

Freedom of Association: Legislation and Practices in North Africa

The Cairo Institute for Human Rights Studies (CIHRS) stresses the importance of urgently reviewing legislation and practices regarding the right to freedom of association in North Africa. Despite the fact that the recent revolutions and promises of reform across the region have to some extent offered new opportunities to bolster this freedom in both law and practice, it is also true that this period has seen an escalation of restrictions and attacks against civil society organizations and their members in many of the states in the region.

In Egypt, for example, civil society work continues to be governed by the repressive Mubarak-era law (Law no. 84 of 2002). Similar to other associations laws across the region, this law violates both the national constitution and international treaties, as it gives broad powers to the administrative authorities to arbitrarily interfere in the work of civil society.

Since June 2011, Egyptian civil society has been targeted by fierce and ongoing attacks. In addition to the smear campaign which was launched in the media against civil society - particularly human rights organizations - investigations were also launched into a large number of civil society associations by the Supreme State Security Prosecution, and they continue to this day. Moreover, the inflammatory statements made to the media do not even reflect the actual charges made against NGOs – even those raided in late 2011 and whose members are still being prosecuted – which consisted solely of charges of administrative violations. In addition, the legitimacy of the investigation is questionable, due to the handpicking of the investigating judges and leaking of confidential case information to the media in decontextualized and misleading ways, among other factors.¹

Several draft laws to govern the work of civil society have been submitted to the Egyptian Parliament, including drafts from the government which are even more repressive than the law still in effect. A recent version even went so far as to explicitly describe a role for the state security apparatus and intelligence services in regulating civil society, justifying such infringements on the right to freedom of assembly by claiming that they are to “protect the sovereignty of the state.” Positively, these bills were dropped, and the parliament is currently discussing other, more progressive draft laws to govern civil society.

Finally, foreign funding for registered NGOs in Egypt is experiencing a crackdown. Among the organizations affected is the New Woman Foundation, which has been forced to make significant cuts to its staffing and is expected to have to close in the near future due to restrictions on its funding.

Out of all the countries in North Africa, Sudan boasts the most repressive legislation on associations, which provoked fierce criticism from civil society organizations both domestically and abroad when it was adopted in 2006. In addition, repressive practices continue to target members of opposition groups and leaders of human rights organizations, including with security interrogations and arbitrary arrest.

Meanwhile, promises for reform made in 2011 in both Morocco and Algeria have not alleviated the ongoing pressures on the freedom of association in these countries. The Moroccan legislation governing civil society groups dates back to 1958, although it has been amended several times, most recently in 2006. The law now contains relatively progressive provisions including a declarative system for the establishment of associations; however, in practice these provisions are not implemented. For example, the administrative authorities continue to arbitrarily refuse to accept registration papers from organizations that they do not

¹ <http://www.cihrs.org/?p=1234&lang=en>, <http://www.cihrs.org/?p=1786&lang=en>

wish to see legally recognized. Groups that are often denied legal status include Amazigh cultural associations, groups promoting the rights of sub-Saharan immigrants or unemployed university graduates, and charitable associations with ties to the Islamist Justice and Spirituality movement. Restrictions on registration and activities are especially harsh for organizations working in Western Sahara or promoting self-determination for the region. In April 2012, six rights defenders from the Western Sahara Organization Against Torture were sentenced to three years in prison on charges related to violence which took place in Dakhla last September in a trial described as unfair and politically motivated, as no evidence was presented to the court that the men were even present in Dakhla at the time or participated in acts of violence.

Algeria passed a new law on associations in January 2012 on the pretext of government-led “political reform.” However, the law has been severely criticized, as it contains no protections for the right to freedom of association and does not meet international standards for establishing civil society groups. Moreover, the Algerian authorities have continued to arrest and question members of various organizations regarding their activities, as in the 2011 case of Dalila Touat of the unrecognized National Committee to Defend the Rights of the Unemployed. Public meetings by critical organizations have been denied authorization, including those held by the National Coalition for Change and Democracy and the Algerian League for the Defense of Human Rights. Labor unions and their leaders have also faced harassment due to their work, including raids and attempts by the executive authorities to stop their activities, as was experienced by National Independent Union of Civil Servants (SNAPAP) in late 2011. At least seven independent unions are blocked from becoming legally registered, including the Teachers Union of Higher Education (Sess), which was denied registration in January 2012. Often, no explanation for such denials is given.

Tunisia and Libya represent the most positive examples of respect for the freedom of association in the region. In Tunisia alone, over 100 political parties have been legalized and civil society organizations long considered illegal authorized in Tunisia, where participation with “unrecognized” organizations was long punishable by imprisonment. Among those recently recognized are the International Association in Support of Political Prisoners and the Tunisian Association to Combat Torture, as well as international human rights groups like Amnesty International and Human Rights Watch. Importantly, the Tunisian League for Human Rights was allowed to organize its annual congress for the first time in ten years in September 2011. In Libya, where civil society work was all but impossible during the rule of al-Qaddafi, the number of civil society organizations has increased significantly. Furthermore, positive legislation has been enacted which abides by international standards on the freedom of association more closely than those of any other country in the region. However, recent steps taken by both the Libyan National Transitional Council and the Tunisian judiciary to limit freedom of expression are cause for great concern, for such repression may easily encroach on other fundamental freedoms as well, including the freedom of association.

Recommendations

In order to achieve the goal of liberating civil society organizations from oppressive control of the state while simultaneously ensuring the transparent operation of these organizations, CIHRS has identified the following five critical areas which must be ensured in legislation governing Freedom of Association:

1. Establishment of organizations should be based on a system of notification rather than prior authorization of the authorities. In addition, the number of founding members required to establish an organization should be limited to two, as seen in Tunisia and Libya, which starkly contrasts with the requirements seen in other countries such as Egypt and Sudan, which require ten and thirty founding members for associations, respectively. Such excessive requirements constitute an unnecessary restriction to the freedom of association.

2. Fields of work of organizations should be left completely open, except for activities which violate the states constitution or international human rights treaties. Unfortunately, vague language used in several countries, including prohibiting associations for contradicting the “public order” and “public morals,” allows the executive authorities to arbitrarily ban the work of organizations based on broad prerogatives.

3. Dissolution of an association must require a judicial ruling, so as not to give arbitrary powers to executive branch to do away with organizations at will.
4. Funding should be left open to organizations and not subject to executive restrictions. Legislation should include clear standards for the rejection of funding, and such decisions should be taken by the judiciary.
5. Penalties should not include liberty-depriving penalties or large monetary fines, as has long been the case in North African countries. Libya and Tunisia have now adopted exemplary laws on this matter.

In addition to calling for these points to be implemented in the legislation regarding freedom of association, CIHRS calls on the states of the North African region to:

1. Ensure the inclusion of guarantees for the protection of freedom of association in the drafting of new constitutions, specifically in Egypt, Libya, and Tunisia, where new constitutions are scheduled to be drafted.
2. Review and amend all other legislation, such as in national penal codes, which contradict constitutional guarantees for freedom of association or international treaties signed by these states, in order to bring all related legislation in line with international standards for freedom of association.