¹⁴¹. Prominent civil society actors have faced trumped-up charges for their legitimate human rights activities as well as their connections with other domestic and international actors. The charges are based on a variety of criminal provisions, including “defamation of the President” and “incitement to violence and hatred” in the Penal Code¹⁴², “participating in an illegal assembly” in the Law on Meetings and Demonstrations¹⁴³ as well as “membership to a terrorist organisation” and “terrorist propaganda” under the Anti-Terror Law¹⁴⁴. The latter has long been contested by international and domestic actors for its broad definition of terrorism, which enables criminalisation of any expression of dissent. While the authorities made attempts to address the situation with minor legislative changes¹⁴⁵, the problem lies within the lack of judicial

136 See, IHOP, Is The State of Emergency Inquiry Commission, Established By Emergency Decree 685, an Effective Remedy? (February 2017), available at: <http://www.ihop.org.tr/en/wp-content/uploads/2017/03/IS-THE-STATE-OF-EMERGENCY-INOQUIRY-COMMISSION.pdf>

137 See, BBC News Türkçe, Açık Toplum Vakfı: Ne zaman kuruldu, Türkiye'de hangi çalışmalara imza attı? (November 26, 2018), available at: <https://www.bbc.com/turkce/haberler-turkiye-46349417>

138 Open Society Foundations, The Open Society Foundation in Turkey Ceases Its Operations (November 26, 2018), available at:

<https://www.opensocietyfoundations.org/newsroom/open-society-foundation-turkey-ceases-its-operations>

139 TUSEV, LAW ON COLLECTION OF AID Law No : 2860 Date of Enactment : June 23, 1983,

<https://www.tusev.org.tr/userfiles/image/fundraising%20law.pdf>

140 European Commission, Turkey Report 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

141 For more information on the cases of harassment against the civil society actors and human rights defenders in Turkey, see, Keep the Volume Up for Rights Defenders in Turkey, Rights Defenders at Risk, available at: <https://www.sessizkalma.org/en/>

142 Penal Code no. 5237 (*Türk Ceza Kanunu*) published in the Official Gazette no. no. 25611 and dated October 12, 2004.

143 Law no. 2911 on Meetings and Demonstrations (*Toplantı ve Gösteri Yürüyüşleri Kanunu*) published in the Official Gazette no. 25611 and dated October 12, 2014.

144 Anti-Terror Law no. 3713 (*Terörle Mücadele Kanunu*) published in the Official Gazette no. 20843 (duplicate) and dated April 12, 1991.

145 The Ministry of Justice introduced the Judicial Reform Strategy (“Strategy”) on May 2019 amid ongoing criticism by national and international actors regarding the erosion of judicial independence in Turkey. The Law no. 7188 provided amendments and ameliorations, in line with the Strategy, in areas including prolonged pre-trial detention and criminalisation of free speech, among others. For instance, for enhancing the protection of free speech, Law no. 7188 only added the following wording in the article titled “terrorist propaganda” under the Anti-Terror Law, which has been

independence from the political power and the erosion of rule of law Turkey ranks only 107 of 128 in the Rule of Law Index of the World Justice Project in 2020¹⁴⁶. The new judicial reform strategy adopted in May 2019 and covering 2019-2023 falls short of addressing concerns regarding the independence of the judiciary. The enforcement of rights is hindered by the fragmentation and limited independence of public institutions responsible for protecting human rights and freedoms and the right to a fair trial is continuously disrespected by the judiciary.

b. Case Study #5: Alternative Narratives in Women's Rights and Emerging Actors¹⁴⁷

The strategy to create alternatives to established and independent CSOs was clearly visible in the field of women's rights. In the past years, the authorities openly shifted their focus to the "protection of family" rather than gender equality. For instance, in line with this shift, the Ministry of Women and Family Affairs was reorganised as the Ministry of Family and Social Policies in 2011¹⁴⁸. Legislative amendments which would result in legitimising statutory rape, promoting child marriage, diminishing women's economic independence after divorce and weakening the protections awarded to survivors of gender-based violence were proposed and discussed in parliamentary commissions¹⁴⁹.

Parallel to the shift in the Government's priorities, long-standing women's rights organisations have been more and more excluded from the policy space, and the areas of collaboration between independent women's rights organisations and the authorities have effectively reduced. They were replaced by the organisations, that are promoted and supported by the Government, and who put family in the centre of the narrative and promote "values confirming to the Turkish society". Well-established women's rights groups, on the other hand, had to actively and regularly follow-up with the authorities to make sure that they were invited to relevant consultations and meetings. But even when they succeeded to participate, they did not feel that their voices were heard and taken into account by the governmental officials.

Many well-established legal concepts and protections granted to women were put under the spotlight by the emerging actors in the women's rights space¹⁵⁰. This narrative was also promoted on the pro-government as well as conservative media and was even picked up by the state officials. In particular, independent women's rights organisations were regularly targeted on the media for being pro-LGBTI+ rights and accused of being anti-family. The most extreme example of this trend was the demonisation of the Council of Europe's Istanbul Convention by the same actors on baseless grounds such as "promoting homosexuality" and "giving

repeatedly used to judicially harass civil society actors and journalists: "expressions of thought for the purpose of criticism and within the limits of press reporting do not constitute a crime". Many civil society actors believe that the problem lies within the arbitrary application of existing laws rather than the legislation itself, but the Law no. 7188 did not meet the expectations of institutional reforms in the judiciary and only introduced a few cosmetic changes. For more information, see, IHD, İHD Report and Recommendations on the Judicial Reform Strategy Document (October 4, 2019), available at: <https://ihd.org.tr/en/ihd-report-and-recommendations-on-the-judicial-reform-strategy-document/>; also see, International Commission of Jurists "ICJ" & IHOP, Turkey's Judicial Reform Strategy and Judicial Independence (November 18, 2019), available at: <https://www.icj.org/turkey-judicial-reform-strategy-must-do-more-to-promote-independence-of-turkish-judiciary-warns-icj-and-ihop-briefing-paper/>.

¹⁴⁶ See https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

¹⁴⁷ This case study is based on desk research and the analysis shared by a member of the Purple Roof Women's Shelter Foundation (*Mor Çatı Kadın Sığınağı Vakfı*), who was interviewed on December 18, 2020. It is a feminist organisation founded in 1990 to fight against gender-based violence. In addition to operating a shelter and solidarity centre, it also conducts monitoring, advocacy and training activities.

¹⁴⁸ Bianet, Kadın Bakanlığı Kaldırıldı, Kadın Örgütleri Öfkeli (June 8, 2011), available at: <https://bianet.org/bianet/kadin/130585-kadin-bakanligi-kaldirildi-kadin-orgutleri-ofkeli>

¹⁴⁹ Istanbul Convention Monitoring Platform Turkey, Shadow NGO Report on Turkey's First Report, p.10 (September 2017), available at: <https://rm.coe.int/turkey-shadow-report-2/16807441a1>

¹⁵⁰ Turkey's Second VNR Civil Society Alternative Report, p.3-4 (July 2019), available at: http://www.kadinininsanhaklari.org/wp-content/uploads/2019/07/rapor_ing_2-web-icin.pdf

disproportionate power to women.” Calls to withdraw from the Convention were later echoed by the high-level governmental officials too¹⁵¹.

The clearest example of the above-mentioned phenomenon is the Women and Democracy Association (*Kadın ve Demokrasi Derneği – KADEM*), which was founded by a group of women, including relatives of the high level governmental officials¹⁵². They have mobilised a considerable amount of resources in a short period of time. With the support from governmental bodies and their network, they organised in dozens of cities across Turkey. They have received strong support from institutional actors including but not limited to various ministries, local authorities and the European Union. Thanks to their resources, they manage to be highly present at the international fora too, especially at the UN level, and they retain a consultative status at ECOSOC¹⁵³, allowing them to have a direct/privileged access to UN mechanisms. However, it appears that their alternative narrative on women’s rights hasn’t yet found much support there.

While KADEM focuses on promoting alternative narratives to gender equality and feminism, and rejects equal rights to LGBTI+ individuals, even they were criticised by the other more conservative actors¹⁵⁴. During the debate on the withdrawal from Istanbul Convention, they supported the Convention¹⁵⁵, which was used to demonise them by several conservative actors, including pro-government journalists, next to independent women’s rights groups, while KADEM was trying to dissociate themselves from the pro-LGBTI+ and feminist women’s rights groups. Furthermore, due to receiving foreign funding, they were also victimised by the anti-foreign funding narrative despite their close ties with the Government. This is indeed a striking example of how the vilification of foreign funding and collaboration with international bodies can strike back and even harm the least critical and pro-government CSOs. Nevertheless, KADEM established its place in the civil society, and they are very much present in events, meetings and consultations in Turkey, whether those are organised by the governmental actors or international actors, according to the testimonies of our source.

Despite various difficulties and emerging alternative actors, the independent women’s rights movement remains quite active and vibrant in Turkey. It hasn’t been easy to challenge their legitimacy in the eyes of the general public, especially in a context where support for the survivors of gender-based violence is much needed. Even the discussion to withdraw from Istanbul Convention was silently put on hold, at least for now, due to the division within the ruling party and since the majority of the public did not actively support the idea according to the polls¹⁵⁶. Women’s rights movement is still one of the few civil society groups that remains highly visible in public spaces and relatively, although not fully, protected from the broader level of stigmatisation of and restrictions to civil society in Turkey.

c. Case Study #6: Criminalisation of outspoken trade unionists, anti-union discrimination and reprisals¹⁵⁷

There are serious hurdles, both legal and in practice, to the right to freedom of association of trade unionists in Turkey. Unionisation figures remain low among workers due to fears of reprisals and stigmatisation of trade

151 EuroMed Rights, Eren Keskin: “If Turkey leaves the Istanbul Convention, it will legitimise violence against women” (July 31, 2020), available at: <https://euromedrights.org/publication/eren-keskin-if-turkey-leaves-the-istanbul-convention-it-will-legitimise-violence-against-women/>. Bianet, Erkeklik saldırdı kadınlar savundu: İstanbul Sözleşmesi (August 17, 2020), available at: <https://bianet.org/bianet/toplumsal-cinsiyet/229134-erkeklik-saldirdi-kadinlar-savundu-istanbul-sozlesmesi>; Evrensel, İstanbul Sözleşmesi hedefte | Kadınların yükselen mücadelesinden korkuyorlar (July 15, 2020), available at: <https://www.evrensel.net/haber/383052/istanbul-sozlesmesi-hedefte-kadinlarin-yukselen-mucadelesinden-korkuyorlar>

152 Their website available at: <https://kadem.org.tr/en/>

153 See, UN NGO Branch, Kadın ve Demokrasi Derneği, available at: <https://esango.un.org/civilsociety/>

154 Sputnik Türkiye, KADEM'den iddialara yanıt: KADEM'in kaynağını 'Soros' ifadesiyle bir arada zikretmek iftiradır (July 11, 2019), available at: <https://tr.sputniknews.com/turkiye/201907111039639474--kademden-iddialara-yanit-kademin-kaynagini-soros-ifadesiyle-bir-arada-zikretmek-iftiradir/>

155 KADEM, İstanbul Sözleşmesi Hakkında (July 31, 2020), available at: <https://kadem.org.tr/istanbul-sozlesmesi-hakkinda/>

156 SES Eşitlik, Adalet, Kadın Platformu, Toplumun Yüzde 63'ü İstanbul Sözleşmesi'nden Çekilmeye Karşı (July 29, 2020), available at: <https://esitlikadaletkadın.org/metropoll-yuzde-63-6-istanbul-sozlesmesinden-cekilmeye-karsi/>

157 This case study is based on desk research and an interview conducted on January 28, 2021 with a legal advisor of a trade union.

union activities: according to the official data as of January 2020, only 13.84% of the workers, excluding civil servants, are unionised¹⁵⁸. As per the figures of Confederation of Progressive Trade Unions (*Devrimci İşçi Sendikaları Konfederasyonu – DİSK*) for the same period, only 12.14% of the workers, including those working in the informal economy, are unionised and only 7.8% of them benefit from collective agreements¹⁵⁹. Being a member to a trade union does not guarantee that workers are covered by a collective agreement because only the trade unions representing more than 1% of the workers in an economic sector, which is a high level to attain in bigger sectors, and the majority at a particular workplace are entitled to bargain on behalf of their members¹⁶⁰.

Trade union members are systematically harassed both by the authorities and employers. Many workers stay cautious about being a member to a trade union over the fears of losing their job, and membership to outspoken and critical unions is deemed even riskier. In addition to the stigma around being a member to such trade unions, there is active harassment on the ground. Indeed, anti-union discrimination by the employers is widespread, especially for the members of such trade unions¹⁶¹. They face dismissals, and new employees are effectively deterred from being a member to outspoken trade unions. Employers illegally inquire about trade union membership of workers, and the employment contracts of those who are suspected to join trade union activities are terminated. While dismissals on the basis of union activities are not permitted by the law, judicial mechanisms do not effectively deter the employers from engaging in anti-union discrimination and they may refrain from re-employing those who were illegally dismissed. Furthermore, the pandemic provided an extra tool for employers to harass the workers, which is legally obliging them to take unpaid leave during which they only receive a modest financial contribution from the state, much lower than their actual salaries.

Many employers have a preference for less outspoken unions, which would moderate workers' demands and agree to collective agreements with less favourable clauses for workers. Our source reported that employers even facilitate the activities and organisation of those less outspoken trade unions in their work place while the outspoken trade unions are not granted such opportunities. Confederation of Turkish Trade Unions (*Türkiye İşçi Sendikaları Konfederasyonu – Türk-İş*) reported in 2018 that employers exert pressure on workers, particularly in the public sector, to join the unions designated by the employer¹⁶².

According to the official data as of July 2020, Türk-İş remains as the biggest confederation among the workers, excluding the civil servants, with 1,021,952 members out of 1,946,165, and Hak-İş is the second biggest confederation following Türk-İş¹⁶³. Between 2013 and 2020, there has been approximately 916,000 new trade union members, and an overwhelming percentage of those new members were registered to the trade unions with closer relations with the Government. Government-aligned Hak-İş registered 500,000 new members while 309,000 new members were registered by Türk-İş and only 85,000 by DİSK¹⁶⁴. Our source highlighted that this disproportionate outcome is the direct result of favourable treatment towards government-aligned unions, especially in the public sector (i.e. municipalities and state-owned companies). The workers employed

158 Unionisation figures among civil servants are much higher, with 65.44%, according to the official data released in 2020. See, General Directorate of Labour, Çalışma Hayatı İstatistikleri 2019, p.168&190 (December 2020), available at:

https://www.ailevecalisma.gov.tr/media/63359/calisma_hayati_2019.pdf

159 The Research Center of Confederation of Progressive Trade Unions in Turkey, Covid-19 Günlerinde Türkiye'de Sendikalaşma (April 8, 2020), available at: <http://arastirma.disk.org.tr/?p=2042>

160 ITUC, Turkey's Istanbul New Airport: occupational safety and health violations and the high cost to workers' lives, p.7 (March 28, 2019), available at: https://www.ituc-csi.org/TMG/pdf/turkeys_istanbul_new_airport_report_en.pdf

161 European Commission, Turkey 2020 Report, p.90, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

162 ILO Committee of Experts on the Application of Conventions and Recommendations, Application of International Labour Standards 2020, p.185, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736204.pdf

163 Ministry of Family, Labour and Social Services, Communique on the Statistics of July 2020 on the Number of Workers in Economic Sectors and the Number of Trade Union Members (July 30, 2020), available at: https://www.ailevecalisma.gov.tr/media/52856/2020_temmuz.pdf

164 The Research Center of Confederation of Progressive Trade Unions in Turkey, Covid-19 Günlerinde Türkiye'de Sendikalaşma (April 8, 2020).

by State-owned or public institutions are usually pressurised to sign up to certain trade unions, with much closer ties to the Government.

Furthermore, during the state of emergency period, many public sector employees and civil servants, who were members of trade unions that are openly critical of the government, were dismissed from their posts and many have seen their contracts terminated. This also caused a significant decrease in the members of the outspoken trade unions and confederations organised in the public sector. For instance, the Education and Science Workers' Union (*Eğitim-Sen*) reported that it has lost more than a third of its members since the start of the emergency rule, due to dismissals in their sector and members leaving the union over the fears of losing their job¹⁶⁵.

Besides the anti-union discrimination by the employers, the authorities also repress union activities through various other methods. In accordance with Article 63 of the Law no. 6356, the President¹⁶⁶ is entitled to postpone a strike for 60 days if it may disrupt public health or national security. This provision has been implemented in such a broad manner and systematically used during¹⁶⁷ and after the emergency rule to practically ban strikes¹⁶⁸. Furthermore, the authorities also deplore the police forces to disperse workers' demonstrations and judicially harass the protestors based on criminal provisions such as "joining an illegal assembly" and "obstructing a police officer¹⁶⁹." Union representatives also face broader repression, including judicial harassment and detention, based on their other activities defending human rights in general¹⁷⁰. On the other hand, demonstrations or gathering organised by the government-aligned unions are treated with much less hostility, and they are allowed to exercise their right to freedom of assembly and association without police brutality or other forms of harassment, our source reported.

In parallel to the above-mentioned context, outspoken trade unions have also seen a decrease in the opportunities for dialogue with the authorities. Their requests for a meeting with the Ministry of Family, Labour and Social Services were left unanswered while the officials attended events and meetings of the Government-aligned trade unions on a regular basis. It is only normal to have unions with different political tendencies, but what is problematic is the difference in treatment of actors with different political positions. Some unions are systematically promoted by employers and the authorities and their reactions are taken much more seriously while the outspoken unions are deliberately isolated, stigmatised and targeted.

For the above-mentioned reasons, many outspoken trade unions still face difficulties in organising in workplaces and increasing the number of their members, which would enable them to engage in collective agreements on behalf of workers. As the economic crisis deepens in the country, the employers along with the authorities remain hostile towards the increasing demands of the workers for fair wages and labour practices, in parallel to the general hostility towards dissent and anyone openly claiming their constitutionally protected rights.

In Turkey independent civil society faces obstacles through a range of government actions. These include procedural measures relating to the extensive powers granted under the amendments to Law on Associations and the "Law on Preventing Financing of Proliferation of Weapons of Mass Destruction". Restrictions placed on access to foreign funding has also limited the work and impact of independent civil society. Other actions

165 Equal Times, In Turkey, the right to freedom of association and unionisation remains under threat (June 7, 2019), available at:

<https://www.equaltimes.org/in-turkey-the-right-to-freedom-of?lang=en>

166 This power belonged to the Committee of Ministers prior to 2018.

167 It was reported that during the emergency rule a total of seven strikes organised by multiple trade unions in a variety of sectors were suspended on the grounds such as "national security," "public health," and "economic and financial stability". See, Evrensel, 2 yıllık OHAL'in bilançosu: Grev yasakları, sansür, baskı, hak ihlali... (July 19, 2018), available at: <https://www.evrensel.net/haber/357200/2-yillik-ohalin-bilancosu-grev-yasaklari-sansur-baski-hak-ihlali>

168 ILO Committee of Experts, Application of International Labour Standards 2020, p.187.

169 See the case of the workers of Istanbul's third airport, Keep the Volume Up for Rights Defenders in Turkey, Workers of Third Airport, available at: <https://www.sessizkalma.org/en/defender/workers-of-the-third-airport/>

170 For example, the entire board of the Confederation of Public Employees Trade Unions (*Kamu Emekçileri Sendikaları Konfederasyonu – KESK*) was charged for calling for peace and condemning the Turkish military offense in Syria. See, ITUC, Turkey: KESK Executive Board Acquitted but Anti-Union Repression Continues (March 4, 2020), available at: <https://www.ituc-csi.org/turkey-kesk-executive-board>

include the use of criminal charges under the vague terrorism offences, and the use of emergency laws following the failed coup. These prosecutions have seen some acquitted by the court, only to be rearrested on different charges. The exception in Turkey appears to be women's rights organisations which carry the support of the general public which largely protects them from government interference. Trade Unions need prior authorisation or approval by authorities for their establishment and there are several restrictions on workers' right to join the trade union of their choosing imposed by law as well as on the right to elect representatives and self-administer in full freedom. Moreover, administrative authorities have the power to unilaterally dissolve, suspend or de-register trade union organisations if a union seriously contravenes the laws governing its activities, it can be forced to suspend its activities or enter into liquidation by order of a labour tribunal. Trade Unions are not enjoying full freedom in the country: in July 2018, the government adopted Presidential Decree No. 5 under the pretext of "restructuring government institutions following presidential elections". According to the decree, the State Supervisory Council, an institution directly accountable to the Office of the President, has been vested with excessive powers limiting the right of trade unions to organise their internal administration, rules and activities. The State Supervisory Council has now the authority to investigate and audit trade unions at any given time. All documents and activities of trade unions may come under investigation without a court order. It also falls under the discretion of the State Supervisory Council to remove or to change the leadership of trade unions. In addition, unions must obtain official permission to organise meetings or rallies, and must allow the police to attend their events and record the proceedings. Associations still cannot use languages other than Turkish in their official activities. In July 2020, the Turkish parliament passed a controversial law¹⁷¹ on July 11 to allow the creation of multiple bar associations in each of Turkey's 81 provinces, amending the existing system that stipulates only one association per province. This move by Turkey's ruling coalition is the latest attempt to bring bar associations and their national umbrella organization under greater government control so as to favor pro-regime lawyers. GoNGOS play an important role in Turkey, since they legitimize the alternative human rights narrative espoused by the government and authorities. GoNGOs in Turkey receive government funding, access to the authorities and are able to participate in dialogues on important legislative amendments.

¹⁷¹ See <https://www.reuters.com/article/us-turkey-lawyers/turkish-parliament-passes-disputed-bar-associations-law-idUSKCN24C08L>

5. Conclusions

This report examined the role, spread and impacts of GoNGOs in the European-Mediterranean region, with a special focus on Algeria, Egypt and Turkey. It sought to provide a snapshot of the legal and *de facto* restrictions on civic space, including the emergence and increasing influence of GoNGOs, in those three countries. Our findings depict an environment where independent civil society is under immense pressure. Independent civil society actors and HRDs are stigmatised and criminalised, and their activities are targeted with restrictive laws in all three countries. They are deprived of opportunities for genuine dialogue with the authorities. At the same time, GoNGOs are promoted and/or supported by the governments in all three countries as an alternative civil society with which they can work, without opening themselves to genuine criticism of their human rights record. These government-aligned organisations spread the official propaganda, praising the human rights record of the country, and halt the democratic debate by giving a pseudo-impression of stakeholder participation. Genuine democratic reforms can however only be achieved by giving a voice to the concerns of independent, genuine civil society.

Based on the findings of this study, several recommendations are formulated below to the attention of influential international institutions in order to create a more enabling environment for independent civil society actors, and to prevent future attempts by GoNGOs to hijack genuine democratic participation and dialogue. International actors ought to exert pressure on the Governments of Algeria, Egypt and Turkey, and take steps to rapidly address the deteriorating situation faced by civil society in those countries. EuroMed Rights hopes that this report will strengthen international support to create enabling conditions for independent civil society to thrive, and to carefully assess the impacts of GoNGOs.

6. Recommendations to Relevant International Actors

To the EU

To the European Parliament:

- I. To keep the shrinking civic space in the European-Mediterranean region, including Algeria, Egypt and Turkey, on its agenda and to continue monitoring the situation, with a view to assessing the role and impacts of GoNGOs on civic space; to issue specific recommendations to countries of concern; and to follow up on its resolutions and the recommendations issued therein;
- II. To reiterate its call on the Member States to halt exports of surveillance technology and security equipment, particularly to Egypt, Algeria and Turkey, which can facilitate attacks on civil society actors and HRDs, in line with [Common Position 2008/944/CFSP](#) and as stressed by the Twenty-Second Annual Report (12082/20) and the answer given by High Representative/Vice-President Borrell on [4 December 2020](#)
- III. To continue monitoring the situation of civil society and HRDs, particularly the role and impacts of GoNGOs in civic space in the European-Mediterranean region, including Algeria, Egypt and Turkey; organise country visits and follow-up visits to document the situation on the ground; to directly engage with independent civil society on the ground; and to publish the evidence they collect, and issue strong recommendations to improve the environment for civil society.
- IV. To provide visibility and solidarity to independent human rights defenders suffering from the crackdown in their country by inviting them to the European Parliament and providing them with public platforms so to speak. To also ensure that funding for independent civil society remains a strong component of the EU's budget.

To the European Commission, its Commissioner for Neighbourhood and Enlargement, the European External Action Service, its High Representative for Foreign Affairs and the Security Policy, and the EU Delegations in the respective countries:

- I. To systematically monitor respect for the right to freedom of association and restrictions on civic space, including the role and impacts of GoNGOs in the European -Mediterranean region, including Algeria, Egypt and Turkey;
- II. To establish clear benchmarks for negotiating new partnership priorities, making measurable progress in human rights and the rule of law central in EU cooperation with Egypt, Algeria and Turkey, insisting on tangible commitments from the authorities towards;
- III. To ensure that respect for human rights and the involvement of independent civil society are key components in all areas of the EU's cooperation with Egypt, Algeria and Turkey;
- IV. To recall, in each bilateral framework, its commitment to systematically and meaningfully consult civil society organisations in a transparent and well-informed manner and with a reasonable timeframe, stressing on a human rights-based partnership with clear priorities
- V. To firmly condemn the laws and practices undermining independent civil society activity in Algeria, Egypt and Turkey, and openly express concerns regarding the role and impacts of GoNGOs on restricting civic space, also in their policy dialogue with the respective Governments, including the annual human rights dialogue, based on information provided by independent civil society;
- VI. To give effect to the provisions of the European Parliament resolutions in relation to the deteriorating situation of civil society and HRDs in Algeria, Egypt and Turkey, in particular:

- a. For Algeria, paragraph 8 of the “Resolution of 28 November 2019 on the situation of freedoms in Algeria [\(2019/2927\(RSP\)\)](#),” and paragraphs 17-18 of the “Resolution of 26 November 2020 on the deteriorating situation of human rights in Algeria, in particular the case of journalist Khaled Drareni [\(2020/2880\(RSP\)\)](#);”
 - b. For Egypt, paragraphs 14-15 and 17-21 of the “Resolution of 13 December 2018 on Egypt, notably the situation of human rights defenders [\(2018/2968\(RSP\)\)](#),” paragraphs 13-18 of the “Resolution of 24 October 2019 on Egypt [\(2019/2880\(RSP\)\)](#),” and paragraphs 14-19 of the “Resolution of 18 December 2020 on the deteriorating situation of human rights in Egypt, in particular the case of the activists of the Egyptian Initiative for Personal Rights [\(2020/2912\(RSP\)\)](#);”
 - c. And finally for Turkey, paragraphs 15-16 of the “Resolution of 8 February 2018 on the current human rights situation in Turkey [\(2018/2527\(RSP\)\)](#),” and paragraph 6 of the “Resolution of 21 January 2021 on the human rights situation in Turkey, in particular the case of Selahattin Demirtaş and other prisoners of conscience [\(2021/2506\(RSP\)\)](#);”
- VII. To conduct a public and comprehensive review, including an ex-ante human rights impact assessment, of all forms of financial support and/or all trainings provided by the EU in order to guarantee that EU support does not facilitate or contribute to human rights violations in those countries; more generally, to ensure that human rights and civil society support are key components of the EU’s financial and economic cooperation; and to follow up on, and monitor, the implementation of the EU Action Plan for Human Rights and Democracy as well as the EU Guidelines on Human Rights Defenders;
- VIII. To actively support independent civil society in Algeria, Egypt and Turkey and stand by targeted HRDs and CSOs; to create opportunities for independent civil society’s meaningful engagement in international and national fora; to put in place flexible financial support mechanisms which are also accessible to non-registered NGOs, including the existing mechanisms such as emergency funding and rapid response measures and protection mechanisms for CSOs and HRDs at risk.
- IX. **To step up engagement at the UN Human Rights Council, including by supporting the establishment of a UN monitoring and reporting mechanism on Egypt** and confronting Egypt’s attempts to undermine the effectiveness and independence of UN human rights mechanisms.

To the UN

To the UN Human Rights Council:

- I. To monitor the shrinking civic space in the European-Mediterranean region, including Algeria, Egypt and Turkey, with a view to assessing the impacts of GoNGOs on civic space; to issue specific recommendations to relevant countries in this regard; and to follow up on its resolutions and the recommendations issued therein;
- II. To pay particular attention to the participation of GoNGOs in the processes for civil society input, including during the Universal Periodic Review and Human Rights Council sessions, and make sure that independent civil society actors are well represented and have meaningful opportunities to contribute to such processes;

- III. To closely monitor the implementation of the recommendations issued in the context of the last Universal Periodic Reviews of Algeria¹⁷², Egypt¹⁷³ and Turkey¹⁷⁴ regarding freedom of association and restrictions of civic space.
- IV. **To establish a UN monitoring and reporting mechanism on Egypt** and confront Egypt's attempts to undermine the effectiveness and independence of UN human rights mechanisms.

To the UN Special Procedures, including the UN Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and of Association, on the Situation of Human Rights Defenders, on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, and on Freedom of Opinion and Expression:

- I. To closely monitor and condemn when necessary the spread and interference by GoNGOs in the civic space and any other restrictions of freedom of association and assembly in the Euro-Mediterranean region.
- II. To include the role and impacts of GoNGOs in civic space in the Euro-Mediterranean region in their reports to the UN Human Rights Council; and, specifically to the Special Rapporteur in Freedom of Peaceful Assembly and Association, to issue a thematic report in the role and impacts of GoNGOs in halting and restricting civil society activities as well as the free exercise of freedom of association;
- III. To request invitation, if not already granted; or to follow up on previous requests to conduct a country visit; and – in case an invitation is granted by the authorities – to organise a country visit with a view to documenting legal and *de facto* restrictions on civil society activities in Algeria, Egypt and Turkey, and having meaningful engagement with independent CSOs and HRDs on the ground.

172 Human Rights Council, [A/HRC/36/13](#), Report of the Working Group on the Universal Periodic Review – Algeria (July 19, 2017).

173 Human Rights Council, [A/HRC/43/16](#), Report of the Working Group on the Universal Periodic Review – Egypt (December 27, 2019).

174 Human Rights Council, [A/HRC/44/14](#), Report of the Working Group on the Universal Periodic Review – Turkey (March 24, 2020).