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Freedom of Association in North Africa

The Cairo Institute for Human Rights Studies (CIHRS) draws attention to key challenges in legislation concerning the right to freedom of association in North Africa. In some countries, old repressive laws remain in effect. In others, such as Egypt, new drafts which reflect the same hostile attitude towards freedom of association as the laws previously in effect are being considered, despite continued popular calls for greater liberties in such countries. While several amendments are still necessary in order to bring Tunisia's post-revolution law on associations into full compliance with international standards, that law represents a major milestone and is currently the best law governing associations in the region, which should serve as an example for other countries. A very positive draft was presented by Libya's National Transitional Council in 2012; its failure to adopt this draft, however, has left Libya's burgeoning civil society without a legal framework in which to operate. Other governments in the region remain more concerned with repressing and controlling civil society than with providing a proper framework in which it may operate. The principle problems encountered are:

1. The requirement of permission rather than notification

Countries in North Africa tend to require that founders of civil society associations seek the permission of the government, rather than submitting notification to the government, in order to establish an association. Even in cases when the law does refer to a system of notification, the requirements imposed are often overly burdensome, making the process more akin to a system of prior permission in practice. For example, article 9 of Sudan's 2006 law on voluntary and humanitarian work requires a minimum of 30 founders in order for an association to be formed. Similarly, both Egypt's current law, in effect since 2002, and several of the drafts being considered to replace it, require 10 persons to found an association. According to international standards, only 2 persons should be necessary.

Associations should also be free to operate without submitting notification to the government, with the only consequence being that they do not enjoy certain benefits which depend on obtaining formal status (e.g. the ability to bring legal cases as an association, special tax benefits). Unfortunately, this fundamental and crucial element of the right to freedom of association is generally prohibited by law in Arab countries. Networks or partnerships, whether between domestic and/or international associations, should similarly be free to file for official status or to operate informally, as they desire. This, too, is rarely the case, as laws in the region tend to look with suspicion on such large-scale associations as well as on cooperation with international associations.

2. Illegitimate restrictions on the purposes of associations

Laws in the region often improperly constrain the objectives and purposes that may be pursued by associations, either by forbidding associations from pursuing certain legitimate objectives (such as advocating for policy change, commenting on political affairs, or conducting opinion surveys) or by using broad and vague language that allows governments to prohibit associations they find politically objectionable. Article 2 of Algeria's law on associations (law 12-06 of 2012), for instance, states that the goal of every association must be precisely defined and in conformity with the general interest and national constants and values such as public order, good morals, and law.

3. Stringent controls on funding and intrusive oversight

Contrary to many of the laws in the region, obtaining funding should not require the permission of the authorities, nor should associations be required to report every time they receive a new source of funds. In practice, laws imposing such requirements form an extremely powerful tool by which states may restrict the effective functioning of associations, while avoiding attracting the level of international and domestic criticism that results from more outright tactics used to suppress associations.

Some laws and draft bills in the region allow for excessive, intrusive, and inappropriate government surveillance of other areas of the internal administration of associations as well, including requiring that the government be informed whenever an association's management changes, allowing the excessive intermingling of government and private employees and projects, or allowing government employees to enter an association's premises at any time and to inspect any of the association's documentation as they wish. Drafts under consideration in Egypt have required organizations to provide the authorities with details of their internal decisions, allowed the Ministry of Social Affairs to object to those decisions, designated NGO money as 'public funds,' and provided for the intermingling of the work of NGOs with that of the government.

According to international standards, the law may provide legal benefits to associations that work for the public benefit; however, such provisions must be carefully crafted in order to ensure that such status is awarded in an impartial manner and not merely to associations working towards ends supported by the authorities. The same principles should apply to the removal of such status, as well. Moroccan law provides a negative example: Article 12 of Morocco's law on associations (law 1-58-378 of 1958) requires that certain transactions by public benefit associations be approved by the Prime Minister, placing an improper level of discretionary governmental control over their activities, and article 9 of Morocco's decree 2-04-969 of 2005 allows the Prime Minister, upon the request of a governor, to remove public benefit status from associations.

4. Hostility to foreign associations

Under international standards, while a country may require that a foreign association apply for permission in order to operate, the conditions under which such permission may be obtained should not be significantly more burdensome than those relative to domestic associations. Once they are granted permission to operate, foreign associations should be subject to the same legal framework as domestic associations.

In contrast, laws in the region often allow the government a great deal of discretion in deciding whether to grant permission to foreign associations to operate and impose overly onerous requirements, such as a requirement of periodic re-application for status. In addition to numerous other problems, Sudan's law provides a prime example of hostility to foreign associations: Article 9(3) requires that the Sudanese embassy approve the registration of foreign associations, that foreign associations sign a country agreement, that the associations implement their work in cooperation with national organizations, and that they comply with any conditions stipulated by the relevant minister.

5. Inadequate conditions for dissolution and excessive sanctions

Contrary to many laws in North Africa, international standards state that dissolution or suspension of the activities of an association should only be possible through a judgment by a court of law, that this should be possible only for extremely limited reasons, and that such actions should not be effective until the entire process, including all appeals, has been completed.

In addition, laws in the region frequently allow for excessive penal sanctions, which are often imposed for activities protected under the right to freedom of association. Article 45 of Tunisia's new law on associations (decree 88 of 2011), for instance, still includes a list of grounds for which associations may be suspended or dissolved which is too broad. Article 24(3) of Sudan's law appears to allow criminal sanctions against individuals for any violation of the law, a clause that, as well as infringing freedom of association, does not respect basic principles of criminal legislation.

Each of the means listed above – restrictions on registration, control over objectives and activities, intrusive oversight, financial constraints, easy dissolution, and severe sanctions – is an improper infringement of the right to freedom of association, and any one of these elements alone grants states the means to improperly constrain what should be the free space for civil society according to their own interests. That legislation in the region so frequently includes many or all of these tools together is a clear indication that the aim of these governments is not to enable civil society but to constrict it. This pattern is clearly visible in Morocco, Algeria, Egypt, and Sudan; unfortunately, it appears that these states continue to see civil society as an enemy to be subdued rather than as a valuable partner in the process of establishing better policies and systems of governance for their citizens. In contrast, Tunisia's recent law is an important example of positive legislation that breaks with this regional pattern, and it is to be hoped that a similarly positive law will soon be passed in Libya. Other countries in the region should follow Tunisia's lead. Until they do, civil society will remain threatened and underdeveloped, and citizens will continue to be unable to enjoy and freely exercise their rights to freedom of association, freedom of expression, and participation in the governance of their countries.