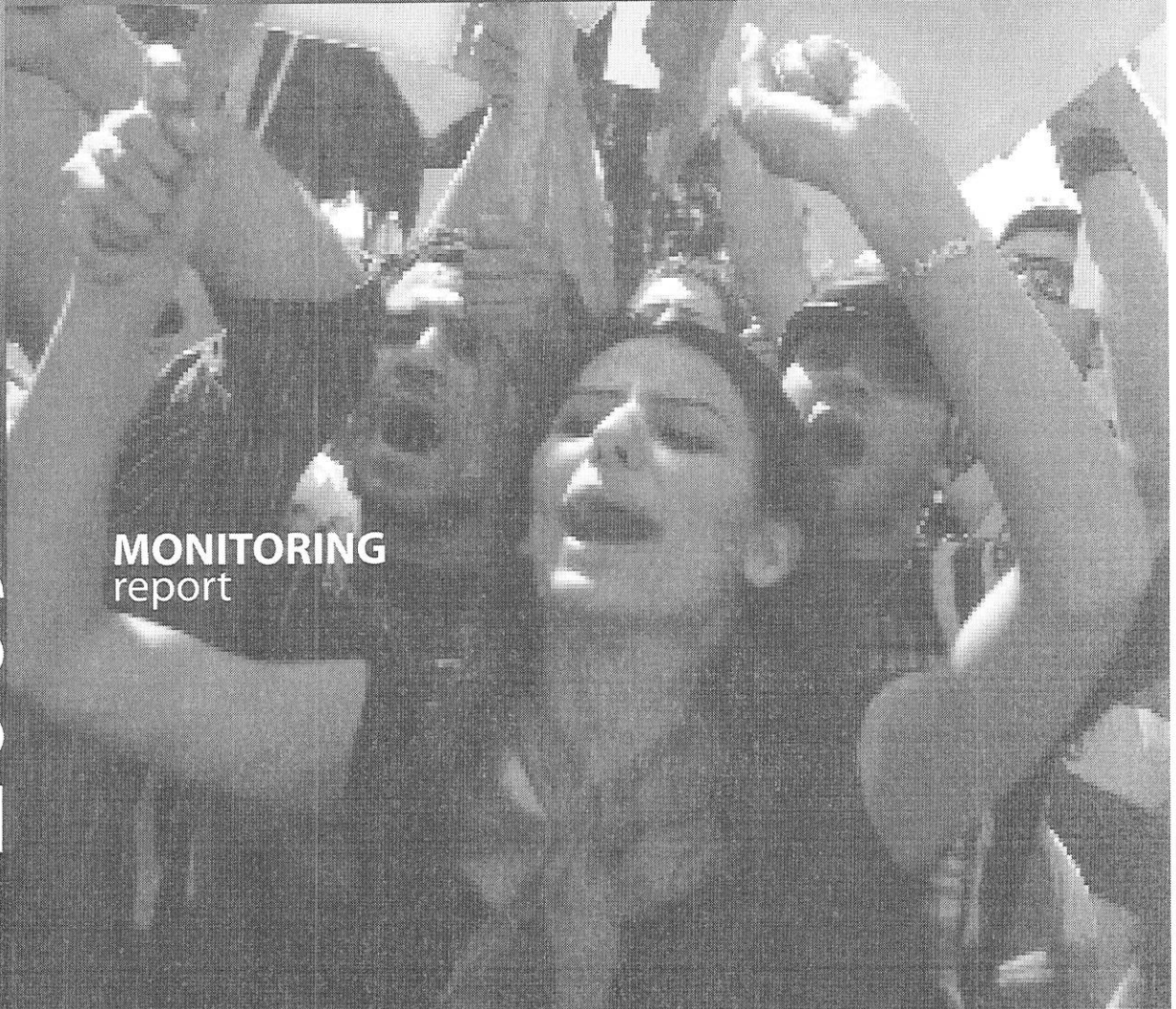


EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

FREEDOM OF ASSOCIATION IN THE EURO-MEDITERRANEAN REGION



MONITORING
report

2009

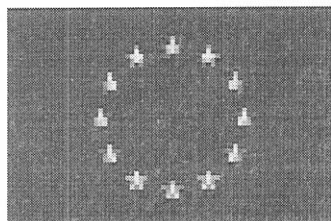
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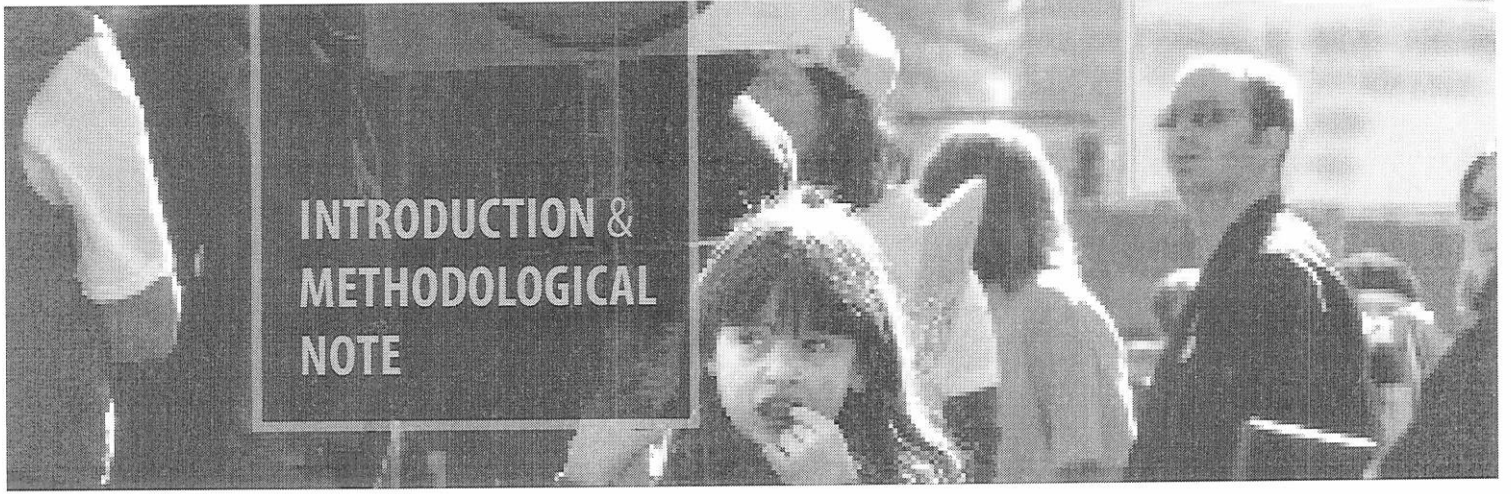
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INTRODUCTION & METHODOLOGICAL NOTE

by **JOE STORK**

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INTRODUCTION

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

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

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

• Liberal Approaches

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

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

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

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

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

• State Interference

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

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

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

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

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

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

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

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

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

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

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

• Security Services

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

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

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

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

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

creation of the above-mentioned organization.⁹

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

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

• Maximizing Control

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

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

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

⁹ Cited in *ibid.*, p. 23.

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

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

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

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

• Liberal Laws, Restrictive Practices

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

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

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

• Minority Rights

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

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

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

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

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

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

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

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



TUNISIA

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

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

2009 INDICATORS

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

INTRODUCTION

The Political Situation and General Framework of Democracy and Human Rights

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

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

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

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

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

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

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

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

These recommendations echo the United Nations Human Rights Committee’s concluding observations within the framework of the fifth periodic report on Tunisia, whereby the Committee expressed its concern over “reports that a very limited number of independent associations have been registered officially by the authorities and that, in practice, several associations for the protection of human rights whose objectives and activities are not in violation of the Covenant have encountered impediments when applying for such registration (articles 21 and 22 of the Covenant)”. The Committee went on to recommend that the “State party should ensure that such organizations are registered, and they should be provided with effective and prompt recourse against any rejection of their applications”⁵.

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

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

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

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

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

I - Formation of Associations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II - Life of Associations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No.

III – Dissolution of Associations

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

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

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

No information available.

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

No.

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

RECOMMENDATIONS

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

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

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

Creation and registration:

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

Organisation and actions:

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

ENVIRONMENT REQUIRED FOR THE SUSTAINABLE DEVELOPMENT OF CIVIL SOCIETY:

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

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