

**Strengthening Dialogue and Democratic
Discourse through Freedom of Association in
the Mediterranean and the Middle East Region**



**STRENGTHENING DIALOGUE
AND DEMOCRATIC DISCOURSE
THROUGH FREEDOM OF ASSOCIATION
IN THE MEDITERRANEAN
AND THE MIDDLE EAST REGION**



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ABOUT US

The Club de Madrid is an independent organization dedicated to strengthening democracy around the world by drawing on the unique experience and resources of its Members – over 70 democratic former Presidents and Prime Ministers from more than 50 countries. In partnership with other organizations and governments that share its goals of “democracy that delivers”, the Club de Madrid provides peer to peer counsel, strategic support and technical advice to leaders and institutions working towards democratic transition and consolidation.

**FOREWORD BY CLUB DE MADRID
MEMBERS**

*Since World War II, there has been halting but nonetheless significant progress toward establishing democratic, constitutional regimes in many areas of the globe. One region, however, stands out as a glaring exception to the general picture of the gradual spread of democratic systems worldwide. This region is the Middle East, which for nearly half a century has been an almost universally bleak desert as far as the development of vibrant, full-fledged democratic systems is concerned- **Sowing Crisis: The Cold War and American Dominance in the Middle East, Rashid Khalidi, 2009***

**ABDULKAREEM AL ERYANI, FORMER PRIME MINISTER OF YEMEN
CLUB DE MADRID MEMBER AND PROJECT CO-CHAIR**

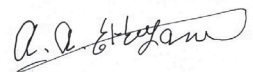
I think it was a very wise choice that the Club de Madrid chose the Arab world to promote freedom of association and expression. Compared to any other region in the world, I think these freedoms are most restricted in the Arab world.

Both freedom of association and expression are cornerstones of democracy and democratization. Without them, we could say democracy is restricted (not to say lacking) because there are democratic practices to some extent. I think we in the Arab world, need to be fully sensitized to these freedoms. Our Club de Madrid initiative has played a significant role in this aspect of democratization.

Unfortunately, the democratisation process that might be going on in the Arab world is still more or less a gift from the Head of State. It is not yet a mass movement that creates a democratic system. I don't mean in a revolutionary way, but a democratic process led by mass action and understanding of these rights, not one led by rulers and the ruling class.

Capacity building and support to NGOs working in this area is crucial to this type of grass roots movement and support to freedom of association, which I think we have been able to contribute to. Sensitization and awareness are the most important project achievements, whether with regard to NGOs or to government officials. I think in some cases, some NGOs have put a lot of hope on the role of the Club de Madrid and it is uncertain whether we can really fulfil that hope. Of course we will submit the project recommendations, but it is up to the rulers to decide whether they want to implement them or not. Because of the composition of the Club de Madrid, there was a great deal of hope put on our role. Let's hope that these organisations, these NGOs, will one day say thanks to the Club de Madrid because of change that has occurred.

I think that the wave of democratisation will not stop or go backward, however sometimes the process is fluid. I'm rather optimistic to hope that democracy will come soon and I hope the Club de Madrid will continue this important work in other countries in the region to broaden awareness and have follow-up projects including seminars, workshops and dialogue with leadership, to encourage them to give more space for freedom of association and expression. These important initiatives have to continue and we cannot stop where we are now.



AL IMAM AL SADIG AL MAHDI, FORMER PRIME MINISTER OF SUDAN CLUB DE MADRID MEMBER AND PROJECT CO-CHAIR

The basis of the Club de Madrid's initiative on Freedom of Association in the Middle East and North Africa is that of human rights, inclusion, participation and the freedom to associate as universal values. Over the course of the past two years, in our visits and dialogues we have been welcomed by civil society, including opposition parties, and by governments and ruling parties. The fact that the Club de Madrid is composed of statesmen who are experienced and aware of realities in the region has meant that the authorities involved were not scared –they were not afraid that we were starry-eyed idealists who come with unrealistic ideas–. They could see that this is a group that, although it certainly has democratic intentions at heart, is also aware of the real world. This has made the Club de Madrid credible in their eyes, and allowed our work to have more impact.

A clear lesson to be drawn from our conversations and engagement in this project is that this whole exercise of reform for greater freedom of association and democratic freedoms in general is contingent on leaders having the political will to make and allow change. We can now ask if things will change after the revolution, because we can begin to imagine the revolution. The world is changing, and politics and societies in the Arab world –the last largely-undemocratic region– will follow suit. Now that Europe and the U.S., led by President Obama, are speaking with the Arab and Muslim world in a different way, with a friendlier, more open and respectful approach, we must ask ourselves, “Are we –Arabs particularly– prepared to respond?” Are we ready for a new discourse not just with the outside world, but within our own societies? In the Middle East and North African region there remain many signs that we are not.

While the pull factors of outside pressure, support and encouragement may be getting better, we have to admit that the internal push factors in our societies are weak. Our regimes have worked hard to see to it that the political parties, trade unions and NGOs are weakened, divided, and interfered with in every possible way to make them ineffective.

But things are beginning to change, and the rulers know that they too need to be part of –to lead if they can– change, or they will be changed. This change, while necessary, will not come easily and leaders in the region, as rulers everywhere, do not want to give up power.

Al Imam Al Sadig Al Mahdi
السيد السديق المهدى

**VALDIS BIRKAVS, FORMER PRIME MINISTER OF LATVIA
CLUB DE MADRID MEMBER**

In this project, we have learned and witnessed that each and every one of our project countries is at a different point of the reform process.

Regarding lessons learned for the future and the region, I would like to reference a country that I visited several times during this initiative, Saudi Arabia. I would like to stress that it is a complicated and fascinating country, which very much needs reforms for its own benefit. We found that His Majesty the King understands this and is cautiously moving ahead. We also learned that the country's reformists want more pressure to come from within, but recognize that many Saudis are not pushing for change. Despite all existing problems, there is a lot of support for gradual reforms initiated by His Majesty the King and the challenge is how to use this support to speed up reforms without damaging the process.

In this respect, the only successful and relevant way forward would be to promote freedom of association and issue (although limited) the respective civil society law. The implementation of this law is crucial for reform in Saudi Arabia and demonstrates that the Club de Madrid has chosen the right approach to help the Arab world move ahead with reforms locally initiated by helping to slowly incorporate and encourage civil society and citizen's engagement in their own reform processes and nation building.

A handwritten signature in black ink, reading "Valdis Birkavs", with a long horizontal flourish extending to the right.

**KJELL MAGNE BONDEVIK, FORMER PRIME MINISTER OF NORWAY
CLUB DE MADRID MEMBER**

This project has been able to bring together key players for a productive dialogue on their experience of reforms for freedom of association, accomplishments, best practices and lessons learned. It has been an interesting experience for me to participate in this project in Morocco, Jordan and Egypt. I have learned a lot from the many visits and meetings with people from another culture than my own.

I think we have managed to create a greater understanding of the benefits of social cohesion among leaders in the Arab world and the need for a better legislation and practise regarding freedom of association in the project countries. I hope one of the results from our work will be more institutionalised and frequent dialogue and communication between Government and civil society in the project countries.

The program for the missions varied from country to country. To meet representatives from the civil society was important to get an impression of their working conditions. To reach representatives of the government was also necessary to confront them with the demands from the civil society.

But most successful were the meetings where we managed to bring representatives from government and civil society together in a dialogue. I remember, for example, a meeting in Morocco between representatives of media and the responsible minister and his promise to bring members of the media into the process of drafting a new press law in the country.

There are still many restrictions on freedom of association in Arab countries. In addition to concrete changes in legislation and practice, which to some extent vary from country to country, it is important to establish mechanisms for a permanent dialogue between civil society, government and parliament.

The recommendations we delivered to the Prime Ministers were received in a positive atmosphere. At the end of the day it's only the officials with the real power to make a change that implement our recommendations. But it is of great importance to follow up the implementation of the recommendations, and Club de Madrid will be engaged in this regard.

Kjell Magne Bondevik

PROJECT INTRODUCTION

ABOUT THE PUBLICATION

This publication presents the work of two years of project activities in Bahrain, Egypt, Jordan, Morocco, Saudi Arabia and Tunisia, and including study missions and seminars in the Netherlands and Spain. These activities included peer-to-peer consultations with political and government leadership and civil society counterparts, cross-sector dialogue sessions, presentations on relevant transition processes by Club de Madrid Members and political experts, and independent research and analysis conducted by project partner FRIDE. The project has been possible through the guidance and support of local partners, the leadership of Club de Madrid Members, and the financial and programmatic backing of the European Commission and the United Nations Development Fund.

ABOUT THE FRIDE REPORTS

FRIDE researchers accompanied Club de Madrid delegations on project missions and held more than 100 independent interviews in each project country with civil society and government representatives to discuss the status of freedom of association and reform processes underway. While Club de Madrid-led dialogue sessions and meetings between Club de Madrid members and authorities helped inform these country reports, the reports do not reflect necessarily the opinion of the Club de Madrid or its members, nor do they represent the project work and recommendations drafted by national project stakeholders. The reports reflect independent academic research by FRIDE, informed by statements and opinions expressed by a large number of local representatives interviewed during and outside of project missions.

ABOUT THE PROJECT

Launched in February 2007, in response to an expressed need for greater efforts towards and in support of democratic dialogue and freedom of association in the Arab world, this initiative aimed to strengthen discourse and association in the Middle East and North Africa. Calling on the leadership experience of its Members –more than 70 democratic former Heads of State and Government– and working with local partners promoting the constructive engagement of civil society, the Club de Madrid provided strategic counsel to leaders for reform in Bahrain, Jordan, Morocco, Saudi Arabia, Tunisia and Egypt. The Club de Madrid did not impose external ideals, but rather worked with local partners to discreetly nurture and facilitate the construction of discourse for democratic reform and development. Responding to the political context and efforts towards reform in each country, Club de Madrid members –leaders who have faced similar leadership challenges, many directly related to the democratic transformation of their own countries– shared relevant experiences and provided counsel. By supporting dialogue between authorities and civil society, Club de Madrid worked to transcend current constraints and create important policy frameworks and goals to build a shared vision of society, and advance and better protect citizen's rights.

POLITICAL CONTEXT

In the Mediterranean and Middle East region, numerous inter-governmental and civil society initiatives have affirmed social and political rights and identified the need for increased civic participation as essential for modernization. However, the reality in the region

has not matched the standards promulgated. States of emergency, anti-terrorism laws and authoritarian governments have limited the formation of, and participation in, civil society organizations and political parties and processes.

Throughout the region, laws that govern civil society organizations' registration processes and provide (limited) space for organizations to work are generally prohibitive. Civil society organizations deemed to be engaged in work that is political are those most likely to be banned, restricted, monitored and censored. While a country may claim to have a vibrant civil society environment, reflected by the number of registered organizations, these are usually not working in the field of human rights and democracy. Institutions engaged in such work face cumbersome registration processes, restrictions on receiving international funding, limitations on activities, harassment by security forces, and censorship in the local press. Because political pluralism and social freedoms are not guaranteed, civil society has worked to fill this void, and as a result come under intense scrutiny and is up against many obstacles. Authoritarian regimes and non-democratic governments work to contain opposition and freedoms in order to protect their own positions and power, and civil society actors increasingly are marginalized, resulting in societal dysfunction. While in the short term this may be manageable, in the long term coupled with increasing income disparity and lack of basic needs and services, this will result in a more disenfranchised citizenry, less willing to cooperate with their governments and rulers, and likely a larger and more radicalized opposition.

As social demands for democratic participation increasingly call into question current government structures, this initiative addressed the need for consensus and a shared vision for the advancement of ongoing reform processes.

ABOUT PROJECT ACTIVITIES AND RECOMMENDATIONS

Club de Madrid members led three or four missions to each project country, working in Jordan, Morocco and Bahrain in the project's first year of activities, and Saudi Arabia, Egypt and Tunisia in the second year. During the second year of project activities, Club de Madrid Members led dialogue activities in Year 2 countries and returned to Year 1 countries to deliver recommendations to the highest levels of government.

In Jordan, Bahrain and Morocco (Year 1 countries), dialogue activities were successful in bringing together Club de Madrid members with representatives of key government and civil society institutions to discuss ways in which freedom of association could be better guaranteed and secured. Over the duration of mission activities, the Club de Madrid successfully identified key issues and created environments for constructive dialogue among opposing parties over contentious issues, facilitating dialogue where normally not possible and working towards consensus between government and civil society stakeholders on necessary steps forward to help improve and guarantee freedom of association. As a result, Year 1 country representatives of both sectors convened upon completion of the dialogue missions and agreed a set of country-specific recommendations to the leadership of their respective countries to be submitted by Club de Madrid Members on behalf of country representatives and stakeholders.

In Egypt, Saudi Arabia and Tunisia (Year 2 countries), holding open dialogue sessions between government and civil society stakeholders, mediated by Club de Madrid Members, was not possible. Due to a high level of distrust between sectors and stalled reform processes, the Club de Madrid used alternative means of convening, listening and sharing experiences. During missions to Year 2 countries, the delegations held individual meetings, and invited members of both sectors to participate in panel discussions on transition processes, drawing on relevant lessons learned from regions such as Latin America and Eastern Europe, and creating a neutral space for indirect dialogue. Similar to the delivery of stakeholder recommendations to the highest levels of leadership in Year 1 countries, the Club de Madrid delivered Year 2 project findings to ruling authorities, and

discussed with them impressions and ideas to help strengthen and promote reforms in Tunisia, Egypt and Saudi Arabia.

In addition to project country missions, the project also convened four regional meetings to guide, review and evaluate the project. In Cairo, the Club de Madrid convened project partners for an initial planning session. In Cordoba, Spain, delegations (principally from Year 1 countries) of civil society and government representative met for an initial strategy seminar to discuss and guide project plans. At the conclusion of the first year; Year 1 country representatives met at the Dead Sea, Jordan, to produce country recommendations, evaluate progress, and build consensus between government and civil society stakeholders. Year 2 country stakeholders were also invited to join the Dead Sea Meeting and provide Club de Madrid with their impressions and advice on how best to proceed in their respective countries for the second year of project programming. Project stakeholders from all six countries participated in a Study Tour to the Netherlands, to look at issues related to freedom of association and democratic governance. Finally, at the end of the two-year project, stakeholders met in Barcelona for a two-day seminar which included panel discussions on the Spanish transition process and a review and evaluation project results and next steps.

PROJECT ACHIEVEMENTS

During two years of project implementation, more than 500 national stakeholders representing government and civil society led and participated in 27 project activities aimed at building greater freedom of association in six countries in the Middle East-North Africa region.

The project resulted in **a)** active participation of over 500 leaders in Jordan, Bahrain, Morocco, Saudi Arabia, Tunisia and Egypt from executive, judicial and legislative bodies including Heads of State and Government, Ministers, Upper and Lower House legislators, political parties and civil society organizations, activists, journalists and academics; **b)** consensus building processes and institutionalized dialogue advocacy resulting in locally owned and drafted policy recommendations for strengthened freedom of association and national reform processes reached through the engagement of government and civil society leaders; **c)** participation of civil society and government interlocutors in joint discussions to address unresolved roadblocks in national consensus building processes, sometimes initiating and facilitating direct, open dialogue for the first time between opposing parties; **d)** comprehensive reports on the situation of freedom of association in the region; **e)** delivery of policy recommendations to heads of government and state aimed at consolidating ongoing reform initiatives and advancing democratic values in the region; **f)** sharing of relevant democratic transition and consolidation experiences from Latin America, Eastern Europe, the Netherlands and Spain, **g)** strengthening, and in some cases creating, an interstate advocacy network that has extracted promises at the highest levels for democratic reform; and **h)** dissemination of project findings and leadership commitments to European Union representatives and commissioners, as well as to government and civil society representatives attending international forums, to encourage their implementation as instruments for dialogue.

PROJECT CHALLENGES

We identified two types of challenges during project implementation. The first represent obstacles dependent on the political will and commitment to reform of project countries; while the second are project-specific challenges that should be addressed in future programming to better ensure more successful and tangible results. The lack of real commitment by the leadership in project countries to allow for significant opening of political space is an overarching challenge to reform efforts generally and freedom

of association efforts specifically. Many promises at the highest level were made during project activities, but actual change for the most part has yet to be seen. Unless there are strong push factors led by local reformists, coupled with external pressure, there is a clear risk of continuing stagnation. Looming danger of polarization in the countries of the region, as well as the economic crisis and its consequences on social stability and possible increase of authoritarianism to contain unrest, remain predominant concern. Finally, the inability due to political sensitivities to have real debates about power sharing and, specifically, the role of project countries' King/President, means that deep, lasting reform is unlikely in the short-term.

Within the project, the need to more carefully select project countries has been a lesson learned, as the willingness of governments to engage in discussions and consensus building activities is key to achieving the objectives of such an initiative.

NEXT STEPS

Project participants expressed a need for continued engagement in the region, and specifically for the Club de Madrid to remain engaged; and identified the following recommended next steps: a) more capacity building activities for civil society organizations; b) a continued push for project findings and recommendations to become actual policy and practice; c) increased dissemination of recommendations; d) continued efforts to shake-up the current political stagnation; e) continued push for the institutionalization of dialogue; f) coordination with other organizations working in the same area for greater effectiveness (particularly the Friedrich Naumann Foundation and the Euro-Mediterranean Human Rights Network); and g) further provision of information on successful and politically and culturally relevant national transition processes, including the Spanish transition. The Club de Madrid is currently seeking follow on funding and support for continued regional programming and hopes to commence its second phase of project activities in the fall of 2009/early 2010.

CALENDAR OF ACTIVITIES

- **Total number of missions/activities:** 27
- **Former Prime Ministers and Presidents involved:** Club of Madrid Members Abdulkarim Al Eryani (Yemen), Al Imam Sadig Al Mahdi (Sudan), Valdis Birkavs (Latvia), Kjell Magne Bondevik (Norway), Philip Dimitrov (Bulgaria), Felipe Gonzalez (Spain), Lionel Jospin (France), Wim Kok (the Netherlands), Zlatko Lagumdzija (Bosnia & Herzegovina), Jorge Quiroga (Bolivia), Petre Roman (Romania), Jennifer Shipley (New Zealand), Cassam Uteem (Mauritius); and Eduardo Rodríguez Veltzé (Bolivia)
- **Number of missions per project country:** Egypt (4), Morocco (5), Jordan (5), Bahrain (4), Saudi Arabia (3), Tunisia (3)
- **Number of countries total:** 6 project countries, plus study missions in the Netherlands and Spain: 8

DATES	ACTIVITIES	CLUB DE MADRID MEMBERS
<i>February 14-15, 2007</i>	Strategic Planning Meeting Cairo	Al Mahdi
<i>March 13-16, 2007</i>	Survey Mission Morocco	Gonzalez, Roman, Eryani
<i>April 16-19, 2007</i>	Survey Mission Jordan	Eryani, Birkavs, Bondevik
<i>April 24-27, 2007</i>	Survey Mission Bahrain	Al Mahdi, Lagumdzija, Uteem
<i>May 10-12, 2007</i>	Cordoba Regional Meeting	Al Mahdi and Eryani
<i>June 6-9, 2007</i>	Second Mission to Morocco	Bondevik and Lagumdzija
<i>June 25-28, 2007</i>	Second Mission to Jordan	Al Mahdi and Dimitrov
<i>September 5-8, 2007</i>	Elections Observation with NDI	Quiroga
<i>October 22-24, 2007</i>	Third Mission to Jordan	Eryani and Bondevik
<i>October 30- November 1, 2007</i>	Second Mission to Bahrain	Al Mahdi, Birkavs
<i>December 11-13, 2007</i>	Third Mission to Morocco	Bondevik, Al Mahdi, Dimitrov
<i>January 29-31, 2008</i>	Third Mission to Bahrain	Birkavs and Lagumdzija
<i>February 27-29, 2008</i>	Regional Meeting- Dead Sea, Jordan	Al Mahdi, Eryani, Birkavs, Bondevik, Lagumdzija
<i>March 25-28, 2008</i>	Survey Mission Egypt	Bondevik, Shipley, Lagumdzija
<i>June 3-6, 2008</i>	Survey Mission Saudi Arabia	Jospin, Kok, Lagumdzija
<i>June 23-27, 2008</i>	Study Tour- The Netherlands	Kok
<i>October 12-15, 2008</i>	Survey Mission to Tunisia	Uteem and Eryani
<i>October 27-30, 2008</i>	Second Mission to Egypt	Veltzé, Birkavs, Bondevik
<i>December 17, 2008</i>	Delivery of Recommendations Jordan	Birkavs, Bondevik, Al Mahdi
<i>December 18, 2008</i>	Delivery of Recommendations Egypt	Birkavs and Bondevik
<i>February 14-15, 2009</i>	Delivery of Recommendations Bahrain	Jospin, Birkavs, Lagumdzija
<i>February 15-17, 2009</i>	Second Mission to Saudi Arabia	Birkavs, Lagumdzija
<i>March 4-6, 2009</i>	Second Mission to Tunisia	Veltzé and Eryani
<i>April 19-21, 2009</i>	Barcelona Regional Meeting	Eryani, Al Mahdi, Birkavs, Bondevik
<i>May 27-28, 2009</i>	Delivery of Recommendations Saudi Arabia	Birkavs
<i>June 24-25, 2009</i>	Delivery of Recommendations Tunisia	Eryani
<i>June 25-26, 2009</i>	Delivery of Recommendations Morocco	Roman

PROJECT RECOMMENDATIONS AND FINDINGS

JOINT RECOMMENDATIONS BY PARTICIPANTS OF THE REGIONAL PLENARY “ADVANCING FREEDOM OF ASSOCIATION THROUGH DEMOCRATIC DIALOGUE AND POLITICAL REFORM”

Jordan, the Dead Sea, February 29, 2008

Jordan, Morocco and Bahrain share several concerns related to the rights of assembly, political and civil organization, association, and the joining of trade unions. The *Advancing Freedom of Association through Democratic Dialogue and Political Reform* dialogue was organized and moderated by the Club de Madrid on Thursday the 28th and Friday the 29th of February, 2008 at the Dead Sea, and was attended by delegations from these three countries, reflecting the political and social spectrum in each country.

The three delegations identified progress in political and institutional reform as the sole way to achieve development and social peace, and avoid causes of instability and violence in all forms. To this end, the delegations expressed determination to institutionalize dialogue via a national platform that brings together political and civil societies, and achieves a balanced national accord whereby no party wins or loses, and the only winner is the country.

Drawing on the unique experiences of their respective countries, the three delegations arrived at several shared recommendations aimed at promoting democracy and political participation based on the full exercise of citizenship rights within the framework of a law-based state, and in accordance with the international standards ratified by the three countries. These priority recommendations recognize the urgent need for:

- I. National consensus in each of the three countries on conducting constitutional reforms that enhance democratic practice guarantee the principle of separate and balanced powers in government, strengthen the role of representative institutions, and ensure the independence and impartiality of the judiciary.
- II. Reform of the legislation guaranteeing the rights of assembly and political organization, as well as the freedoms of expression and election, so as to ensure equal opportunities for participation in politics, civil society and trade unions without any discrimination, taking into account the empowerment of women and enhancing their participation in all fields.
- III. Strengthened legal and institutional safeguards for the independence of the judiciary, including the empowerment of judges, by ensuring their right of assembly in line with the 1985 United Nations Basic Principles on the Independence of the Judiciary.

Each country's specific recommendations are as follows:

I. The Kingdom of Morocco

Implementation of the Equity and Reconciliation Commission's recommendations regarding fundamental reforms ensuring genuine nation building and the protection of human rights and fundamental freedoms.

II. The Kingdom of Bahrain

Amendment of the laws governing elections, and fairly dividing electoral districts to strengthen national unity, in addition to establishing an independent national commission to ensure the integrity of elections.

III. The Hashemite Kingdom of Jordan:

1. Revision of the election law and regulations in order to achieve more balanced and just representation for different social groups and political forces and entrusting a neutral

and independent commission with elections monitoring at all stages. This commission must have the legal frameworks and financial resources necessary to conduct its work.

2. Revitalization of the principles and norms endorsed under various national initiatives, such as the National Charter and the National Agenda, in a way that strengthens the rule of law and state and consolidates democratic reforms based on pluralism and the rule of law.

The participants extended their deep gratitude to the esteemed Club de Madrid Members for their valuable and continued efforts since the beginning of this project in order to reach a national consensus regarding reform areas and priorities in the three countries. The participants look to Club de Madrid Members to dedicate their moral and political influence, their impartiality and their credibility to promote these recommendations and encourage governments as well as political and civil bodies to adopt and invigorate them.

Notes

Finalised by national stakeholders, Dead Sea (Jordan), February 2008.

PROJECT FINDINGS AND RECOMMENDATIONS: BAHRAIN

1. Institutionalized dialogue, sustainable and systematic, is needed to build confidence among the state, political associations and civil society institutions, for its positive and direct impact on popular participation in the political process and the promotion of freedom of political association.

2. Laws restricting civil liberties, including laws regulating civil and political association, public assembly, anti-terrorism measures and, press and publications, must be amended. This amendment process requires a democratic dialogue based on the spirit, articles and principles of the Constitution and the National Action Charter, and international conventions.

3. A code of conduct for the media and the press is required to protect individual and civil liberties in the interest of society. A broadcasting law should be adopted to allow for the creation of private media, codifying the right to form private media institutions. State censorship and restrictions on freedom of expression must cease.

4. The state should provide suitable financial and institutional support for capacity building of civil society and political associations, including for the improvement of professional practices of members (check goals).

5. Political associations should abide by the political associations law and work on a national basis, rejecting all forms of sectarianism.

6. All legal rulings on complaints and conflicts relating to political associations and civil society organizations should be subject to an independent judicial authority without the intervention of the executive authority. Judicial independence must be strengthened in order to guarantee fair application of the law.

Notes

Finalised by national stakeholders, Dead Sea (Jordan), February 2008.
Delivered, February 2009.

PROJECT FINDINGS AND RECOMMENDATIONS: EGYPT

In Egypt, we recognize some of the important developments that have occurred over the past few years, especially within the public sector, including an opening up of the media and civil society sphere and their increasingly important role and contribution to Egyptian society. We encourage the continuation of this effort and therefore would like to highlight the main concerns and recommendations brought to our attention through consultations and dialogue processes among government and civil society leaders to help to further consolidate the reform process in Egypt.

1. Current legislation regulating the founding and activities of civil society organizations is controversial due to a cumbersome registration process, excessive control and monitoring of NGO activities, interference in NGO elections and assembly, and inconsistent application of current NGO legislation. The resulting legal insecurity creates a relationship based on distrust and fear between civil society and the government. The relationship between civil society organizations and the government needs to be strengthened. An institutionalized dialogue between civil society and the government would help to alleviate misunderstandings and differences.

2. The political party licensing by the Political Parties Committee, chaired by the Speaker of the Shura Council—currently held by the Secretary General of the ruling NDP party—is unfair due to the risk of biased decision-making. New political party licensing should be the responsibility of an independent body or office to secure a non-biased and fair registration process.

3. Women have been successful in lobbying for changes of key legislation recently, including the divorce and citizenship laws. The President is considered open to promoting the equal rights of women and pushing these legislative reforms forward, however, too little is being done to promote women within the leadership of political parties, institutions, or top government positions. Everyone, including government interlocutors, agrees not enough women are elected, and that any electoral reform must address this.

4. Club de Madrid supports the stated intentions of the Egyptian Government to lift the state of emergency and to adopt an anti-terrorism bill that helps safeguard against terrorism while also guarantees the protection of all individual rights and freedoms.

5. Because of a divided and polarized political climate, heavy restrictions placed on campaigning, and disputed electoral processes, steps must be taken to strengthen and guarantee the independence of the High Elections Committee from the Executive body in order to ensure greater transparency and a shift towards a free and fair electoral process is recommended.

6. People have grave worries about the future of the country. Internal divisions within the main political parties and movements- the ruling NDP and the illegal Muslim Brotherhood- point to a further decline in the status quo. Because of these increasing divisions and in order to achieve real political and social stability, an earnest and inclusive national dialogue must be begun between and amongst all sectors- recognizing universal human, civil and political rights- in order to pursue a true reform process.

Notes

Findings informed by Project Activities.
Delivered, May 2009.

PROJECT FINDINGS AND RECOMMENDATIONS: JORDAN

1. As political choices for citizens begins with basic rights and freedoms, including freedom of expression through various means of communication, such as the media, it is necessary to have adequate legislation to guarantee these freedoms, effectively contributing to a professional and independent media that advances democratic participation and respects the plurality of opinions.

2. The need to consider the introduction of new legislation regulating the right to establish independent civil society organisations, which would lead to enhance its role in political, economic and social development. This is predicated on the belief that that reform is a process involving both government and civil society, which requires abiding by both the constitution and international standards, without restricting the right to associate.

3. The need to preserve the independence and consistency of the judiciary as a fundamental guarantor of rights and liberty, upholding the unconditional right to due process. It is also necessary to replace overly-restrictive existing laws and to disband the special courts, together with the restructuring of the administrative courts, in order to achieve this aim.

4. Reconsider the electoral law in order to achieve a more balanced representation and justice for all of society, which does not discriminate between different political forces within Jordan, and to create an independent monitoring commission empowered by law with all the required administrative and financial resources.

5. Promotion of a vibrant and representative civil society culture in every way, in order to increase public awareness of democratic concepts and values, avoid political polarization, and promote a non-tribal and non-sectarian orientation, establishing dialogue as the fundamental means for the expression and promotion of the existing democratic framework and the rights of the citizen.

6. The commitment of all national parties, governmental and non-governmental, to the principles and rules stated by national initiatives such as the National Charter and the National Agenda, in order to advance a state based on the rule of law, representative institutions and democracy.

PROJECT FINDINGS AND RECOMMENDATIONS: MOROCCO

Through a process of dialogue and consultation between the Moroccan Government and members of civil society, the following steps should be taken:

1. The execution of the recommendations of the justice and reconciliation process, especially those that deal with enhancing the guarantees of rights, both general and public rights and freedoms;

2. Enhancing the democratic transformation by constitutional reforms that strengthen the role of elected institutions and the government role to have a more balanced relationship between the two authorities;

3. Eliminate all legal loopholes permitting arbitrary behavior and provisions curbing public liberties and fundamental freedoms in the following laws:

- Association Law
- Law on Public Assembly
- Press Code
- Penal Code
- Anti-terrorism Law

4. Ensure rigorous application of the law by establishing effective safeguards in laws and legal procedures, including penalties and adequate legal resources in cases of disrespect of the law;

5. Establish full transparency, accountability and objectivity regarding criteria and procedures in all interactions between government and NGOs or the media (including issuing of receipts, denial of public assemblies, granting of public funding, issuing broadcasting licenses, etc);

6. Raise awareness and promote a culture of accountability, transparency and rule of law among civil servants, judges, and government authorities;

7. Raise the professionalism of associations in order to demonstrate good governance and transparency, for those that are receiving both national and foreign aid;

8. Strengthen the Judiciary via a full separation of powers in law and practice, including checks and balances, a comprehensive judicial reform, a national plan to combat corruption, and a traceable, systematic implementation of all the recommendations made by the IER;

9. Establish institutionalized mechanisms of regular consultation between government, parliament and civil society regarding all matters of public interest, via newly created intermediary bodies in full accordance with the Paris Principles;

10. The activation of the independent commission that is responsible for the journalism profession;

11. The implementation of the press law and the penal code.

Notes

Finalised by national stakeholders, Dead Sea (Jordan), February 2008.
Delivered, June 2009.

PROJECT FINDINGS AND RECOMMENDATIONS: SAUDI ARABIA

We commend His Majesty King Abdullah bin Abdul Aziz Al Saud's wisdom and forward looking leadership. It is clear that there is now in Saudi Arabia a reform process backed by political will, with intent to lead the nation forward while maintaining stability and balance in a changing society. With the understanding that traditional structures and practices combined with a distrust of perceived western agendas for reform not indigenous to Saudi Arabia are slowing down the process of reform in Saudi Arabia, and with an appreciation of the need to appeal to national sentiment and not contradict traditional Saudi culture and practice, we nonetheless call for redoubled efforts towards greater reform and opening of the political process. Because of Saudi Arabia's position of global importance and its leading regional role in today's increasingly complex world of competing ideals, it is more critical than ever that the nation act as a regional role model on these important reform processes.

Within this context and through the Club de Madrid's formal and informal discussions with leading civil society and government stakeholders over the past year, we transmit the following findings identified by Saudi stakeholders as necessary for the continuation of the reform processes:

1. We encourage the passage of a long-awaited NGO law. This will lead to improved trust between the government and public sector and will encourage Saudis to work together to engage in society through the most productive and useful channels available to a citizen, the civil society.

2. Important steps in the Kingdom's electoral processes, such as the 2005 Municipal Council Elections, are crucial for building a society that believes in and participates in politics, elections and decision-making. However, these elected positions must be empowered in order to build trust, understanding and capacity in the elected as well as among the electorate.

3. We support the continuation of important National initiatives such as the King Abdulaziz Center for National Dialogue, but encourage a more proactive adoption of the Dialogue's recommendations at the legislative and executive levels. Building national consensus is essential to resolving internal issues but taking these recommendations to the top leadership and demonstrating that these important initiatives will lead to concrete change must be incorporated into the process.

4. Empowering the Shura Council with further powers beyond those of a mere consultative body is important for allowing citizens to take part in their nation's decision making mechanisms, something we note has recently been done by allowing it to propose legislation. We encourage the further development of such powers.

5. We continue to support the equal inclusion of all sectors of society, regardless of race, gender or religious belief or sect. Public awareness campaigns, especially in the case of women's equality, can go a long way towards helping women in a widely conservative society. Symbolic actions, such as appointment to positions of power of the marginalized, are important steps in this process and we further encourage this.

Notes

Findings informed by Project Activities.
Delivered, May 2009.

PROJECT FINDINGS AND RECOMMENDATIONS: TUNISIA

We understand that since independence, Tunisia has made great strides forward towards social modernity and economic prosperity. It has been a leader in promoting women's rights and establishing a modern interpretation of the Shari'a law within the context of the personal status law. However, through our project activities we have learned that there are several key steps needed to further secure equality, opportunity and freedom within the public sphere:

1. Difficult registration laws and processes for NGOs need to be improved. Legally registered NGOs' activities are monitored and sometimes banned and civil society is not totally free to exercise its rights. As an effective means of relieving current tension within civil society, reforming overly cumbersome registration laws will go a long way in establishing a stronger relationship between civil society and the government.

2. Political pluralism needs to be strengthened. Political activities are closely monitored and controlled, even during campaign season subjecting campaign material to censorship, effectively leaving candidates with no printed material. Because political constraints will lead to greater appeal for the extreme opposition, it is recommended that the political space is opened to help moderate political opinion.

3. A biased judiciary in some occasions contributes to a general lack of faith in the protection of rights. Consistency between law and practice should be guaranteed and lawyers and members of the judiciary must enjoy freedom of opinion without fear of punishment.

4. Freedom of expression and the media should be better protected. This will provide a pressure valve for opposition and will help to moderate public opinion and maintain stability.

Notes

Findings informed by Project Activities.
Delivered, June 2009.

FRIDE REPORTS

PREFACE

Associations are indispensable to the very survival of democracy and societal progress. Non-governmental organisations (NGOs) defending human rights at local, national or international level are the guardians of fundamental liberties, and often constitute the only framework through which minorities and other vulnerable segments of the population can ensure that their voices are heard, their rights respected and their participation guaranteed. The degree of effective use of freedom of association therefore constitutes an important barometer in judging the factual situation of democracy, human rights and participation in a country.

In addition to being a fundamental right in itself, freedom of association is also a precondition and safeguard for the defence of collective rights, freedom of conscience and religion, and therefore deserves special attention and vigilance. With the rise of transnational terrorism, recent years have witnessed the suppression of freedom of association in many countries in the name of national security. Obligations that expose the founders of associations to arbitrary admission criteria, pedantic verifications and unnecessary administrative hindrances are indicators of government efforts to exert political control. This may happen formally –via the adoption of laws that allow inappropriate limitations on freedom of association– or informally –through a lack of application of the law in practice and the predominance of informal rules that replace the rule of law.

Recognising the fundamental significance of freedom of association and a vibrant, active civil society for citizen participation and the dynamics of democratisation, the Club de Madrid, an independent non-governmental organisation of 70 former heads of state and government dedicated to democratic practice, embarked in February 2007 on a project aimed at strengthening dialogue on freedom of association across the Middle East and North Africa region. With the support of the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the United Nations Democracy Fund, the objective of the project has been to improve the capacity of both civil society and the authorities to construct a shared vision on the promotion of freedom of association. In cooperation with FRIDE and local partners, the Club de Madrid (CoM) has been engaging in efforts to strengthen dialogue between civil society and government, aiming to contribute, based on the CoM members' own leadership experience, to fostering the inclusion of civil society. With this end in mind, the project hopes to propose constructive legal and policy reforms that contribute to advancing citizen participation in national political debates on freedom of association, and more broadly, on democratic reform.

This report is one of a series of six country reports that provide independent analysis of the state of freedom of association and civil society in Morocco, Jordan, Bahrain, Egypt, Tunisia and Saudi Arabia, respectively. The reports are intended to accompany and support the aforementioned project led by the Club de Madrid by identifying both outstanding challenges and civil society's ideas on how to resolve them. Each report is based on a substantial number of consultations and interviews among local civil society stakeholders, government representatives across all levels, parliamentarians, political party representatives, journalists, union activists, women's and human rights activists, and lawyers and political analysts, conducted throughout 2007 and 2008. The independent analysis aims at facilitating public debate and furthering societal dialogue on freedom of association in the respective countries. The main findings and recommendations summarise the views expressed by the numerous local stakeholders who kindly granted us their time for an interview.

ABOUT FRIDE

FRIDE is an independent think-tank based in Madrid, focused on issues related to democracy and human rights; peace and security; and humanitarian action and

development. FRIDE attempts to influence policy-making and inform public opinion, through its research in these areas.

WORKING PAPERS

FRIDE's working papers seek to stimulate wider debate on these issues and present policy-relevant considerations.

ABOUT THE AUTHORS

FRIDE researcher Ana Echagüe graduated in International Relations and Art History from Tufts University and obtained her Masters in International Relations from the School of International and Public Affairs at Columbia University. Prior to joining FRIDE, she was Deputy Director at the University of the Middle East Project in Madrid. She has also worked as a financial analyst at Lehman Brothers in London.

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BAHRAIN: REACHING A THRESHOLD¹

EXECUTIVE SUMMARY

Bahrain's top-down reforms, initiated by King Hamad bin Isa al-Khalifa in 2001, were a welcome respite for a population weary of the violence and state repression that had characterised much of the preceding decade. To the surprise of many, King Hamad granted considerable space for civil society organisations (CSOs) to operate, abolished the hated State Security laws and provided an amnesty to opposition exiles. King Hamad's relatively benign treatment of CSOs and his tolerance for a wider degree of freedom of expression has won international praise, most effusively from the United States. The lack of legislative and judicial reform, however, means that Bahrain's political societies, CSOs, journalists and trade unions continue to operate under flawed and inconsistently applied legislation. Restrictive legislation such as the associations' law, the public gatherings law and those laws governing trade unions and the media urgently require amendment to concretely secure the rights that Bahrain is required to observe under its international obligations, including the International Covenant on Civil and Political Rights (ICCPR).

After the publication of a programme for reform in 2001, many Bahrainis hoped that the king would grant significant powers to an elected parliament, ending decades of discrimination against the Shia majority, and act in the interests of all Bahraini citizens. These hopes were dashed, however, with the promulgation by King Hamad of the 2002 Constitution creating an elected lower house, the Majlis al-Nuwwab, which lacks significant powers in the governing of Bahrain's affairs. Bahrain's parliament has been consistently hindered by a lack of trust between the Majlis al-Nuwwab and the government, resulting in a frequent deadlock in the passing of legislation. The inability of parliament to hold the government to account has only served to heighten suspicions that while the king has granted a considerable, albeit ill-defined, space for civil society to function, he is unwilling to devolve power over government affairs to elected representatives at both the national and municipal level. The king continues to appoint ministers without any parliamentary vetting procedures or the realistic possibility of the Majlis al-Nuwwab overturning his appointments. Consequently, some ministers feel that they are under no obligation to account for their activities to parliament.

The recent efforts by the government to redraft legislation regulating the activities of CSOs and the media, especially the consultative approach pursued by the Ministry for Social Development, are welcome, and the draft legislation constitutes a significant improvement on previous laws. Concerns remain, however, over the excessive interference of the government in civil society and the media without sufficient judicial oversight. The public gatherings law should be amended to ease restrictions on the location of public meetings and penalties for the vague offence of "any speech or discussion infringing on public order or morals" should be removed. Anti-terrorism legislation that allows for prolonged incarceration without trial is a grave infringement of citizens' rights and should be scrapped. To date Bahrain has only ratified four of the eight core International Labour Organisation (ILO) conventions and the right to strike remains severely limited, as does the ability of public sector workers to form unions. While Bahrain has shown a recent willingness to provide legislation to protect workers' rights, in reality foreign workers, who make up the majority of Bahrain's private sector workforce, continue to suffer from inadequate protection and exploitation.

Bahrain faces a series of grave challenges if it is to avoid an increase in the recent violence that has shaken the country. The introduction of laws governing freedom of association and expression must go hand-in-hand with a determined effort to end sectarian discrimination, as the government is currently perceived as being part of the problem rather than being at the forefront of efforts to end it. To reverse this trend, the

protections provided by the constitution must be applied by an independent judiciary, and a more open dialogue led by civil society to build understanding between Bahrain's communities should be encouraged. Ultimately, as the 10th year of his reign approaches, King Hamad will face a complex set of decisions in deciding how to balance the interests of the royal family while also addressing calls for further reform, or whether he should resist these demands by trying to manage growing dissent in the hope that Bahrain's economic growth will eventually assuage unrest among its citizens.

Bahraini civil society is both robust and diverse, a strength the country will increasingly rely upon to ease tensions between its communities and between Islamists and secularists. CSOs will be equally important if reform efforts are to regain momentum. This report, intended to accompany the Club de Madrid's efforts² to strengthen freedom of association in North Africa and the Middle East, provides an independent analysis of democratic reform and civil society in Bahrain. The findings and recommendations are based on interviews among governmental and non-governmental Bahraini stakeholders.

POLITICAL CONTEXT: THE DEMOCRATIC REFORM PROCESS TO DATE

Bahrain, an archipelago state situated in the strategically vital Persian Gulf, has a population of approximately 1 million, including 350,000 foreign residents. Approximately 60 percent of Bahrain's citizens are members of the Shia Twelver faith, although the country is ruled by a Sunni dynasty, the al-Khalifa family.³ At the tip of the "Shia crescent", a concept crudely outlined by King Abdullah of Jordan in 2004, Bahrain has been viewed as a key test for reforms to ease sectarian tensions in the region, encourage shared values and build a common Bahraini identity to overcome discrimination on religious lines.⁴ The reforms begun by King Hamad bin Isa al-Khalifa upon his accession to the throne in 1999 were greeted with relief by a Bahraini population weary of the systematic repression practiced during the latter years of the reign of his father, Sheikh Isa. The political and social space opened up in Bahrain has been filled with debate over the future direction of the country, not least upon the division of powers between the elected parliament, the Majlis al-Nuwwab and the royal family. Bahrain's experience is being observed with interest and a certain degree of wariness by other countries in the Gulf Cooperation Council (GCC), who are concerned lest Bahrain act as a template for demands for reform elsewhere.⁵

As well as allowing some much-needed breathing space for civil society in Bahrain, the top-down, managed process of reform in Bahrain has also had significantly positive consequences for the consolidation of power by King Hamad.⁶ After the economic stagnation and social unrest of the 1990s, King Hamad's reform programme has provided a valuable opportunity for the ruling al-Khalifa family to allow for the "decompression" of the tense atmosphere of the 1990s, a situation that came close to spiralling into all-out insurgency, while ultimately retaining complete executive power. As Gerd Nonneman has observed, liberalisation may not only reduce pressures on the regime but also essentially function as a "divide and rule" tactic, under which former opposition leaders are given access to limited parliamentary institutions, become stakeholders in state structures and seek the favour of the king to implement their differing objectives.⁷ By successfully persuading the largest, and pre-dominantly Shia, opposition party, al-Wefaq, to participate in seriously flawed elections to a parliament with weak legislative and oversight powers, the al-Khalifa family have made significant progress in legitimising structures devised in the 2002 Constitution that allows them to contain the opposition and appease Western sensitivities. This apparent stability is then employed to encourage vital external investment in Bahrain's emerging post-oil economy. Given the disharmony between the Sunni and Shia Islamist parties in the elected lower house of parliament, both the al-Khalifa family and the royally appointed upper-house of parliament have moved to present themselves as mediators between the Islamist parties and guardians of a more secular, tolerant form of government.

For now at least, King Hamad may have answered Huntington's "*King's Dilemma*" –consolidating the dominant position of the al-Khalifa family by carefully managing top-down reforms that pay homage to the rhetoric of democracy but do not extend to empowering the elected parliament. This royally instigated process has succeeded in fracturing the opposition and aims at establishing the royal family as a benevolent court of appeal that will arbitrate between the sectarian parties that characterise the Bahraini political landscape and occasionally grant their demands as an act of royal favour.⁸

Historical Background

After declaring independence from the United Kingdom in 1971, Bahrain underwent a period of fervent political activity as disparate groups came together to advise King Hamad's father, Sheikh Isa bin Salman al-Khalifa, on drafting the new state's first constitution, which was promulgated in 1973. This established a one-chamber legislature, the Constituent Council. This body was granted extensive powers, including the right to enact legislation, which the Emir could only delay, and the right to dismiss ministers. The 1973 Constitution established that, of the 42 members, 22 would be directly elected by the populace, 12 would be appointed by Emiri decree and 10 ministers would also have Council seats (though Sheikh Isa opted to appoint only 8 ministers so as to maintain a majority of democratically elected representatives).⁹

The unwillingness of the elected representatives to obey Shiekh Isa's wishes, an assertiveness that may have caught the royal family off-guard, resulted in the suspension of the Constituent Council by the Emir in 1975, as he was entitled to do under Article 65 of the Constitution. The Emir was also constitutionally obliged, however, to hold elections within two months of the dissolution.¹⁰ This obligation was ignored and, invoking the recently promulgated State Security Measures Law of 1974, the Bahraini state began a crackdown on opposition activists that saw thousands imprisoned during a 25-year period, of whom a significant number were tortured.¹¹ Prime Minister Khalifa bin Salman al-Khalifa was perceived during this time as the key executive authority, rather than Sheikh Isa, and it was he, through his control of the activities of the Interior Ministry, who became a resented figure among opposition activists. This legacy continues to have repercussions today as he approaches his 40th year in office.

The 1990s saw a campaign of violent protest against the regime, including several bombings perpetrated by the Islamic Front for the Liberation of Bahrain. A broad coalition of opposition activists known as the Bahrain Freedom Movement (BFM) was established in London.¹² As a means to try and assuage rising opposition to the government, Sheikh Isa established a consultative body, the Majlis al-Shura in 1992, but this lacked any real legislative authority. Protests intensified and peaked between 1994 and 1996, when Bahrain was rocked by a series of riots and occasional bombings. Armed resistance to the regime was incoherent, however, and the vast majority of opposition activists were unwilling to support a sustained armed insurgency against the regime.¹³ Upon his accession in 1999, Sheikh Hamad bin Isa al-Khalifa, recognising a need to distance his rule from the abuses committed under his father since the dissolution of the Constituent Council, established a Supreme National Committee for Drafting a National Action Charter in order to begin a process of reconciliation and reform. On 14 and 15 February 2002, of a turnout of 90 percent of eligible voters, 98 percent voted to support a National Action Charter which outlined a reform path for Bahrain, including an imprecise proposal for a bi-cameral parliament. The Charter also precipitated the dissolution of the State Security Courts and the amendment of the State Security Law, thus removing the most repressive state legal architecture.¹⁴

The high turnout and overwhelming support of Bahrainis for the National Charter was greatly helped by the visit of King Hamad to the home of Sayyid Abdullah al-Ghurayfi, where he met with Sheikh Abd al-Amir al-Jamri, a leading Shia cleric, and agreed that legislative power would rest with a democratically elected chamber –the Majlis al

Nuwwab– and that the Majlis al-Shura would have only an advisory role. These powers were to be enshrined in Bahrain's constitution. The king also signed a document agreeing to these recommendations, which was widely circulated as an assurance that he would keep his word in the future.¹⁵

The initial period of Bahrain's reform process appears to have been modelled on the Jordanian experience. Essentially it called for a National Charter to define a course for the country, while also facilitating the return of exiles, the release of political prisoners, the reinstatement of employees who were dismissed from their jobs as a consequence of their political activities and the repeal of repressive state security laws. In February 2002, King Hamad used the overwhelming endorsement of the vaguely worded National Charter as a mandate to promulgate a constitution which fell short of most Bahrainis' aspirations, consolidating power once again around the royal family, with the Constitution misleadingly citing Bahrain as a constitutional monarchy and changing the country from an Emirate to a Kingdom.¹⁶ The king also reneged upon his public declaration that the democratically elected Majlis al-Nuwwab would be the principal legislative chamber, dividing legislative authority between the two houses of the Majlis al-Watani (National Assembly), the Majlis al-Shura with 40 members appointed directly by the king, and the Majlis al Nuwwab with an equivalent number of representatives directly elected by the populace. Given that the Majlis al-Shura maintained a deciding vote in the case of deadlock between the two houses, and the subsequent gerrymandering that characterised the 2002 and 2006 elections, the king was perceived to have betrayed the trust placed in him to empower a truly democratic legislature.¹⁷

If the opposition viewed the new Constitution as a breach of faith on the part of the king, preparations for the 2002 elections convinced them that the government was embarking on a strategy to provide a veneer of democracy while denying Bahrainis the opportunity to participate in fair and transparent elections.¹⁸ The electoral districts of Bahrain for the 2002 elections, which remain substantially unaltered today, are a gross example of gerrymandering. In 2003 the Bahrain Human Rights Society (BHRS) pointed to the imbalance of constituents in the electoral districts, with one predominantly Sunni district containing barely 400 voters while a Shia district could have up to 14,000.

In protest at the promulgation of the new constitution and the fixing of boundaries to limit the impact of the Shia vote, the main Shia party, al-Wefaq, together with several secular opposition parties such as al-Waad, refused to participate in the 2002 elections to the Majlis al-Nuwwab. Shia clerics encouraged a boycott of the polls and national turnout for the second round of voting was low, registering barely 43 percent of eligible voters. The reversal of this decision in 2006 and subsequent participation of al-Wefaq in elections led to a split in their ranks, with a relatively small minority of members leaving to form the al-Haq movement, which continues to advocate non-participation in elections. Nevertheless, al-Wefaq, under the leadership of Sheikh Ali Salman, a learned and widely respected scholar, together with the support of the highest Shia religious authority in Bahrain, Sheikh Isa Qassim, and the blessing of significant marjas, including Ayatollahs al-Sistani and Fadlallah, retained the support of the majority of the Shia electorate and won 17 seats in the 40-seat Majlis al-Nuwwab in 2006.¹⁹

During the elections al-Wefaq avoided overt sectarian references and in some cases offered support to liberal Sunni candidates. However, gerrymandering, combined with a disappointing vote for the al-Waad movement, ensured that the opposition did not secure a majority of seats in the Majlis al-Nuwwab. Generally, the government can continue to rely on the support of the Sunni Islamist parties, al-Minbar and al-Asalah. Together with the support of most of the independent members of the Majlis al-Nuwwab they form a majority that is broadly supportive of the government.

Undoubtedly the most divisive issue of the 2006 campaign were the revelations published by a British-Sudanese adviser to the Bahraini Government, Salah al-Bandar, who alleged that the government had established a task force headed by the Minister for Cabinet

Affairs, Sheikh Ahmed bin Attiyatallah al Khalifa, to undermine the Shia community, and implicated senior Sunni politicians including those from the al-Minbar and al-Asalah parties as having received clandestine payments from the government. The allegations included a plan to increase naturalisation of Sunnis from other countries, the infiltration of Shia civil society organisations (CSOs) and the setting up of fake non-governmental organisations (NGOs). These allegations, combined with the perceived reluctance of the government to investigate the claims properly, and the banning of any discussion of the "Bandar report" in the media, led to increased mistrust and indirectly damaged al-Wefaq for its engagement with the government. The government made an appeal for national unity in the wake of the Bandar Report controversy, but as one prominent Shia leader observed, national unity was exactly what the government was perceived to have betrayed. In response to domestic and international controversy, the king moved to make some conciliatory gestures including the appointment of a Shia deputy prime minister – Dr. Jawad al-Arayyed.

The government has done little to allay mounting fears over its naturalisation practices with regard to foreign Sunni citizens, which for many confirms that there is indeed a deliberate policy to engineer a Sunni majority.²⁰ The number of Shia participants in top government positions remains woefully unrepresentative, with opposition leaders alleging that Shia representation may be as low as seven percent of the top 500 government posts. Shia citizens are also totally excluded from any positions of command in the security services, which is a profound demonstration of the state's lack of trust in the loyalty of the majority of its citizens. There are also serious allegations of Shia not being able to buy land in certain areas which have not been adequately addressed. This is exacerbated by a lack of transparency over land acquisitions or transactions made by senior royals. It is also widely believed that the royal family currently owns the majority of land in Bahrain and are distributing it both to reward supporters and for personal economic gain.

The UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has recently criticised Bahrain for the lack of economic social and cultural rights accorded to the Shia population and the UN Committee on the Rights of the Child (CRC) has also noted significant disparities between social services provided in Sunni and Shia areas.²¹ In addition to widespread anger over a lack of transparency over land transactions, there is also significant frustration that the reclamation of land from the sea is being treated as a personal project of the royal family.²²

Executive

The constitutional powers of King Hamad are extensive and include the power to dissolve parliament, impose martial law, alter the constitution, veto laws passed by the National Assembly, along with the power of appointment and removal of ministers and judges. However, royal decrees must ultimately be ratified by parliament and can be overturned by a majority of both houses, although attempts by the Majlis al-Nuwwab to amend legislation introduced unilaterally by the king prior to 2002 have consistently met with failure. The Family Council of the al-Khalifa also plays an important role in deciding the distribution of resources, but although it has been in existence since 1932 and was made a formal state body in 1973, its relationship with other state institutions is not codified. Ministers and senior officials are frequently directed by members of the ruling family, an informal system of royal command and patronage highly detrimental to the transparent functioning of government. The relationship between the king and his uncle, Prime Minister Sheikh Khalifa bin Salman al-Khalifa, is not straightforward, but it is believed the prime minister was initially sceptical about the ability of the king to limit or control the reform process. The influence of the prime minister is highly significant, and is not merely restricted to those senior officials whom he has personally appointed and instructs, but also applies to the courts, the security forces and the economy. The Crown Prince wields increasing influence over Bahrain's economy due to his control of the Economic Development Board (EDB).

Bahrain's Cabinet of Ministers normally consists of 24 ministers, including the prime minister and three deputy prime ministers. Approximately half of the current cabinet is derived from the al-Khalifa family. Ministers are not selected by parliament and therefore their position is based entirely upon the favour of the royal family. While some ministers, most notably those not of the al-Khalifa family, have proved willing to cooperate with the Majlis al-Nuwwab, MPs complain that legislation agreed with ministers can often be revoked under instruction from the prime minister or another senior member of the royal family.

At a local level the government exercises its authority through five local governorates, which take precedence over the elected municipal councils. The Ministry for the Majlis al-Shura, municipalities and agriculture is the relevant ministry for local authorities. The municipal councils frequently complain that they have little or no influence over local policy and expenditure.

Legislative

Under the Constitution legislative authority is divided between the king and the National Assembly. The upper house - the Majlis al-Shura is appointed by the king, while the lower house - the Majlis al-Nuwwab, is elected by the popular vote.²³ Both houses consist of 40 members and, according to the Constitution, legislation must be passed by the king and the legislature. The king may veto laws passed by both the Majlis al-Shura and Majlis al-Nuwwab, but this may be overturned if both houses, meeting in a joint session of the Majlis al-Watani, vote by a two-thirds majority to reverse the king's veto, an event that is highly unlikely given the gerrymandering of constituencies by the government and the royal appointment of all members of the Majlis al-Shura.

While both the Majlis al-Shura and the Majlis al-Nuwwab can propose legislation, the official text of the legislation must be prepared by the Cabinet Office of Legal Affairs, which is overseen by the Ministry for Justice and Islamic Affairs. There is a consistent trend whereby the government rejects bills originating from the parliament, delays legislation indefinitely and/or makes substantial changes to the original bill before sending it back for ratification by parliament. As a consequence the legislative process suffers from frequent and prolonged deadlock, which is a source of frustration for ministers and parliamentarians. Both houses of parliament also suffer from a lack of legal advice when trying to initiate legislation.²⁴ Under Article 66 of the Constitution a two-thirds majority of the Majlis al-Nuwwab can pass a vote of no-confidence in a minister, except for the prime minister. This has not happened to date due to the lack of cooperation between al-Wefaq, the Sunni parties and independents, with the Sunni parties being sympathetic, to varying degrees, to the government, and it remains to be seen whether this power can indeed be exercised.

The Majlis al-Nuwwab does have the right to question ministers, although this is frequently frustrated by the current Speaker, who refuses to assert the right of the Majlis al-Nuwwab to question certain ministers, including the unpopular Minister for Cabinet Affairs, Ahmed bin Attiyatallah.²⁵ Even when agreeing to be questioned, some ministers have treated the elected house with contempt, with the Finance Minister, Ahmed bin Mohammed al-Khalifa, walking out of a session of parliament and the Minister for Municipalities and Agriculture ignoring calls for his resignation on corruption charges stating: "Why should I bow down to their demand when I have been appointed by the Kingdom's leadership and not by parliament?"²⁶

The Majlis al-Nuwwab does not audit the state finances, although some ministers have volunteered financial statistics when requested. Other ministries are apparently exempt from financial oversight, such as the Ministry for the Interior, Defence and the prime minister's office. According to royal decree, the Financial Control Bureau reports directly to the king and the parliament similarly has no oversight over the activities of the highly influential Economic Development Board (EDB) and the Supreme Council for Women.

Bahrain is a regional leader in extending the franchise to women and allowing women to run for public office. In the legislative elections of 2006, 18 women campaigned for

election to the Majlis al-Nuwwab, and five ran in the municipal elections. One woman, a prominent supporter of the government, Latifa al-Qa'oud, was unopposed in her district and became Bahrain's first elected female MP. A recent trend in Bahrain, however, has been the rejection of some of the more secular initiatives of the government by the political societies of the Majlis al-Nuwwab, including opposition to the introduction of a personal status law. To date sectarian mistrust has prevented bi-partisan cooperation between the Islamist parties but the potential for a coherent common Islamist agenda in the Majlis al-Nuwwab has alarmed Bahraini liberals. The conservative Sunni political society, al-Asalah, advocates the strict observance of a narrow interpretation of Sharia law and often finds itself in broad agreement with leading figures from Al-Wefaq in their opposition to the more secular instincts of the royally-appointed Majlis al-Shura. The other Sunni political society in the Majlis al-Nuwwab, al-Minbar, led opposition to the government's signing of the International Covenant on Political and Civil Rights (ICPCR), citing their rejection of the freedom to convert to another religion, an offence against Islam which in the opinion of their President should carry the death penalty.²⁷ The Sunni Islamist parties have also stated their support for restrictive media laws that would allow a broader interpretation of offences against Islam. The Islamist success in the 2002 and 2006 elections has allowed the government to sow seeds of doubt as to whether many of Bahrain's civil liberties could paradoxically be lost through the empowerment of its elected institutions.

There is currently a grave lack of cooperation between the political societies of the Majlis al-Nuwwab along sectarian lines.²⁸ The Sunni parties seem to be especially reluctant to work with al-Wefaq and, indeed, those who have proposed to do so have suffered politically, most strikingly in 2005, when the leader of al-Asalah, Adel al-Mouwda, was replaced because of his perceived closeness to Shia Islamists.²⁹ Some political leaders have cited the need for external interlocutors to stimulate dialogue between the political societies as indicative of the glaring lack of trust and cooperation between the different factions of the Majlis al-Nuwwab. The work of parliamentary committees flounders along sectarian lines and a lack of defined powers and staffing resources. Relations and cooperation between the Majlis al-Shura and the Majlis al-Nuwwab remain poor and occasionally acrimonious. Al-Wefaq particularly is coming under increasing pressure from its Shia constituency to demonstrate tangible benefits at the national and municipal level for its participation in the elections of 2006. The International Institute for Democracy and Electoral Assistance (IDEA) has observed that the principal reason for the dissolution of the 1973 parliament was the increasing frustration of parliamentarians in their efforts to draft and pass laws, which inevitably led to conflict with the government. It remains to be seen whether the current parliament can avoid a similar fate.³⁰

Judiciary

Bahrain's legal system derives from laws inherited from British Common Law, Sharia law and tribal precedents.³¹ The higher civil and criminal courts are presided over by three judges, whose decisions can be referred to a court of cassation which is the final appellate court. Bahraini law does not allow for trial by jury. The application of Sharia law is divided into parallel courts for Shia and Sunni citizens, which rule on personal status cases. Rulings by Sharia courts can be appealed to the High Sharia court of appeal. The decisions of the Sharia courts are frequently criticised by women's groups, including the Supreme Council of Women, the Women's Union and the Women's Petition Committee, which have aimed at securing a codified personal status law to protect women's rights. Bahrain's Constitutional Court has jurisdiction over interpreting the constitutionality of laws and statutes and its president and six members are directly appointed by the king.

While the constitution established the nominal independence of the Bahraini courts, in practice there is extensive interference from the executive. The king continues to chair the Higher Judicial Council, appoints judges by decree and many members of the judiciary

are members of the al-Khalifa family. There are an insufficient number of judges to hear the amount of cases before the courts, resulting in significant delays in hearings. The government also employs judges from abroad, who do not have a deep knowledge of Bahraini law and may bring malpractice from other court systems to Bahrain. The Constitutional Court has been subjected to particularly sharp criticism from civil society activists for its lack of expertise and is widely perceived as a tool to protect the king and the Cabinet rather than as a safeguard of citizens' rights.³² The Office of the Public Prosecutor (OPP) is similarly viewed as a tool of government policy rather than an independent state agency.

The judiciary has proved unwilling or unable to rigorously uphold citizens' rights in challenging sectarian practices whereas, paradoxically, when allegations of sectarianism have been the subject of discussion in the media, the judiciary has not hesitated to invoke anti-sectarian legislation to censor newspapers and close websites in the name of protecting the unity of Bahrain. Civil society activists frequently express their concerns regarding the futility of legislating to protect citizens' rights unless the judiciary, Courts Secretariat and the Office of the Public Prosecutor are granted the requisite independence and expertise to interpret the law fairly and consistently. The government has recognised the need to improve the capacity of the judiciary, especially with regard to commercial law, given its obvious repercussions on the country's economy, and has begun to work more intensively towards judicial reform with agencies such as the United Nations Development Programme (UNDP) and the American Bar Association (ABA), as well as expanding the Institute for Legal Studies. It is doubtful, however, that the king and other senior royals are willing to allow a truly independent judiciary to emerge in Bahrain.

ASSOCIATIONS LANDSCAPE

There are currently just over 460 CSOs operating in Bahrain, most of which have only become operational in the last few years. The inexperience of many of the leaders of these organisations, together with an internal debate in the Bahraini government on the extent to which CSOs should be monitored and regulated, has led to significant incoherence and mistrust between the government and civil society. Although the proliferation of CSOs in Bahrain is a reflection of the increased freedoms enjoyed by Bahrainis since the succession of King Hamad, there also remain considerable restrictions that limit their activities. Nevertheless, there are signs of a willingness of the Ministry for Social Development to substantially alter existing legislation and the Minister has, in consultation with CSOs, introduced a draft bill which allows for a much more permissive civil society environment – legislation which still has to be ratified by the king and parliament. The Minister, Fatima bint Mohammed al-Beloushi, has also established a fund of 50,000 BD for civil society training over the next two years. A positive step would be for this consultative approach to be replicated by other government ministries, most pertinently by the Ministry for Labour and the Ministry for Information.

Political parties/associations

Political parties are officially illegal in Bahrain, although political societies, as defined and regulated by Political Societies Law No. 25 of 2005, assume very much the same role. While some parties such as al-Waad regularly complain about the banning of political parties, others do not see the legalisation of the Arabic term for party, *hizb*, as a key issue, with some even regarding it as an overly divisive term which has more negative connotations than the English word “party”. There are currently 15 political societies in Bahrain, three of which are represented in the Majlis al-Nuwwab. All of these three are Islamist: the mainly Shia al-Wefaq society and the predominantly Sunni societies, al-Asalah and al-Minbar. Al-Asalah defies easy categorisation as a “pro-government” political society however. Their Salafist ideology has precluded close cooperation with al-Wefaq, but they have shown an increasing frustration with what they view as government mismanagement and corruption

and in May 2008 led a campaign to censure the Minister for Municipalities and Agriculture, Mansour Hassan bin Rajab, and refused to accept a parliamentary committee verdict which cleared him of corruption charges. Ironically, and indicative of the lack of cooperation in the Majlis al-Nuwwab, this effort to censure a minister suffered from the absence of al-Wefaq, whose members have increasingly boycotted parliament in protest at what they see as a lack of government cooperation and their limited ability to seek information and question ministers.³³ A lack of consensus on strengthening the power of the Majlis al-Nuwwab has damaged the credibility of parliament in the eyes of many Bahrainis who have become increasingly frustrated with the inability of their elected representatives to deliver meaningful change. Within the Shia community this has led to a trend of growing support for the non-participatory al-Haq movement.

While the activities of registered political societies do not encounter overt harassment by the government, restrictions such as the public gatherings laws, which oblige societies to notify the government 72 hours prior to a public meeting, as well as constraints on freedom of expression, fundraising and publications imposed by current legislation, continue to frustrate political activity in Bahrain. None of the Islamist parties have fielded a female candidate to date, with al-Asalah even going so far as to oppose women's right to vote, although al-Wefaq has previously supported women candidates from al-Waad and has its own internal women's committee.

Professional associations

Professional associations are an influential part of civil society in Bahrain, although this influence is often exercised discreetly. While in the past professionals have come together to found clubs, such as the Engineers Society or the Bahrain Bar Society, professional associations have tended not to become engaged on overtly political issues, and they have been careful not to offend the government or the judiciary. The Bahraini Journalists Association (BJA) was finally granted legal status by the government in 2000, although since then the government has been unwilling to allow more than one media association. The BJA has become more assertive in recent years in highlighting censorship issues but its activities are hampered by the reluctance of many journalists to ostracise themselves from the Ministry for Information or their editors. Of key importance to the Bahraini economy is the Bahrain Chamber of Commerce and Industry (BCCI), which represents employers' interests and has played a prominent role in advising the government on economic policy. While the BCCI generally enjoys a good relationship with the government, there have been increasing complaints from prominent business leaders with regard to the lack of competence within the government and the courts to oversee Bahrain's economy, in addition to the practice of some members of the royal family of circumventing standard corporate and financial practice.

Historically, the al-Khalifa family's oil wealth has encouraged a system of patronage that pervades Bahraini society and its institutions. In 2007, however, Bahrain introduced its first income tax, which, although currently standing at barely one percent, and condemned as un-Islamic by senior Shia and Sunni clerics, may be seen as a recognition of a need to adjust to a post-oil reality.³⁴ The erosion of oil revenues has led to senior figures within the royal family such as the prime minister and the Crown Prince engaging in increased economic activity in alternative sectors, not least in construction and in the financial sector. This has led to calls for oversight and transparency with regard to the business dealings and trading in state assets by senior members of the al-Khalifa family. The Crown Prince, Salman bin Hamad al-Khalifa, has also recognised that reforming Bahrain's economy is key to the al-Khalifa family's perceived legitimacy to rule and there are significant hopes that his Economic Development Board (EDB), although beyond the scrutiny of the elected Majlis al-Nuwwab, will mitigate social tensions among Bahrain's populace.

As well as raising questions on the need to regulate new economic developments, the BCCI has also been frustrated in its recent efforts, in cooperation with Bahrain's trade unions,

to draft a new labour law, its recommendations being all but ignored by the government. A likely outcome of the Bahraini government's attempts to diversify the economy is that the private sector will play an enhanced role in influencing government policy.

Labour unions

Trade unions were legalised for the first time in 2002 and there are now approximately 40 trade unions active in Bahrain. Most workers, however, remain unaffiliated to any trade union - in 2005, it was estimated that only four percent of all Bahraini workers were members of a trade union.³⁵ Public sector workers are generally not permitted to unionise, although the Bahraini government, in its submission to the UN Human Rights Council in March 2008, has committed to reviewing this restriction under Article 10 of the Trade Union Law in order to comply with international labour standards.³⁶ There was a marked increase in strike action in 2007, with public sector workers particularly aggrieved at the lack of commensurate wage increases to meet rising prices. Clashes have resulted in trade union activists being dismissed for organising strikes without government permission, including, most recently, the dismissal of the Vice President of the Bahrain Postal Workers Union for unsanctioned trade union activity.

Unions are currently restricted by law in publishing their own newspapers, which restricts the dissemination of information on workers' rights. The General Federation of Bahraini Trade Unions (GFBTU) was established to serve as an umbrella organisation for the interests of Bahraini private sector workers. The GFBTU currently has a membership of 25,000. Representation of migrants in Bahraini trade unions remains negligible as many foreign workers assume they will be expelled from Bahrain for engaging in union activity. Recourse to the judicial system by migrants is almost unheard of and labour cases often take over a year to process, during which time an employee is frequently suspended without pay. Approximately 50,000 foreign housemaids fall outside any labour law and their interests are not represented by any trade union. In 2007 the Embassy of the Philippines reported that 749 of their nationals sought refuge from their employers due to abusive working conditions.³⁷

Human rights organisations

Bahrain has several vocal and vibrant human rights organisations. The Bahrain Centre for Human Rights (BCHR) is widely known across the region and in Europe and North America for its outspoken criticism of the al-Khalifa family's rule. The BCHR was established with state support in 2002 but quickly came into conflict with the government who revoked their licence in 2004 after the director of the BCHR, Abdul Hadi al-Khawaja, publicly accused the prime minister of corruption, an offence for which he was briefly imprisoned. The UN Special Representative on the Situation of Human Rights Defenders expressed her concern that the closure of the BCHR was designed to prevent the organisation carrying out legitimate human rights work. The government justified the closure of the Centre on the basis that the organisation was more focused on political agitation than legitimate human rights activities.³⁸ Despite its current illegal status, the BCHR continues to run a highly effective international campaign, having adopted a confrontational approach in its relations with the government rather than one of engagement. They have been criticised for this by some opposition activists, who accuse the BCHR of irresponsibly exaggerating government abuses for an external audience. The BCHR also works closely with the Bahrain Human Rights Society (BHRS), Bahrain's other significant human rights organisation. The BHRS has succeeded in winning the respect of a broad range of representatives from government, opposition parties and civil society.

After the violent protests in December 2007, which resulted in the incarceration of over 20 protestors without charge for a period of several weeks, during which time allegations of torture were made, the BHRS acted as an intermediary between the government and civil

society, requesting unconditional access to the prisoners in order to allow an independent medical examination of them and, when this was not granted, focused international attention on the lack of cooperation forthcoming from the government. The Bahrain Human Rights Watch Society (BHRWS) has been widely dismissed as a government stooge, in part due to the allegations made against its director in the Bandar report, which details payments to the BHRWS. Such a dismissal of the organisation may be unfair as it has played an important role in calling for electoral reform and highlighting problems of poverty in Bahrain.

The Bahrain Youth Society for Human Rights (BYSHR) is a relatively new and increasingly popular organisation which ostensibly serves as a human rights organisation, but essentially aims to mobilise political opposition to government on a wide range of political, social and economic issues. The BYSHR is led by the charismatic Mohamed al-Maskati, who has of late convened a number of youth workshops to advocate peaceful methods of opposing the regime. While the BYSHR adopts a highly critical and confrontational approach, excluding the use of violence, this in itself hardly warrants the tactics of the government, who have refused to register the BYSHR on questionable grounds, citing the age of its members. The government also seems to have had a hand in al-Maskati's recent deportation from Egypt where he travelled to attend a conference, and in late 2007 it charged him with operating an illegal organisation. These actions have seen his profile soar both domestically and internationally.

Despite the proliferation of civil society organisations, few of these attach proportionate importance to campaigning on migrant workers' human rights, with the exception of the BCHR, which helped establish the Migrant Workers Protection Society, an organisation that suffers from a severe lack of funding and is, at best, tolerated by the government. In the case of migrant workers, there is a general consensus among civil society leaders that any agitation for their rights under Bahraini law would likely lead to arbitrary expulsion from the country. Considering that foreign nationals constitute approximately 80 percent of the private sector workforce, this is a grave denial of representation to a significant sector of Bahraini society.³⁹ There also exists a vacuum within the Bahraini civil society landscape for an organisation to represent the rights of Bahraini Farsi speakers, whose language and traditions, rather than being protected, are frequently treated with disdain by government representatives.⁴⁰

Women's organisations

Women have increasingly assumed an important role in Bahrain's civil society landscape. Enthusiasm has not always been matched by administrative know-how or government support, most of which has been channelled to the Supreme Women's Council led by King Hamad's wife, Sheikha Sabeeka. There are currently 12 women's societies, but most of these do not have permanent offices. Many women's organisations, especially those linked to the Islamist movements, tend to be charitable organisations rather than women's rights advocacy groups and work to a community rather than a national agenda. Aside from the Supreme Council for Women, other organisations which engage in advocacy on social issues include the Awal Women's Society, the Child and Mother Welfare Society, Bahrain Women's Union and the Young Women's Society, but their activities are restricted by a lack of funding and they rely upon the voluntary work of a few key members. Most of the leading women's organisations rely upon government funding to implement their projects.

The Supreme Council for Women works together with UNDP to run regular gender awareness seminars and host courses on women's rights in the workplace. The Council has riled many of the Islamist parties for its outspoken championing of a personal status law to protect women's rights. Although funded by the state, the Supreme Council for Women cannot be seen as simply a government mouthpiece. Indeed, many of the senior members of the royal family and the government are uncomfortable with their agenda, but it remains protected by the patronage of the king's wife, Shaikha Sabeeka. Other prominent issues for women's groups include reforming procedures to grant equal citizenship rights to the

children and spouses of Bahraini women as well as the provision of social benefits to women divorcees. The Bahraini government has of late shown a willingness to improve women's rights, not least through women's enfranchisement and increased representation in the public workforce. While Islamist parliamentarians have been seen by secular women's groups as a primary threat to the furthering of women's rights, in reality these groups, which attract most domestic and international media attention, constitute a minority of Bahraini women's opinion. Indeed, voting trends demonstrate that women generally favour Islamist parties. Prominent secular groups are also relatively inactive in engaging in social work in the majority of Bahraini communities, where local Islamist women's groups tend to be more organised and effective.

Institutions for public support and research centres

The government has established a number of institutions to assist CSOs and the public. Key among these is the Bahrain Institute for Political Development (BIPD), which works closely with UNDP and other international agencies to provide training for elected representatives and CSOs. It has been criticised, however, for expending more resources on groups seen to be close to the government. The Ministry for Information has also established an extensive training programme for journalists and has stressed that advancing journalistic standards will avoid future confrontations between the government and the media. These training initiatives have been broadly welcomed by journalists but some senior journalists have noted the rather condescending approach adopted by the government to its relations with the media. The government has also committed to establishing a National Human Rights Centre to formulate a national plan for the protection of human rights, in accordance with the Paris principles.⁴¹

There are a range of intergovernmental and non-governmental international organisations working with the Bahraini government, state institutions and civil society. Among the organisations currently engaging in capacity building for political and civil society participation are the National Democratic Institute (NDI), the American Bar Association (ABA), the International Republican Institute (IRI), and a number of UN agencies, including the International Labour Organisation and the United Nations Development Programme (UNDP). The United States, through its Middle East Partnership Initiative (MEPI) programme, and the governments of France, Germany and the UK are also engaged in institutional reform and training initiatives. However, the Bahraini Government retains significant control over the activities of UNDP through its funding of their programmes in Bahrain. NDI's activities were restricted after their representative's visa was not renewed due to government displeasure over his activities in Bahrain.⁴² The 2006 election was notable for the absence of international election monitoring groups in the country. Foreign associations operating in Bahrain continue to be heavily restricted and any Bahraini CSO that wishes to associate with a foreign association must seek permission from the Ministry for Social Development beforehand.

Truth and Reconciliation Committee

In June 2007, eleven Bahraini human rights organisations and opposition groups formed a truth and reconciliation committee in order to address human rights abuses by the government during the reign of Sheikh Isa.⁴³ The Bahrain Human Rights Society (BHRS) claimed that they had the support of the king in seeking to establish such a body. In 2005 the UN Committee Against Torture (CAT) cited its concern over the controversial Decree 56/2002, which granted security forces immunity from prosecution for abuses committed prior to 2001, and the lack of a process for victims of torture and extra-judicial killings to seek redress. There are increasingly vocal calls for decree 56/2002 to be revoked, which protects many serving members of the security forces from prosecution and also foreign nationals who were allegedly contracted to employ such methods, including a British citizen, Ian Henderson, who held a senior position in Bahrain's security forces for almost 30 years. A

move by the government in 2008 to curtail such a truth and reconciliation process could exacerbate pre-existing tensions considerably.

LEGAL FRAMEWORK

Constitution & international treaties

The Bahraini Constitution explicitly protects the right to free association. Article 27 states that: "The freedom to form associations and unions on national principles, for lawful objectives and by peaceful means is guaranteed. Communications shall not be censored or their confidentiality breached except in exigencies specified by law, provided that the fundamentals of religion and public order are not infringed."⁴⁴ The term "national principles" underlines the government's fear that CSOs will be used for sectarian purposes, but is in reality often applied as a means to block debate on overt sectarian practices. Freedom of expression and media rights are stipulated under Article 23 of the constitution: "Freedom of opinion and research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by the law provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced and discord or sectarianism is not aroused."⁴⁵ The nuance between freedom of expression and the prohibition on causing discord is open for interpretation and it has been argued that this article of the Constitution should be permissive rather than establishing over-zealous restrictions which may be applied arbitrarily. The Constitution also establishes the principle of an independent judiciary under Articles 104-106.

Bahrain has moved of late to ratify a number of international conventions protecting citizens rights including the International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1990), the Convention on the Rights of the Child (CRC-1991), the Convention against Torture (CAT-1998), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-2002), the International Covenant on Civil and Political Rights (ICCPR-2006), and the International Covenant on Economic, Social and Cultural Rights (2007). Bahrain has, however, applied reservations to many of its international treaties, including the International Covenant on Civil and Political Rights (ICCPR) in 2007, where it added belated reservations to Articles 3, 18 and 23, which deal principally with equal rights between men and women, religion and the family. The government of Portugal formally objected to Bahrain's reservations on these articles, citing them as "fundamental provisions of the Covenant" and stating that "the first reservation [the recognition of equality between men and women] makes it unclear to what extent the Kingdom of Bahrain considers itself bound by the obligations of the Covenant..."⁴⁶ Bahrain has also applied reservations to CEDAW where it contradicts the application of Sharia law and nationality rights, reservations which the UN Human Rights Council asked Bahrain to remove during its Universal Periodic Review (UPR) of Bahrain's human rights practices in April 2008.

Bahrain added reservations to CERD where it permits the hearing of a dispute by the International Court of Justice (ICJ), and the International Covenant on Economic, Social and Cultural Rights, where Bahrain wishes to maintain a ban on strike action in "vital and important facilities."⁴⁷ In recent years Bahrain has met its reporting obligations under these treaties and has been broadly praised for engaging UN rapporteurs, hosting, among others, visits from the UN High Commissioner for Human Rights in 2001 and the Special Rapporteur on Trafficking in Persons in 2007.

National legislation

The king and the Majlis al-Shura maintain disproportionate influence over the legislative process in comparison to the elected Majlis al-Nuwwab. These powers are contrary to the Article 25 of the ICCPR which asserts that legislative power should rest with the elected house.

Political Societies Law

The Political Societies Law promulgated by King Hamad in 2005 has been criticised for banning the establishment of parties, its restrictions on societies with regard to fundraising and the vague proviso that parties cannot be established on the basis of class, sectarian, ethnic or professional grounds. Political societies are also opposed to articles in the law which require societies to request permission from the Ministry for Justice and Islamic Affairs (MOJIA) prior to contacting overseas political parties or institutions or travelling abroad to attend an international conference. The law also places a ban on foreign funding or training, raises the required membership age from 18 to 21 and gives the MOJIA discretion over whether to reject an application without clear legal recourse to the courts.⁴⁸ The MOJIA can dissolve a political society with permission from the High Civil Court. Despite being ratified by both houses of parliament, both al-Wefaq and al-Waad asked the king not to sign the law, a request the king ultimately refused.

Associations Law

CSOs in Bahrain operate under the 1989 Law of Associations (21/1989), which allows for significant government interference in their activities. The law specifically prohibits associations from political involvement and grants the Ministry for Social Development intrusive powers over CSOs including the powers to nullify elections, appoint a board of directors, inspect headquarters, confiscate documentation and audit finances. Registration can also be refused if the Ministry for Social Development believes that the aims of the prospective association are already served by an existing body. If 60 days elapse without a response then the application is deemed to have been automatically denied. Funding from foreign sources is prohibited and affiliations or membership through an association of a foreign society, union or club are also forbidden, unless special permission from the government is secured. Employees of a society are not permitted to serve on the board of directors. CSO leaders complain that as well as granting overly intrusive powers to government ministries to inspect and regulate their activities, the law also does not provide for sufficient recourse to the courts. In 2005, the UN Committee against Torture expressed its concern regarding serious restrictions placed on CSOs, including those dealing with human rights.⁴⁹

There have been successive attempts to draft a new associations law. In 2006, the government introduced legislation which was heavily criticised for not addressing the concerns of CSOs and imposing further restrictions on their activities, and was withdrawn under public pressure.⁵⁰ The Ministry for Social Development is currently drafting a new associations law in consultation with a broad range of civil society leaders and the International Center for Non-Profit Law (ICNL). The new draft law has been praised for allowing the *de facto* registration of a society if the government does not reply to their application within 60 days. It also proposes to remove the ban on political activities for CSOs, and allow non-nationals to establish CSOs in Bahrain, which would constitute a significant breakthrough for migrant workers. However, the proposed law does not address many of the serious restrictions placed on CSOs, including the obligation to seek ministerial approval for fundraising activities. Under the law, the Minister for Social Development also retains the right to appoint board members and annul elections, and does not sufficiently make reference to judicial oversight with regard to these powers. Furthermore, it imposes the requirement for informal voluntary groups to register with the government, defining such informal organisations as a group of people meeting to discuss issues of public concern or a "special interest". This is an unnecessary infringement of the right to association, which could be used to curtail freedom of expression by groups of individuals who do not seek to establish formal associations. The provision for the monitoring of CSOs by federations is also unclear and CSO leaders have recommended its omission in order to avoid confusion.

Furthermore, a Bahraini CSO that wishes to associate with a foreign association must seek permission from the Ministry for Social Development prior to affiliating with foreign

organisations. Under the recent draft law foreigners who are members of foreign political organisations will also be banned from joining Bahraini organisations. The proposed law appears to have been based to some degree on legislation introduced in Jordan, where the government has continued to heavily restrict CSO activities, contrary to its obligations under the ICCPR. In drafting a new associations law, the government should not seek to impose specific criminal sanctions against CSOs, where pre-existing penal laws already suffice, including for offences such as fraud or sedition, and punitive measures imposed by the Ministry for Social Development should be subject to judicial oversight.

Electoral Law

The Election Law of 2002 grants the right to vote to all Bahraini citizens over the age of 21. Citizens of GCC countries who are Bahraini residents as well as GCC non-residents who own property in Bahrain are also allowed to vote. Citizens of non-GCC countries are not allowed to vote, although extensive naturalisation of Sunni citizens from non-GCC countries has been a feature of government policy in recent years. Al-Wefaq, al-Waad and other opposition groups are now urging significant reform of the electoral laws including the establishment of an independent electoral commission to curtail gerrymandering and other electoral infringements, the right of international organisations to observe the election and the expansion of the powers of the Majlis al-Nuwwab. Al-Wefaq has also suggested that proportional representation should be considered as an alternative to the current electoral system of single seat constituencies.

More reform-minded senior government representatives recognise that the controversy over the 2006 elections, especially with regard to the gerrymandering of districts and the continued naturalisation of citizens, must be addressed and that transparency through the publication of electoral lists would be a good first step towards achieving this. The possible outcome of such reform, however, would be an al-Wefaq-led majority in the lower house and it is far from certain that the government feels confident enough in their ability to absorb such a shift.

Public Gatherings Law

The Public Gatherings Law, introduced as Law No. 32 of 2006 to amend the Public Gatherings Law of 1973 (Law No. 18), is a continuing source of controversy in Bahrain and was cited by Freedom House as a key reason why Bahrain followed a downward trend on its index of civil liberties in 2007.⁵¹ Currently, the law obliges organisers to seek permission for a public meeting at least 72 hours prior to it taking place and stipulates that a public demonstration cannot be held within 500 metres of certain state institutions, including airports, large commercial areas, schools and health facilities, as well as any locations deemed by the Minister of the Interior to be sensitive to national security. Funeral processions cannot be used to organise political rallies. The law also imposes prison sentences of up to six months for breaking these regulations. CSO and political leaders argue that the law is too restrictive and can be used to deny permission to hold a meeting or a demonstration on political grounds. There are also occasional complaints of organisations not receiving any communication from the government after they submit such a request. While the government points to its tolerance in not applying the law to those who organise meetings without official consent (in 2007, for example, of 324 marches and gatherings that took place in Bahrain, 104 applied for permission, while 220 did not, with only a fraction of the latter being broken up), this is hardly conducive to confidence and clarity in the application of the law.⁵²

The Public Gatherings Law has consequently become another legal grey area in Bahrain, applied selectively rather than impartially. Furthermore, the definition of a public gathering is vague and potentially restrictive – a meeting of more than five persons to discuss an issue of public interest is deemed a public gathering. The organisers of a public gathering can

also be held responsible for any "speech or discussion infringing on public order or morals".⁵³ In a submission to the UN Human Rights Council, the Bahraini government defended the application process for holding public meetings on the basis that the authorities needed ample time to prepare to protect the participants in such meetings.⁵⁴ Al-Wefaq introduced a number of amendments to the Public Gatherings Law on 19 September 2007, seeking to reduce the notice period to 24 hours, remove geographical restrictions, and reduce the jail sentence to one month. So far these efforts have made little headway.

Press law

The media is currently regulated by the 2002 Press and Publications Law (Law No. 17/2002) and comes under the supervision of the Ministry for Information. This law has been widely criticised for its excessive restrictions on freedom of expression. As a direct consequence of the introduction of this law in 2002, Bahrain fell from 67th to 143rd in the "Reporters without Borders" international press freedom rankings between 2002 and 2008.⁵⁵ Under the terms of the law, journalists or civil society activists can be sentenced to prison sentences of up to five years for "inciting division, sectarianism and violence and attacking national unity".⁵⁶ The law also allows for fines of up to 2000 BD for other offences including publicising statements by a foreign state or organisation without government permission and making allegations against a foreign head of state that has diplomatic relations with Bahrain.⁵⁷ Occasionally the Bahraini courts impose extended injunctions on publishing news stories about prosecutions before the courts, as has been the case with the Bandar Report, where a blanket ban on reporting remains in place. Due to lengthy delays in hearing cases in Bahrain, this ensures that cases alleging abuses by the government may be barred from discussion by the media for months, if not years. The Minister for Information has stated that increased measures taken against journalists in 2007 are a consequence of the irresponsibility of the press and has pointed to increased funding by his Ministry for media training as an attempt to improve standards and avoid further disputes.

Criminal law is generally used with an unwarranted degree of frequency to convict journalists in cases where civil law should apply. The government defence of laws which "make journalists responsible for proving falsehoods portrayed in the press against any person or institution" is appropriate for the courts to decide according to the Bahraini criminal and civil codes, but in reality the Ministry for Information assumes excessive censorship powers.⁵⁸ The Special Representative on the Situation of Human Rights Defenders expressed serious concern that criminal charges made by the Ministry for Information for offences including "encouraging hatred of the state" and "distributing falsehoods and rumours" is an implicit danger to the right of free speech. She was particularly concerned by cases where this was applied to those who alleged human rights violations, and called for the reform of Bahrain's judiciary.⁵⁹

Journalists and civil society activists have observed that civil law is usually sufficient to deal with libel claims and recourse to criminal law should only be exercised where there is a clear case of sedition or incitement to hatred. There is therefore no need to impose exceptional laws with regard to libel or sedition if the pre-existing legislation already suffices. Nor is there a need for the Ministry of Information to act as a libel watchdog on behalf of members of the royal family, government or the general citizenry. In a positive development, the government has recognised that civil remedies are an alternative means for citizens to seek redress for libel and has undertaken to increase awareness of such rights.⁶⁰

The government exercises strict control over public broadcasting in Bahrain and all Bahraini television channels remain under the control of the state. Political websites are frequently censored when they discuss allegations of corruption by the government, including the hugely popular *Bahrain online*, which was temporarily shut down in 2005. The authorities previously attempted to block the *Google Earth* website, as it allowed Bahrainis to get a rare view of the extensive palaces and secretive investments of the royal family. The government also actively monitors and censors media broadcasts and publications that offend public

morality. The US State Department reported that 22 discussion forums and political websites had been censored by the Ministry for Information in 2007, including the closing of websites of political societies such as al-Waad.⁶¹ The government reported to the UN Human Rights Council that they are reviewing this practice and would refrain from exercising such intrusive censorship over the internet in the future.⁶² However, the subsequent censorship of opposition websites in June 2008 has called this commitment seriously into question.

It is generally acknowledged that the editors-in-chief of Bahrain's six daily newspapers are appointed with the prior consent of the government and they are occasionally summoned to the Ministry for Cabinet Affairs for discussions on their editorial policy. Due to the vagueness of the media laws and a lack of trust in the independence of the judiciary, editors often exercise zealous self-censorship rather than risk prosecution or closure. The process of applying for a publication licence is complex and expensive, with a fee of one million BD being a major disincentive for prospective applicants. Books published in Bahrain also require pre-licensing from the Directorate of Printing and Publication at the Ministry for Information.⁶³

In May 2008 the Ministry for Information published a new draft press law which, if ratified, would decriminalise press offences and ostensibly reduce the power of the Information Ministry to impose sanctions against publications without judicial oversight. There remains some concern over the rather vague offences of offending religion or threatening national unity, which may still carry prison terms imposed at the discretion of the judiciary. Furthermore, the Ministry for Information retains the power under Article 19 of the proposed new law to close a newspaper or a publication and then seek judicial permission retrospectively within three days. The Ministry for Information has also introduced plans to license private broadcasting companies, under which registration of television and radio stations will be approved by the Cabinet of Ministers. This represents an important and overdue step towards improving freedom of expression in the broadcast media.⁶⁴ While improvements in Bahrain's media laws are obviously welcome, the competence of the Bahraini judiciary to protect freedom of expression is in serious doubt.

Labour Law

Labour rights in Bahrain are guaranteed by the constitution and regulated by the Labour Law for the Private Sector of 1976 and the subsequent Workers Trade Union Law of 2002. The 2002 law was widely praised when it was introduced, including by the International Trade Union Confederation (ITUC), as a step forward in Bahraini labour relations. It allowed for the establishment of the General Federation of Bahraini Trade Unions (GFBTU), which represents approximately 25,000 workers, and provided some procedures for strike action. The law requires arbitration before a vote to strike and a two-week notification from a trade union if it intends to strike, a decision that must be ratified by a simple majority vote of a union's members. The Labour Ministry's Labour Relations Directorate registers and investigates workers' complaints against private sector employers. Investigators are responsible for mediating in disputes and where a solution is not forthcoming, the Ministry refers cases to the courts for arbitration. The fourth High Court has jurisdiction over labour cases. If the Labour Ministry finds an employer has violated the law, for example with regard to occupational safety, then the Ministry can withdraw the employer's licence. Bahrain has also legislated for a 48-hour working week with an optional 12 hours of overtime, which is frequently not enforced in the case of migrant workers. The right to strike is heavily restricted and is denied to workers employed in "vital and important facilities such as security, civil defence, airports, ports, hospitals, transportation, telecommunications, electricity and water."

In October 2006, the king passed a decree prohibiting dismissal for trade union activities. This is not generally enforced, however, and there have been several well-documented instances where workers have been dismissed for union activities, including at Gulf Air and Batelco. The government retains wide-ranging powers to prohibit strikes under Article 21 of

the Workers Trade Union Law and the judiciary can also apply a broad interpretation to the existing ban on political activities by trade unions. Furthermore, the law only provides for the establishment of one trade union in the workplace, a restriction the International Labour Organisation (ILO) Committee on Freedom of Association formally objected to in a letter to Bahrain.⁶⁵ Perhaps the most significant flaw in current legislation, however, is the inability of public sector workers to form trade unions.⁶⁶ When public sector workers do engage in union activities, they can often face immediate dismissal or demotion.

Although they constitute up to 80 percent of the Bahraini private sector workforce, representation of migrants at the union level remains negligible. The Bahraini government has moved towards addressing migrant worker rights in recent months, prompted to some degree by the recent review of Bahrain by the UN Human Rights Council. In January 2008, the king issued Decree No. 1 as an anti-trafficking measure to tighten the law on the exploitation of migrants. The Ministry for Foreign Affairs also leads a government task force to combat human trafficking.⁶⁷ In contrast, the response by Bahrain's parliament to migrant abuse has been muted, reflective of a populist attitude that blames migrant workers for criminal activities and taking jobs from local Bahrainis.⁶⁸

Bahrain has been slow to ratify international treaties regulating workers' rights, and to date has only ratified four of the eight core ILO labour standards, including ILO Conventions 87 and 98, which protect freedom of association and collective bargaining.⁶⁹ However, the government has recently recognised the need to ratify these conventions.⁷⁰ Bahrain entered into a Free Trade Agreement (FTA) with the United States in 2004, which came into force in 2006, under which Bahrain agreed to continue to improve labour standards in accordance with ILO standards. In 2007 a senior US trade union official called for the US government to vigorously apply the clause in the FTA referring to labour standards.⁷¹ Relations between trade unions and the government deteriorated in 2007 however, as public sector workers became more assertive in resisting new restrictions placed on trade union rights and demanded wage increases to meet inflated living costs. The government has been reluctant to make any concessions that reduce its control over the civil service and state enterprises.

Anti-Terrorism Law

In 2006, in apparent contradiction to constitutional protections against arbitrary arrest and detention, King Hamad signed a new anti-terrorism bill that allows for up to 90 days of pre-trial detention without judicial oversight.⁷² The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Committee against Torture expressed their concern regarding certain provisions of the bill, most particularly the transfer from the judiciary to the public prosecutor of the authority to arrest and detain, including the authority to extend pre-trial detention. The Committee against Torture expressed its concern that the law could allow for a repeat of abuses committed under the notorious State Security Law.⁷³ The government responded that its actions were consistent with international legislation and met the definition of terrorism defined under the Arab Convention for the Suppression of Terrorism.⁷⁴ The anti-terrorism law identifies several offences that are highly nebulous, including Article 1 of the law which forbids any act that would "damage national unity" and Article 6, which legislates for the potential use of the death penalty for crimes that "disrupt the provisions of the Constitution or laws, or prevent state enterprises or public authorities from exercising their duties".⁷⁵

In 2005, prior to the introduction of this legislation, the UN Committee against Torture welcomed reports that systematic torture no longer occurred in Bahrain but remained concerned that persons detained by the state were not protected by sufficient legal safeguards and oversight.⁷⁶ This echoes the concerns of many civil society leaders who believe that the end of systematic torture has been achieved by the wish of King Hamad, but had not been followed up with legislation to ensure that the torture of the 1990s would never be repeated. Torture allegations made by several leading human rights organisations

in Bahrain following the detention of protestors in December 2007 have underlined these concerns and the fear that anti-terrorism legislation could serve as cover to reintroduce abuses practiced under the infamous state security laws of Sheikh Isa's reign.

KEY OBSTACLES

Registration

The Law of Associations (Decree No. 21/1989) provides for a restrictive registration process, whereby the Ministry for Social Development can refuse an application with no obligation to publish or inform the prospective founders of their reasons for doing so and there are no procedures in place to appeal such a decision. In the past, the Ministry could also refuse an application on the grounds that a pre-existing society already met that need, although the government has of late stopped refusing applications on these grounds. The failure to adequately inform the Bahrain Youth Human Rights Society, chaired by Mohammed al-Maskati, of the government's reasons for refusal of registration is an example of excessive government restrictions on societies who are opposed to its policies. The government subsequently raised the legal age for membership of an association from 18 to 21 ostensibly to reduce the risk of youth indoctrination. The Committee of the Unemployed was refused the right to register because of the alleged political nature of its activities.

The proposed new law, drafted in late 2007 by the Ministry for Social Development in consultation with civil society representatives, would constitute a significant improvement upon existing legislation, mandating that an association be registered automatically if the government does not respond within 60 days. This is in contrast to the current law under which an application is automatically rejected if the government does not reply after the same period. However, the new law does impose restrictions on vaguely defined informal groups which meet to discuss or pursue a "special interest" or "seek to fulfil an urgent demand", including the need to notify the Ministry of their existence and follow the Ministry's instructions thereafter. This proviso, if introduced, would be open to significant abuse of the informal right to assembly of small groups of individuals and is contrary to Bahrain's Constitution and obligations under the ICCPR.⁷⁷

Recognition of the 2002 Constitution is a prerequisite to successful registration for a political society, which creates significant problems for those activists who view the Constitution as an imposed document, which lacks popular legitimacy. The process for submitting an application to register as a political society has been standardised, involving the submission of three copies of all by-laws, a list of the by-laws signed by all members and a financial statement with specific information on the prospective party's funding sources. The Ministry for Justice and Islamic Affairs then has 45 days to seek clarifications and 60 days to approve or reject the application. The government has generally not hindered the registration of political societies in the past. The law regarding the establishment of trade unions is more unclear and a standard, transparent procedure has yet to be in put in place. The government has generally preferred to limit the number of trade unions that may be registered, citing the impossibility of dealing with a multiplicity of unions and the representation already provided by the GFBTU.

Oversight

There are extensive oversight powers available to the state in its regulation of CSOs including a range of criminal sanctions, ranging from fines to imprisonment. Article 94 of the proposed new Law of Associations allows for imprisonment where financial penalties would suffice for administrative failures. Meanwhile, Article 18 of the existing Law of Associations does not allow for CSOs to become involved in political activity and, although seldom enforced, criticism of the government was the main reason for the closing down of the BCHR in 2004. Existing legislation also allows for intrusive and frequent inspections by the Ministry

for Social Development. CSO leaders have argued that government inspections should be carried out only where there is good reason to believe that a criminal act has taken place in an organisation's premises, that they should be carried out by the appropriate investigative agencies and that they should be subject to judicial oversight. Political societies are regulated by the 2005 Political Societies Law, which prohibits training or funding from abroad and obliges political societies to inform the Ministry for Justice and Islamic Affairs of any contact with political groupings outside Bahrain. In certain exceptional cases the government does permit training for political societies, usually along bi-partisan lines. Since 2006, political societies receive state funding, weighted in accordance with parliamentary representation. This has helped political societies increase the scope of their operation as well as, conversely, making them more dependent upon the government for the management of their respective organisations. The oversight powers exercised by the government over the media and trade unions are considerable and have already been outlined.

Dissolution and suspension

The government can choose to dissolve associations for a variety of offences specified under current legislation, including a society's inability to achieve its stated objectives, for using funds for purposes unrelated to its core activity or for any violation of the law. The permanent dissolution of an association must be ratified by an administrative court, but the government can temporarily close a society for 60 days and impose a new board of directors for up to a year. CSOs contend that this provision, which goes beyond existing legislation that can be used to shut down organisations for fraud, embezzlement or conspiracy to commit violence, is unnecessary and should be removed from any future legislation.

Funding

CSOs face severe government restrictions in raising funds. In the proposed new law of associations, Article 16 explicitly prohibits all fundraising activities without prior permission from the government. CSOs had hoped that the burdensome obligation to seek permission to raise funds would be lifted in the new legislation. Government representatives frequently complain that CSOs are too dependent upon government funding for their activities, but this culture of looking to the state for assistance rather than seeking support from private donors can only be overcome if there is a more permissive environment for fundraising. Existing legislation governing fraud and ensuring transparency in financial transactions is sufficient to guard against possible abuses.

CSOs also suffer from over-regulation with regard to expenditure of funds, including having to seek governmental permission to invest in or extend property. The consequence of these regulations is that while professional associations and labour unions have an obvious source of funding from membership fees, many CSOs that are not favoured by the government are unable to raise sufficient revenue within Bahrain. The government, through the Ministry of the Interior and the Ministry for Social Development, has very intrusive powers to monitor the finances of associations, including inspection powers and discretion over the transfer of funds to organisations. CSO leaders complain that these powers are unnecessary and were put in place to allow the government to discriminate against certain CSOs whose activities they disagree with.

Targeted/excluded groups

During the turbulent 1990s, the Bahraini state practised systematic repression of opposition activity and groups, resulting in the imprisonment, torture and exile of thousands of political and civil society activists. King Hamad finally put an end to this traumatic and brutal era and there is now a limited political and social sphere within which the activities of the opposition,

both legal and illegal, are tolerated. Social groups such as those advocating women's rights often meet more stringent opposition from the Islamist political societies than from the government, which nevertheless continues to restrict the activities of certain women's rights activists.

While the vast majority of Bahraini exiles have now returned home, and some have even accepted positions in government, including the Minister for Labour, Majid al-Allawi, external opposition remains in the form of the Bahrain Freedom Movement (BFM), which is based in London but has little support from either the Bahraini diaspora or the citizenry within the country. The most significant and organised illegal CSO is the Bahrain Centre for Human Rights (BCHR), led by its President Abdulhadi al-Khawaja and Vice-President Nabeel Rajab. According to leading members of the BCHR, a large part of their activity is directed towards winning external support to pressurise for change within Bahrain.

The BCHR issues more frequent allegations of torture and mistreatment of prisoners than alleged by other human rights groups and it has undoubtedly played a leading role in highlighting abuses taking place within Bahrain. Its ability to operate is in itself indicative of the support it enjoys domestically but also, and perhaps even more importantly, is a reflection of its international profile, including its strong links with international human rights organisations, such as the International Federation for Human Rights (FIDH), Human Rights Watch (HRW) and Front Line Defenders, as well as support from parliamentarians such as Lord Avebury in the United Kingdom. The Bahraini government alleges that the BCHR has ties with the Iranian regime, pointing to statements by its president affirming his admiration for Ayatollah al-Khomeini, which clearly underlines the government's discomfort regarding the Shia population's high spiritual regard for *marjas*, both in Iran and more broadly in the Shia world. Alleging an Iranian link to Shia leaders is also a strategic means of obfuscating the government's obvious reluctance to cede more executive or legislative power to the Shia majority.

Strongly linked to the activities of the BCHR is the Women's Petition Committee led by Ghada Jamsheer, which is highly critical of the application of Sharia law, and in contrast to other women's groups, does not see a possibility for constructive engagement with the government. Confrontational demonstrations and appeals to Western audiences have become a hallmark of the group's activities and, while its advocacy of a personal status law for women is not in accordance with some Islamists in the BCHR, they are a useful addition to the broader coalition of radical opposition groups, which seeks to maximise international condemnation of the government.

The Committee of the Unemployed, established in 2005 to draw attention to the economic plight of many Bahrainis, is mainly representative of the Shia youth who are disenchanted with the mainstream politics of al-Wefaq and have increasingly taken a more confrontational approach in their public demonstrations against the government. Together with the Committee for Martyrs and Victims of Torture, a group which seeks retrospective justice for abuses committed in the 1990s, they have staged illegal protests that have sometimes spiralled into violent confrontation. There is increasing bitterness among Shia citizens that non-national Sunnis, in addition to receiving Bahraini citizenship arbitrarily, are receiving economic benefits such as better housing and salaries, and hold government posts from which the Shia are excluded. This is leading to rising ethnic and religious tensions in Bahrain, which could spill over into serious violence in the near future. There are already signs that radical opposition to the government is becoming more violent, with attacks on the property of members of the government and royal family and the murder of a policeman in April 2008.⁷⁸ In response to mounting social pressures, the Crown Prince introduced a policy of "Bahrainisation" –replacing foreign workers with Bahraini citizens– and the Government has levied a tax on employers for every foreign worker they employ. While this scheme met with resistance from the employers association, the Bahrain Chamber of Commerce and Industry (BCCI), it has proved popular, not least because of the use of this tax revenue for the training of Bahraini nationals.

Of the banned political groups in Bahrain, the most significant is the al-Haq movement led by Hasan Mushaima, which refuses to recognise the legitimacy of the 2002 Constitution and by extension the Political Societies Law. Al-Haq operate a sophisticated domestic and foreign public relations campaign but so far have relied upon the support of disaffected Shia youth rather than securing the support of the Shia mainstream, including the Shia ulama who remain broadly supportive of al-Wefaq. They have also been condemned by other opposition groups for statements advocating the use of violence if peaceful efforts to reform fail.⁷⁹ The government has so far avoided a heavy crackdown upon al-Haq, most likely for fear of a destabilising violent backlash, but continues to restrict their activities through other means including infiltration, censorship and breaking up public meetings.

Electoral

There is increasing frustration with the gerrymandering of electoral districts and the lack of an impartial electoral commission to oversee voting. CSO leaders advocate providing more independent oversight powers to the Electoral Commission in order to reduce the current misallocation of electoral districts and for international monitors to observe future elections. There have been renewed calls for a national dialogue in order to address the fears of the Sunni community regarding a Shia majority in Majlis al-Nuwwab and conclude an agreed reform agenda that will help turn the tide of rising mistrust and violence.

State-civil society relations

The reform process to date has signalled an unprecedented growth in civil society activity in Bahrain and the recognition by the state of the right of CSOs to have a consultative role in the drafting of legislation. The work of certain ministries such as the Ministry for Social Development in reaching out to civil society is laudable and an encouraging sign of a shift in attitudes by the government. What is principally undermining reform efforts, however, is the poor working relationship between key members of government and civil society, not least the prime minister and the minister for Cabinet Affairs, and the effective veto power that the royal family has over any legislation which it disagrees with. While some ministers in the government wish to engage with civil society and introduce further reforms, the unwillingness of the ruling family to clearly outline the next steps of the reform process (if they indeed exist) seriously hinders meaningful progress in Bahrain. Bahraini civil society's relations with the state have yet to move beyond the current tendency towards appealing to royal favour, especially the king, rather than the rule of law as a means of protecting civil and political freedoms.

LOCAL CALLS FOR REFORM

Most political and civil society leaders agree that Bahrain's reform process urgently requires renewed momentum, but disagree on the substance of these reforms as significant differences exist between Islamist leaders and those activists who seek more secular reforms and suspect that a majority of the MPs of the Majlis al-Nuwwab wish to roll back some existing rights. The following recommendations are a reflection of the most persistent demands for reform, which were articulated by a broad representation of Bahraini society encountered by FRIDE during visits to Bahrain in 2007 and 2008:

Constitutional reform to ensure balance of powers

- The king should convene a national dialogue to reflect upon the successes and remaining obstacles to be overcome since the publication of the National Charter. After consulting with parliamentarians and civil society leaders the king should outline further steps for reform to be implemented within a fixed period.

- There is considerable disagreement within Bahraini society as to whether the Majlis al-Nuwwab should eventually assume sole legislative power. Some civil society leaders fear Islamist influence and view the democratically elected Majlis al-Nuwwab as a threat rather than a guardian of their rights. Nevertheless, most civil society leaders agree that the current lack of powers of the Majlis al-Nuwwab is unsustainable and an accommodation through dialogue between the Shia and Sunni communities should be found in order to begin a transfer of legislative power to the lower house of parliament. The Majlis al-Shura should ultimately become a consultative upper house without the power to block legislation.
- The elected municipal councils should be reformed to allow local authorities more local legislative and budgetary power. The division of power between the governorates and the municipal councils should be made more coherent, and the appointment system for governors rewritten to allow for parliamentary oversight of appointments.
- The judicial appointment system should be reformulated to limit the influence of the royal family over the judiciary. Judicial training should also be extended.

National Legislation

- Bahrain's laws should reflect the constitution and its obligations under international conventions.
- Parliament should be provided with further training on the drafting of legislation, additional legal staff provided to advise on the drafting process and a closer working relationship established between the government and the Majlis al-Nuwwab.
- Promulgation of the draft associations law with amendments, eliminating clauses which allow for overly intrusive powers of inspection, unnecessary restrictions on fundraising and criminal sanctions already covered by existing legislation.
- Remove anti-terrorism legislation introduced in 2006.
- The Public Gatherings Law is contrary to Bahrain's obligations under Article 21 of the ICCPR and should be amended.
- The independence of the Office of the Public Prosecutor (OPP) should be protected in accordance with international best practice.
- Introduce legislation obliging the government to publish transparent information on government spending, the naturalisation of foreign citizens and land transactions.

Elections

- Ensure the independence and transparency of the Electoral Commission.
- Allow the international monitoring of elections.

Political parties

- Allow the formal establishment of political parties rather than societies.
- Ease restrictions on foreign training and travel permits for political representatives.

Civil society

- Remove the ban on political activities.
- Ease restrictions on fundraising.
- Remove the right of the Ministry for Social Development to annul elections and replace an association's board. Penalties should only be applied under judicial direction.
- Eliminate the requirement for informal groups to register with the Ministry for Social Development.

Media

- Promulgation of a new press law to replace the restrictive Law No. 47, removing vague clauses such as the threat of imprisonment for "inciting division", and eliminating the power of the Ministry for Information to censure journalists for allegations in the press that relate to government representatives, foreign leaders and the general citizenry. Penalties against journalists in the case of alleged libel or crimes against the state should be applied by the courts and not by the Ministry for Information
- The Ministry for Information should not try to duplicate the work of the Office of the Public Prosecutor (OPP) in deciding whether to bring a case against a newspaper and the application of penalties such as the closing down of a publication should be a matter for the judiciary. In the case of libel, the Ministry for Information should not intrude where existing procedures allow the Bahraini citizen recourse to the court system.

Labour

- Ratify ILO Conventions 87 and 98 to protect trade union rights and Conventions 100 and 138 providing safeguards on a minimum wage and child labour.
- Equal rights for migrant workers should be applied in accordance with the law. Safeguards should be put in place to allow migrant workers the opportunity to exercise their labour rights without fear of imminent deportation or dismissal.
- Domestic workers should not be excluded from existing labour legislation. Exceptions to the law, that allow housemaids to be described as "family guests" rather than legitimate employees, should be revised in order to close loopholes that leaves thousands of vulnerable workers without adequate legal protection.
- Remove restrictions on public sector workers to form and engage in union activities. Exceptions on labour rights with regard to the security forces should not be applied to other areas of the public and private sector.
- Remove government discretion over whether to permit strike activity by trade unions.

CONCLUSION

Bahrain aims to please. Leading Bahrainis envisage their island state as a financial centre for the Gulf region. The growth in Bahrain's economy is linked to the perception of Bahrain as a relatively liberal and stable haven in a troubled but economically and strategically vital region. This favourable view of Bahrain has encouraged investment from the Gulf region, from Europe and the United States, and increasingly from East Asia. There is an almost total absence of international pressure to reform - in January 2008, President Bush praised Bahrain as a reforming role model for the region and the US has come to view Bahrain as a key ally in a vital area of US military commitment, not least due to its hosting of the US Fifth Fleet.⁸⁰ Bahrain has excelled at portraying itself as a country of moderation and reform, easily securing election to the UN Human Rights Council for a second time in May 2008 with the support of 142 out of 191 votes cast by UN Member States.⁸¹ This lack of international pressure has hampered efforts to persuade the government to progress beyond a tendency to over-legislate and interfere in the activities of civil society. While King Hamad is respected for his relatively benign attitude towards freedom of expression and association, these rights must be protected by more concrete legislation and judicial application rather than by royal favour.

Bahrain can be justifiably proud of its transformation since the turbulent years of the mid-1990s, but it is becoming increasingly obvious that Bahrain's reform process has reached a precarious impasse. The wave of optimism which swept through Bahrain in 2001 after the

publication of the National Charter is now remembered bitterly as a period of unfulfilled promises by many Bahrainis, who claim that although the royal family is willing to allow a degree of dissent, it remains above the law of which it is the ultimate authority. In late April 2008, the prime minister ridiculed any suggestion that sectarianism exists within Bahrain and refused to acknowledge that discrimination needed to be addressed.⁸² This failure of the government to address institutionalised discrimination against Shia citizens in Bahrain is leading to the increasing perception that the royal family and the government of Bahrain are not representative of the interests of the majority of Bahraini citizens. The almost total exclusion of Shia citizens from serving in the security forces, their conspicuous absence from other positions of public service, the glaring lack of transparency over the allocation of funds and property, the gerrymandering of constituencies and the questioning of Shia loyalty to the Bahraini state, are ultimately causing an erosion of the Bahraini national identity and increasing sectarianism.⁸³

Bahrainis are also exasperated by the current legislative process and the inability of their elected representatives to amend or replace vague legislation that allows for excessive state monitoring and interference. They are likewise alarmed by the introduction of wide-ranging anti-terrorism legislation. The moderate leadership of al-Wefaq senses that time is running out, that they must begin to deliver for their constituents who trusted their decision to engage within Bahrain's flawed parliamentary institutions. Bi-partisan cooperation in the Majlis al-Nuwwab remains non-existent and Bahrain's representatives must lead from within the parliamentary chamber to ease sectarian tensions and work on issues of common interest. A key dilemma for the more secular supporters of reform in Bahrain is whether they are willing to support the empowerment of a democratically elected legislature in a state with "an arguably illiberal majority and a liberal minority?"⁸⁴

The alternative to constitutional reform and national reconciliation can be found on almost any given weekend in some of the poorer Shia areas that circle Bahrain's capital al-Manama, where crowds of young men gather to burn tyres and clash with the police. Impatient with what they see as a Sunni conspiracy to deny them rights and jobs, some sections of the Shia youth are beginning to look outside Bahrain to Iraq and Lebanon for inspiration from Shia movements there.⁸⁵ It remains to be seen whether the escalating violence in Bahrain is indeed manageable while simultaneously preserving Bahrain's image abroad. Some in government are optimistic that future economic growth, combined with initiatives to address housing and other social problems, will be sufficient to ease current unrest, but this may not be enough to mollify Shia demands for equal treatment. One of the essential lessons of the "King's dilemma" is that decompression is ultimately unsustainable, and by allowing for the construction of a strong civil society that advocates the transfer of power away from the monarch, the king must eventually face a choice: suppress or relent. For now King Hamad continues to search for another way.

Notes

¹ "Reaching a Threshold" refers to a FRIDE interview with Sadig al-Mahdi, former Prime Minister of Sudan, who traveled to Bahrain as a leader of the Club de Madrid's project "Strengthening dialogue and democratic discourse through freedom of association in the Mediterranean and the Middle East region": *"The process of political reform is coming towards a threshold. What needs to be done now is to go beyond the general slogans of reform to the specific such as the separation of powers and the need to guarantee human rights..."* Interview with Sadig al-Mahdi, Madrid, April 11 2008.

² The Club de Madrid Project "Strengthening dialogue and democratic discourse through freedom of association in the Mediterranean and the Middle East region", of which this report forms part, is supported by the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the UN Democracy Fund. More information on the project is available at: www.clubmadrid.org

³ The overwhelming majority of Bahrain's Shia population follows the Twelver branch and the Jafari School of Islamic jurisprudence or *fiqh*. The Bahraini Shia populace can be sub-divided into *Baharna* and

Ajam, with the Ajam in the minority and identified as being of Persian origin. Sunni citizens follow both the Malik and Shafi'i schools of *fiqh*, the latter traditionally associated with the *Huwala* or those who had historic associations with Persia while the former is the *fiqh* practiced by the ruling al-Khalifa family. The al-Khalifa trace their origins to the al-Najd central region of Saudi Arabia, from where they migrated to Kuwait in the 18th century before laying claim to Bahrain in 1783 after a turbulent two centuries of Portuguese, Persian and Omani rule. While the al-Khalifa later ceded much of their sovereignty to the United Kingdom, beginning in the early 19th century and continuing until independence in 1971, their astute pragmatism has ensured their survival as the most powerful dynasty in Bahrain for over two centuries.

⁴ "Fears of a Shia Full Moon", *The Guardian*, 26 January 2007.

⁵ Saudi Arabia's influence over Bahraini affairs is extensive, not only through its effective granting to Bahrain of much of its current oil fields and pumping oil to Bahraini refineries, but also through Saudi investment in the Bahraini financial sector. While revenues from oil and gas currently account for only 11 percent of GDP, this constitutes 76 percent of government income. "Country Report 2007: Bahrain", Economist Intelligence Unit. London: December 2007, p. 4.

⁶ Under the 2002 Constitution, Bahrain was formally declared a Kingdom rather than an Emirate. Therefore King Hamad's father's title was that of Emir and King Hamad initially ruled Bahrain as Emir from 1999 to 2002.

⁷ Nonneman, Gerd., "Political Reform in the Gulf Monarchies – From Liberalisation to Democratisation? A Comparative Perspective". Durham University: Sir William Luce Paper No. 6, 2006, p. 13.

⁸ Khalaf, Abdulhadi., "The King's Dilemma: Obstacles to Political Reforms in Bahrain", Fourth Mediterranean Social and Political Research Meeting, Lund University: March 2003.

⁹ "Legal Opinion Concerning the Constitutional Matter in Bahrein", prepared by Hassan Radhi, Jalila al-Sayed, Mohamed Ahmed and Essa Ebrahim. p.2 (Document in author's possession).

¹⁰ "Legal Opinion Concerning the Constitutional Matter in Bahrein" p.10.

¹¹ For an account of human rights abuses committed in Bahrain during the 1990s, see the Human Rights Watch Report compiled in 1997 entitled "Routine Abuse, Routine Denial". <http://www.hrw.org/reports/1997/bahrain/>

¹² This BFM should not be confused with that which exists today, under the leadership of Said Shehabi.

¹³ The Bahraini government remained convinced that the Revolutionary Guards in Iran were conspiring to support a coup attempt, and accused Iran of arming Shia militants and facilitating training in Lebanese Hezbollah camps. Bahrain subsequently expelled an Iranian diplomat in 1996 for alleged links with insurgents and these accusations played a significant role in the souring of GCC-Iranian relations in the 1990s. For an account of allegations against Iran and of the violence of the 1990s see Peterson, J.E., *Bahrain: The 1994-1999 Uprising*, www.jepeterson.net/sitebuildercontent/sitebuilderfiles/apbn-002_bahrain_1994-1999_uprising.pdf

¹⁴ "Bahrain's Sectarian Challenge", Brussels: The International Crisis Group (ICG), Middle East Report No. 40, 2005, p. 5.

¹⁵ Peterson, J.E., "The Promise and Reality of Bahraini Reforms", www.jepeterson.net/sitebuildercontent/sitebuilderfiles/Promise_of_Bahrain_Reforms.pdf

¹⁶ ICG, p. 5.

¹⁷ Ehteshami, Anoushiravan, and Wright, Steven, "Political Change in the Arab Oil Monarchies: From Liberalization to Enfranchisement", *International Affairs* (83:5, 2007). London: Chatham House, p. 919.

¹⁸ "Opposition" is a relative term in Bahrain which generally applies to those groups who oppose the current system of government and seek to expand the powers of the elected lower house. These groups are careful not to overtly criticise the king personally. Any criticism of the prime minister is usually offered indirectly, reflecting the pronounced degree of caution exercised by the opposition in relation to the royal family –The more senior a royal the less room for direct criticism.

¹⁹ The external influence of foreign Marjas is frequently used as a means to question the national loyalty of Bahraini Shia. However, alleging external control of al-Wefaq ignores the more significant influence of Sheikh Isa Qassim and other spiritual leaders in issuing guidance on political questions, and diminishes the internal debate that takes place within the Shia *ulama* of Bahrain.

²⁰ Population statistics have been woefully inadequate in Bahrain for many years with a glaring lack of transparency over the naturalisation of foreign citizens. On 14 May 2008, Bahrain's Opposition walked out of parliament in protest at a 42 percent jump in official population statistics from 740,000 to 1.05 million. "Bahrain Shia MPs walk out over population row", Reuters, May 14th 2008.

²¹ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Doc. No. A/HRC/WG.6/1/BHR/2, Human Rights Council, Working Group on the Universal Periodic Review, First Session, 7-18 April 2008. Geneva: 25th February, 2008.

²² Khalaf, Abdulhadi., "The King's Dilemma: Obstacles to Political Reforms in Bahrain", Fourth Mediterranean Social and Political Research Meeting, Lund University: March 2003, p. 6.

²³ The Carnegie Endowment for International Peace, *Arab Political Systems: Baseline Information and Reforms – Bahrain*, Washington DC: 2008, p.5.

http://www.carnegieendowment.org/files/Bahrain_APS.doc

²⁴ The recent resignation of a legal adviser to the Majlis al-Nuwwab in March 2008 has further exacerbated the lack of legal expertise available to the Majlis al-Nuwwab. "Grant right to Grill Ministers", *The Bahrain Tribune*, 13 March 2008.

²⁵ In March 2008 this precipitated a walk-out of parliament by al-Wefaq in protest at their inability to question certain ministers. "Grant us the right to grill Ministers", *The Bahrain Tribune*, March 13th 2008.

²⁶ "I am only answerable to the leadership: Bahraini Minister", *The Bahrain Tribune*, May 15th 2008.

and "Al Wefaq Chief Warns Deputies", *Bahrain Tribune*, 16 May 2008.

²⁷ "MPs refuse to ratify rights law", *Gulf Daily News*, 22 February 2006. However, Al Minbar are generally perceived as the less conservative of the two Sunni Islamist parties represented in the Majlis al-Nuwwab and were the only elected political society to support the introduction of a personal status law which would have regulated women's rights.

²⁸ An honourable exception to the lack of cooperation in the Majlis al-Nuwwab is Dr. Abdul Aziz Abul who, although elected with support from al-Wefaq, is seen as a leading advocate of building common ground between parliamentarians.

²⁹ Zweiri, Mohammed Zahid Mahjoob, "The victory of Al Wefaq: The Rise of Shiite Politics in Bahrain", Research Paper No. 108. Athens: Research Institute for European and American Studies, April 2007.

³⁰ Mohamoud, A.A., "The Role of Constitution-Building Processes in Democratization – Case Study: Bahrain", International IDEA: Stockholm, 2005 www.idea.int/conflict/cbp/.

³¹ Carnegie Endowment, p. 6.

³² US State Department Country Report on Human Rights Practices – Bahrain 2007.

www.state.gov/g/drl/rls/hrrpt/2007/100593.htm

³³ "I am only answerable to the leadership: Bahraini Minister", *The Bahrain Tribune*, 15 May 2008.

³⁴ "Country Report 2007: Bahrain", Economist Intelligence Unit. London: December 2007, p. 4.

³⁵ Bahrain Labor Rights Report, Bureau of International Labor Affairs, US Department of Labor. Washington DC: 2005.

³⁶ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>, p. 14.

³⁷ US State Department Country Report on Human Rights Practices: Bahrain 2007.

³⁸ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Human Rights Council. Geneva: February 2008.

³⁹ Economist Intelligence Unit, "Country Report 2008: Bahrain", p. 11.

⁴⁰ Many Bahraini Farsi speakers were previously denied citizenship and were known as the "bidun". Citizenship was finally granted in 2001.

⁴¹ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>, p. 11.

⁴² In addition to criticism of the UNDP's perceived closeness to the government, opposition groups were also furious that UN Habitat honoured Prime Minister Shaikh Khalifa bin Salman al Khalifa, with an award for his efforts in reducing poverty. This announcement was greeted with outrage by Human Rights groups, including the BHRS and the BCHR, with the latter going so far as to allege corruption by UN officials. "An Investigation into the Award granted to Bahraini Prime Minister by the United Nations Habitat Programme", BCHR, July 2007 <http://www.bahrainrights.org/node/1333>

⁴³ Carnegie Endowment, p. 2.

⁴⁴ Article 27, Bahraini Constitution.

⁴⁵ Article 23, Bahraini Constitution.

⁴⁶ "Portugal: Objection to the Reservation Lodged by Bahrain following its Accession to the Covenant", Office of the Secretary-General of the United Nations.
http://untreaty.un.org/English/CNs/2007/801_900/842E.pdf

⁴⁷ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>, Annex IV.

⁴⁸ US State Department Country Report on Human Rights Practices; Bahrain 2007.

⁴⁹ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Human Rights Council. Geneva: February 2008 p. 9.

⁵⁰ Carnegie Endowment, p. 9.

⁵¹ "Freedom House Country Reports 2007: Bahrain". http://www.freedomhouse.org/modules/mod_call_dsp_country-fiw.cfm?year=2007&country=7131

⁵² "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, <http://www.mofa.gov.bh/mofa/en/upr.htm>

⁵³ "Human Rights Watch Country Report 2008: Bahrain". 2007 <http://hrw.org/englishwr2k8/docs/2008/01/31/usint17940.htm>

⁵⁴ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008.

⁵⁵ Reporters without Borders, International Press Freedom Index. http://www.rsf.org/article.php3?id_article=11715

⁵⁶ "Bahrain: Tuning Promises into Reality"- Reporters without Borders, March 2008.

http://www.rsf.org/article.php3?id_article=26040

⁵⁷ US State Department Country Report on Human Rights Practices 2007.

⁵⁸ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008 <http://www.mofa.gov.bh/mofa/en/upr.htm>

⁵⁹ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Human Rights Council. Geneva: February 2008 p. 9.

⁶⁰ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008 p. 20.

⁶¹ US State Department Country Report on Human Rights Practices 2007.

⁶² "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008 p. 9.

⁶³ "Bahrain: Turning Promises into Reality", Reporters without Borders Report, March 2008.

⁶⁴ "New Bahrain press law ends jail for most offences", Reuters, May 6th 2008.

And "Bahrain plans to give television and radio stations full freedom", *Khaleej Times*, 13 April 2008.

⁶⁵ "Internationally-recognised core labour standards in Bahrain", Report for the WTO General Council Review of the Trade Policies of the Kingdom of Bahrain. International Trade Union Confederation (ITUC). Geneva: July 2007 p. 3.

⁶⁶ "Bahrain Labor Rights Report", Bureau of International Labor Affairs, US Department of Labor. Washington DC: 2005.

⁶⁷ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008. <http://www.mofa.gov.bh/mofa/en/upr.htm>

⁶⁸ There are occasional demands in parliament for the widespread expulsion of migrants, particularly the 106,000 Bangladeshis working in Bahrain. "Bahraini Islamist wants Bangladeshis expelled", *The Daily Star*, 26 May 2008.

⁶⁹ "Internationally-recognised core labour standards in Bahrain", Report for the WTO General Council Review of the Trade Policies of the Kingdom of Bahrain. International Trade Union Confederation (ITUC). Geneva: July 2007, p. 1.

⁷⁰ "The First Universal Periodic Review Report Presented by the Kingdom of Bahrain to the United Nations Human Rights Council", March 2008, p. 14.

⁷¹ "Free Trade Agreement supports Bahrain's Labour Reforms", Office of the United States Trade Representative. Washington DC: March 2005. "New call to end workers' abuse", *Gulf Daily News*, 31 March 2007.

⁷² International Commission of Jurists (ICJ), E-Bulletin No. 12, 2006. <http://www.icj.org/IMG/ICJBulletinJune06.pdf>

⁷³ "Compilation Prepared by the Office of the High Commissioner for Human Rights", Human Rights Council. Geneva: February 2008, p.10.

⁷⁴ "Compilation Prepared by the Office of the High Commissioner for Human Rights", p. 7.

⁷⁵ "World Report 2007", Human Rights Watch, p. 452.

⁷⁶ "Compilation Prepared by the Office of the High Commissioner for Human Rights", p. 7.

⁷⁷ "Comments on the Draft Law on Not-for-Profit Organisations and Foundations of Bahrain", International Center for Not-for-Profit Law. Washington DC: December 2007.

⁷⁸ See the *Gulf Daily News*, "Arson attack reported at senior Bahrain official's farm", 8 March 2008 and "Policeman killed in Petrol Bombing", AFP, 10 April 2008.

⁷⁹ "Political Leader's call to take up arms against authorities draws flak", *Gulf News*, 16th July 2006.

⁸⁰ White House Press Release – "President Bush Visits Bahrain", 13 January 2008.

<http://www.whitehouse.gov/news/releases/2008/01/20080112-5.html>

⁸¹ "Bahrain Wins Seat on UN Rights Panel", *Khaleej Times*, 23 May 2008. http://www.gulfintimedia.com/index.php?id=404182&news_type=Top&lang=en

⁸² "No discrimination says Bahraini Premier", *The Bahrain Tribune*, 23 April 2008.

⁸³ Many Bahrainis had hoped that any question of national loyalty had been resolved prior to independence in 1970 when a UN Special Envoy, Vittorio Guicciardi, reported to the UN Security Council that "the overwhelming majority of people of Bahrain wish to gain recognition of their identity in a fully independent and sovereign state, free to decide for itself its relations with other states." This report effectively repudiated Iranian claims to be granted sovereignty over Bahrain.

⁸⁴ Nonneman, p. 31.

⁸⁵ The government has begun to demonstrate a sensitivity to Shia opinion in its reaction to events in Iraq and Lebanon, most recently with regards to the crisis in Lebanon in May 2008, when Bahrain went so far as to issue a joint statement with Syria that stated that both countries would not internationalise Hezbollah's recent seizure of strategic areas of Lebanon. Some leaders of the Sunni community remain concerned as to the potential ripple effect of these conflicts and an increasing Shia regional assertiveness. "Syria, Bahrain refuse to internationalise Lebanon crisis" *Kuwait News Agency*, May 11 2008, and "An island kingdom feels the ripple effects of Iraq and Iran", *The New York Times*, 16 April 2006.

DEFENDERS IN RETREAT: FREEDOM OF ASSOCIATION AND CIVIL SOCIETY IN EGYPT

EGYPT: THE VANGUARD OF AUTHORITARIAN UPGRADING

The earthquake of unprecedented social mobilisation throughout 2005 triggered hopes that Egypt would finally move towards a genuine democratic opening and lead the region away from its long history of authoritarianism. However, these hopes have now largely faded away. Protests have been contained, the opposition weakened, divided or jailed, and it has become painfully obvious that Hosni Mubarak's pledges of democracy during his 2004-5 presidential campaign were but another PR line. For the time being, talk about democratisation in Egypt appears to be off the agenda.

The adaptation of governance strategies to the changing norms and expectations in the post-Third Wave world can be observed in many hybrid regimes. Across the Middle East and North Africa (MENA), the establishment of democracy as an international norm in the post-Cold War era and the increased international pressure on authoritarian regimes to change their ways has not led to greater democratisation, but to an adaptation of governance strategies and tools (a process that some have called "upgrading authoritarianism").¹ In an often reactive trial and error fashion, these methods have become increasingly consolidated and sophisticated. This adapted strategic approach has been aimed at formally liberalising politically non-threatening areas while keeping tight control over those policy areas and actors with the potential to meaningfully challenge the ruling elite's prerogatives. While "the great and proud nation of Egypt" has missed its chance to lead the process of democratisation (as suggested by US President Bush in his speech on the state of the nation), Egypt has certainly been able to claim regional leadership in a different sphere: consolidating the tools and strategies of authoritarian upgrading to resist the pressures of democratisation.

Like many of its authoritarian neighbours, the Egyptian regime resorts to open coercion and violent repression only when it can be sure that this is accompanied by a public diplomacy line that provides an internationally acceptable justification (i.e. the fight against terrorism; fears generated by the rise of political Islam). The rationale behind this double-edged method is the need to satisfy conflicting interests, that is, to accommodate enhanced domestic and international demands for democratic governance by maintaining the façade of a gradual reform process. While selective liberalisation and public mobilisation advanced towards the middle of the decade, recent years have again seen massive setbacks, especially in the areas of freedom of expression and the press, and freedom of association and assembly. In contrast to other selectively liberalising countries in the region, such as Morocco, where the measures of liberalisation also serve as a valve to channel and contain domestic and international demands for structural, systemic democratisation, in Egypt the undermining of the slightest democratic openings by massive setbacks have long eroded any credibility of President Mubarak's or his NPD fellows' commitment to genuine democratic reform, even among the most credulous citizens. In Egypt, democracy is not in process, but in retreat.

The outlawed Muslim Brotherhood, as the only opposition force with a sustainable public appeal and the potential to meaningfully challenge the NDP regime, has become the victim of a dramatically intensified crackdown ever since the movement proved its value as a challenger by winning 88 seats in the 2005 legislative elections. The subsequent years have seen hundreds of Brotherhood members arbitrarily arrested, held in custody without charge, and tried and convicted before military courts. Yet the regime's highly problematic relationship with the Muslim Brotherhood (MB) is only the tip of the iceberg. The regime's harsh backlash via crackdowns on human rights defenders during the past year has likewise illustrated the government's nervousness. The issue of "succession" to President Hosni Mubarak, which hangs over Egypt like a sword of Damocles, is poisoning the regime's

approach to the Muslim Brotherhood and inhibits it from developing a healthy approach towards dealing with political dissent in general.

Recent months have also seen a reprisal of the regime against Ayman Nour, the political leader of the Al Ghad Party and former presidential candidate. Nour had been able to introduce a new model for a popular politician challenging Mubarak and advocating for reform. He was involved by the government in a politically motivated case and sent to prison. Formally for health reasons, in February 2009 Nour was released from prison, but as a former prisoner convicted of a crime against integrity, he remains excluded from political contestation for the time being.

Some point to the numerous improvements that the environment which Egyptian civil society operates in has seen during the last few decades. Arguably, NGOs were able to make important gains over the last two decades, the human rights agenda as such is widely accepted in theory, election monitoring is no longer a taboo issue and the number of human rights organisations is on the rise. However, reflecting a general trend across the MENA region, the blatant, open repression of past decades has largely been replaced by more subtle means to ensure the state's continued firm grip over civil society and political opposition. Against the background of these overarching constraints, a number of structural, legal and political aspects condition and shape the way Egyptian NGOs are able to operate.

ASSOCIATIONS LANDSCAPE

The number of associations registered under the Associations Law is estimated by different sources as being between 17,000 and 30,000.² Taking into account the associations whose application for registration has been rejected or ignored and/or that are registered under the regime for private businesses, the real number is thought to be substantially higher. Only a minority of the those is really active. Religious associations and associations dedicated to development together represent more than half of all associations. Other important groups include sports, youth and social clubs and cooperatives. There are 115 trade and industry chambers, 24 professional syndicates and 22 workers' unions organised under a common federation. Moreover, there are currently 24 legally registered political parties.

Human rights and advocacy associations only constitute a small percentage of the associative sector, yet they are the ones whose ability to freely associate and develop their activities is most harshly affected by the formal and informal limits put upon them by the state. The majority of the roughly 25,000 associations (according to official figures) engage in largely apolitical fields such as local development and cultural and religious services. While the quantitative share of human rights and advocacy NGOs may be of relatively little importance, their qualitative role is crucial as their very goal is to defend free association and other fundamental rights and freedoms in the interest of all Egyptian civil society. Moreover, the very obstacles these organisations face in carrying out this important work offer the most truthful indicators of the need and demand for it.

The organisations facing the greatest challenges with regard to freedom of association are those which are politically active and which have the greatest potential for broad political mobilisation. In addition to human rights and advocacy organisations and political parties, trade unions, professional syndicates and cooperatives play an increasing role in this regard, as these are the institutions with the greatest potential to mobilise important social groups. This ability has been illustrated by a number of public protests organised by workers' unions during recent years, and state oversight of unionist activities has been tightened considerably.

Social work is largely carried out by the associative sector. Since the early 1990s, the public authorities have supported the creation of associations in this field, and increasingly tend to rely on them with regard to social and rural development. The important role of associations in fields such as the fight against poverty, literacy programmes, health and family planning has led to the increase in awareness of the importance of the associative sector for improving the social equilibrium, especially at local level.

Against the background whereby international donors mostly prefer to fund associations directly rather than channelling funds via public bodies, the Egyptian authorities have also been trying to “recover” the latter source of funding by encouraging the founding of associations under their own control. A large number of “development” associations have been created for this purpose, especially in the countryside.

LEGAL FRAMEWORK

The freedom of non-governmental organisations in a wider sense –including political parties and unions– to organise and develop their activities is laid down in the constitution and regulated or influenced by a number of laws, including the Associations Law, the Political Parties Law, the Press Law, the Penal Code, the Emergency Law, and a number of other laws regulating professional syndicates and trade unions.

It is generally agreed that both the Associations Law and the arbitrary way in which it is applied violate Egypt's international legal commitments to uphold the freedom of association. Egypt's membership of the International Labour Organisation (ILO) obliges it to guarantee the rights of free association and collective bargaining. International treaties and conventions that guarantee the freedom of association, expression and assembly, and to which Egypt is signatory, include the International Covenant on Civil and Political Rights; the International Covenant on Social, Economic and Cultural Rights (both ratified by Egypt in 1982); and the African Charter on Human and People's Rights (ratified in 1984).

Constitution

The right to freely associate is enshrined in article 55 of the Egyptian constitution. The article states: “Citizens shall have the right to form societies as defined in the law. The establishment of societies whose activities are hostile to the social system, clandestine or have a military character is prohibited.”³ The right to organise in unions and federations is regulated in article 56. Other human rights and fundamental freedoms directly relevant to free association are equally enshrined in the constitution: free assembly (article 54), freedom of speech (article 47), freedom of the press (article 48), and literacy and scientific research (article 49). All of these have been upheld in numerous rulings by the Egyptian Constitutional Court.

Recent years have seen a number of significant amendments to the Egyptian constitution, most of which were widely seen as aimed at securing Mubarak's and the National Democratic Party's (NDP) continuous rule in the future. Most importantly, article 76 of the constitution was amended to allow multi-candidate presidential elections for the first time in the history of the republic. While these amendments were sold by the Mubarak regime as a step towards greater democratisation, the final amendments did not provide for fair, competitive elections as they placed draconian restrictions on the nomination of both partisan and independent candidates, the latter apparently in order to prevent the scenario of a too successful Muslim Brotherhood. Moreover, the long-standing popular demands to reduce the current six-year presidential term and introduce a maximum number of terms for the incumbent were not taken into account.⁴ Finally, the latest constitutional amendments of 2007 substantially limited the judicial supervision of elections, and inserted anti-terrorism clauses into the constitution, de facto leading to a devaluation of rights protected by the constitution. The latest amendments in particular were widely considered a “constitutional backlash” by Egyptian human rights and political groups, aimed at securing the incumbent's rule by means of constitutional manipulation.⁵

Apart from the constitution, a large set of interlocking restrictive laws and provisions, as well as the general political framework, put severe restrictions on Egyptian civil society and, in particular, leave NGOs active in the field of human rights hardly any room to operate. Among the legal provisions that most immediately affect freedom of association are the Associations Law (Law 84 of 2002), the Political Parties Law (Law 177 of 2005) and the Press

Law, as well as some provisions of the Penal Code and the Emergency Law, to name only the most important.

Associations Law

The Egyptian Associations Law (Law 84 of 2002) is regarded as one of the most restrictive in the Arab World and has been widely criticised for providing a framework for governmental control over civil society, rather than vice versa. Moreover, the way the restrictive law is phrased is said to have enabled other authoritarian regimes in the MENA to draft similar laws that allow total control over civil society while maintaining a façade of pluralism.⁶

Non-governmental organisations (NGOs)⁷ and NGO federations come under the provisions of Law n° 84 of 2002 (replacing Law 32/1964), and its relevant Executive Regulation 178 of 23 October 2002. Law 84 of 2002 distinguishes between two types of non-profit organisations: associations and civic foundations. Article 1 defines an association as any “group with an organisation continuing for a specific or unspecific period and formed of national or juridical persons, or both together, whose number is not less than ten in all cases, for a purpose other than gaining a physical profit.” A civic foundation, according to article 56, is established on the basis of a financial fund “for a definite or indefinite period for the realisation of a purpose other than physical profit (...).” The main differences between an association and a civic foundation are thus that the former is a membership organisation with an elected board of directors, while the latter requires initial founding capital and has an appointed board of directors. Where not otherwise specified, the rules applicable to associations generally also apply to civic foundations.

Registration

The overall competency of registering associations and overseeing their activities formally lies with the Ministry of Social Solidarity (and the Governorates at the local level). Law 84 foresees that at least 10 founding members are needed to found an association. These have to submit a registration dossier to the Ministry that includes a number of clearly outlined points of information and documents. Upon submission of the dossier, the Ministry is obliged to check that it is complete and then provide a receipt of submission. If, after a delay of sixty days, the applicants have not received any notification from the Ministry, according to the law, the registration is deemed to be accepted and obtains legal status (articles 2-6). In other words, the law establishes a regime whereby no prior authorisation from the authorities is required, but rather a mere declaration on the part of the founders of the NGO.

If the registration of the association is refused, the Ministry of Social Solidarity must give the reasons for this decision. Article 11 of the law states that an application can be refused if the association's purpose is that of “forming military or paramilitary detachments or formations”, or “threatening national unity, violating public order or morals”, or “calling for discrimination between citizens because of race, origin, colour, language, religion or creed”. A refusal of the registration of an association, stating the reasons, must be communicated to the applicant within sixty days from the date of application in the form of a certified letter acknowledging receipt of the application. The applicant is entitled to contest the refusal before court within sixty days from the date of notification (article 11).

Internal governance

Article 34 of the Law foresees that the Ministry of Social Solidarity may raise objections to the board members proposed by an association. The Ministry must be given at least six days notice in advance of board elections, and be provided with the names of all the candidates. The Ministry of Social Solidarity, or in fact “any interested party”, may exclude certain candidates from nomination. In contrast to the regulations for associations, the board

of a civic foundation is internally appointed by the founding members and no public bodies may, according to the law, interfere in their selection. In consequence, civic foundations have become a relatively more popular legal form than associations.⁸

Activities

According to article 48 of the Executive Regulation, once it has obtained legal status, the association can engage in the full range of its activities. The field in which an association is entitled to develop its activities must be laid down in its statutes, within the boundaries of the law and the restrictions outlined above. Furthermore, article 11 of the Associations Law forbids associations from exercising any activity restricted to political parties or syndicates according to the Political Parties Law or the Trade Unions Law, respectively. Likewise, associations are not entitled to seek profit beyond the revenue necessary for the realisation of the association's objectives.

Funding

Article 17 of the Associations Law imposes high restrictions on funding as it allows associations to receive funding from abroad only after explicit prior clearance by the Minister of Social Affairs. The article states: "The association has the right to receive funds; fundraising is permissible by natural or legal persons after the administrative entity's consent and abiding by the executive regulations of the law. By all means, it is not permissible for associations to receive funds from abroad either from an Egyptian or foreign persons or a foreign body or its representative. None of the aforementioned should be sent to the individuals or organisations above until it is authorised by the Minister of Social Solidarity (...)". Contrary to the case of registration, the law is not clear on what happens if the Ministry fails to reply to an association's request to approve a foreign grant, or whether a prolonged silence equals the granting of approval. In practice, therefore, when the authorisation is not given, the funds remain frozen.

Fiscal regime / taxation

According to article 13 of the Associations Law, associations legally registered under this law enjoy substantial tax exemptions, including on contracts, delegations, correspondence and other matters, as well as from customs, other import taxes and donations (by decree of the Prime Minister). Moreover, they are free from registration and booking fees and enjoy a number of other reductions and special tariffs on phone, transportation, water, electricity and gas bills.

Dissolution

The dissolution of associations is regulated in articles 41-47 of Law 84/2002. The decision can be taken by the Ministry of Social Solidarity and does not require a court ruling. The grounds on which a legally registered association can be dissolved are listed in article 42:

- "Disposing of its property and funds or appropriating them for other than the purposes it was established for;
- Acquiring funds from, or sending funds to a foreign quarter, in violation of the provision of clause 2, article 17 of this law;
- Committing a serious violation of the law, or public order or morals;
- Joining, participating in or affiliating with a club, association, authority or organisation whose seat is located outside the Arab Republic of Egypt (abroad) in violation of the provision of article 16 of this law;

- Establishing that the reality of its purposes is targeting or exercising one of the activities banned in article 11 of this law;
- Collecting donations in violation of the provision of article 17, clause 1, of the present law."

The Ministry of Social Solidarity has extensive powers to halt the association's activities, discharge the board and/or remove the cause of violation by simple decree (article 42). Article 47 further states: "Subject to the provision of article 44 of this law, the members of the dissolved association and any other person in charge of its administration shall be prohibited from continuing its activity or disposing of its funds and property. All persons shall also be prohibited from participating in the activity of any association that is already dissolved." In order to appeal the decision, the NGO may not go to court directly but must first take the case to a three-person dispute committee. If the committee has not decided on the issue within sixty days, the NGO may take the issue to the Administrative Court (article 7).

Public utility

The status of public utility or public benefit is regulated in article 48-53 of the Associations Law. Article 49 states: "Any association visualising the realisation of a general interest upon or after its foundation may be vested with the quality of public benefit, by decree of the President of the Republic, upon the request of the association, or of the administrative authority or the General Federation for Associations and Non-Governmental Institutions (...)." The privileges enjoyed by associations of public benefit are determined by decree of the President of the Republic. The main difference from associations which do not have this status is that the funds of associations of public utility are considered public funds. The public authorities therefore claim a number of prerogatives, such as stronger control and oversight of activities and funds. On the other hand, the status of public utility is a guarantee of permanence for the association and promises smooth relations with the Ministry of Social Solidarity. It is, however, of little practical relevance as it is given only to a handful of charity associations.

Other legal forms

Confronted with the substantial practical constraints underlying the registration and development of associations, many NGOs (especially the ones working in politically sensitive areas) have been registering under legal forms other than the Associations Law. The most common of these is registration as a private company, usually restricted to societies pursuing commercial and economic activities. This is the legal form of some research institutes and the majority of organisations working on human rights issues. In practice, the most active human rights NGOs are those that are not registered under the legal form of an association.

In order to escape the harsh provisions, and particularly funding limitations, of Egyptian legislation, many NGOs have registered as foreign associations with a branch in Egypt. Some have registered several times under different hats, so that if they are dissolved as one legal form, they can continue under the other. However, in order to prevent NGOs from escaping the restrictive supervision of the Associations Law, the provisions of the 2002 Law foresee that any "group whose purpose includes or that carries out any of the activities of the aforementioned associations or institutions, even if it assumes a legal form other than that of the associations and institutions, shall adopt the form of an association or institution, and amend its articles of incorporation accordingly and submit an application for its registration" within a period of six months, otherwise it can be dissolved (article 4). The law further states that "whoever established an entity under any name to carry out the activities of the associations or non-governmental institutions without following the provisions prescribed in this law" can be imprisoned for up to six months (article 76). In practice, the non-registered

NGOs ignore this regulation on a de facto basis, and the law is being selectively enforced by the authorities on this point.

Penalties

Law 84 establishes extensive penalties, including prison sentences, for a wide range of ill-defined conditions. Anyone who establishes an association running clandestine activities, or who develops his activities outside of the boundaries of article 11 or the law, can be punished with imprisonment of up to one year and a fine of up to ten thousand Egyptian pounds. Activities that can be penalised with up to six months imprisonment include the development of association activities under a different legal form, engaging in the activities of an association that has been dissolved, or receiving funds from abroad. Activities that can be penalised with up to three months imprisonment include initiating activities prior to completed registration, or becoming affiliated with a foreign organisation without notifying the Egyptian authorities (article 76).

Foreign associations

Article 1 of Law 84/2002 stipulates that "Foreign non-governmental organisations may be licensed to exercise the activities of associations and non-governmental institutions", subject to the provisions of the Associations Law. The registration of foreign associations falls under the competence of the Ministry of Foreign Affairs. Foreign organisations may choose to found a local association under Egyptian law via an Egyptian partner, who will be accountable to the Egyptian state. Alternatively, they may choose to establish a branch by signing a convention with the NGO department of the Ministry of Foreign Affairs. In practice, this is a very lengthy and unpromising process. Human Rights Watch, for example, has unsuccessfully been trying to establish a branch in Egypt for several years.

Political Parties Law

The Political Parties Law (Law 177 of 2005), combined with the general government policy of putting major constraints on the registration process, impedes the emergence of a truly pluralistic electoral choice. Currently there are 24 political parties legally registered. Registration of new political parties, however, is very restrictive and, in particular for potentially powerful opposition forces, a hopeless matter, given that the ruling party de facto controls the registration process. The formal responsibility for registering new parties lies with the Political Party Committee (PPC), the members of which are nominated by the Shura Council. But as the Shura Council is permanently dominated by NDP members, the latter indirectly decide over the registration of new parties. In practice, this means that the registration of a new political party is close to impossible.⁹

The restrictiveness of Law 177 also weakens existing opposition parties in several other ways. Under democratic conditions, when there is a major ideological split in an existing party, factions can break away and form a new party. In Egypt this is not an option, as the formation of new parties is practically impossible, and existing parties are forced to stick together, deal with great internal divisions and compromise. This not only strongly limits their efficiency, but also contributes to further worsening the image of Egyptian political parties in public opinion. However, a reformation of Law 177 is not currently on the agenda.

KEY OBSTACLES TO FREE ASSOCIATION

Law 84 (2002) puts severe restrictions on associations. On top of the draconian legal constraints, the frequent non-compliance with those provisions of the Law aimed at protecting NGOs against the state, as well as numerous legal loopholes that allow arbitrary behaviour

on the part of the authorities, make practice even more repressive. This all combines to create a legal framework in which the state can dominate NGOs at will, and which aims to strike a balance between securing strict state control over civil society while maintaining a minimum image of liberalism.

With all efforts to bring about a reform of the Associations Law, it is well known that major obstacles to freedom of association in Egypt lie outside of the margins of the law. The legal and political framework in which Egyptian NGO activity takes place is dominated by the absolute powers of a factual one-party rule that severely limits basic human rights and fundamental freedoms in the name of security and uses a shallow democratic discourse to gain domestic and international legitimacy. Placed within this overall repressive framework, even an associations law perfectly in line with international human rights standards would be no guarantee for improving the situation of Egyptian NGOs.

The restrictive law and the arbitrary practice of implementation form but one important piece of the puzzle in an overwhelmingly repressive environment where arbitrary decisions prevail over the rule of law. The fate of outspoken dissenters is dictated by the security services, which exert substantial influence over all processes concerning the registration, activities and funding of NGOs, without a legal basis beyond the vague provision of the maintenance of "public order", and the broad mandate bestowed on them by the permanent warfare of emergency rule.¹⁰ To this general framework it is important to add the current situation of the anticipated power shift after Mubarak's retirement or death, the outcome of which remains extremely unclear. This scenario has significantly tightened the regime's grip on dissent and led to a series of recent clampdowns on Islamists, journalists, bloggers and NGO activists.

Provisions and implementation of Law 84 / 2002

The provisions of the Associations Law outlined in the previous chapter inhibit the free establishment and development of Egyptian NGOs. "The law is an accumulation of restrictive regulations, administrative barriers and procedures that represent an unreasonable burden on NGOs and substantially reduce, if not eradicate, their room to operate, and offer wide space for arbitrary practices":

Registration & dissolution

- Restrictive registration process: The registration process with the Ministry of Social Solidarity is arbitrary and tiresome, and some human rights NGOs have had to struggle for years in order to get their registration through. This imposes unacceptable constraints on their work, as non-registered NGOs are unable to function. While the formal responsibility lies with the Ministry, in practice everything considered to be of political significance is automatically referred to the secret services, which exercise an extra-legal role in this regard. This, in turn, makes it impossible to take legal measures against their decisions. In order to escape the harsh limitations under Law 84, NGOs register in the legal form of a law firm, a non-profit company or a research centre, among others. Others establish themselves as branches of Europe-based paper companies. Yet others undertake a year-long struggle finally to be registered under the Associations Law. Fear of alienating the authorities and the wish to avoid problems and harassment largely contributes to making NGOs seek legal registration, in spite of all the restrictions.
- De facto authorisation: The law formally requires only a notification of NGO registration (regime of declaration), as opposed to a licensing process subject to approval (regime of authorisation). According to the law, the NGO is automatically legally registered sixty days after its application is submitted to the Ministry if the latter does not raise any objections. In practice, however, a lack of response from the Ministry is equivalent to non-registration, as NGOs can barely function without an official registration number,

and non-registered groups are banned from conducting their activities. Moreover, for some external donors, legal registration as an association is a prerequisite for receiving funding. With an official rejection letter from the Ministry, NGOs can go to an Administrative State Council and file a complaint. Without such a letter, or without receipt of their application in the first place, they have no legal remedy.

- Vagueness favours abuse: "The vague provisions of 'threatening national unity, violating public order or morale' in article 11 provide generous loopholes for arbitrary interpretations as to the grounds on which an NGO or its activities can be declared illegal. The provisions of article 11 are so vague that they are giving the authorities and the secret services unlimited powers to dissolve NGOs and to harass activists."
- Easy dissolution: In procedural terms, Law 84 allows the dissolution of NGOs by administrative order. Under international human rights standards, a court ruling would be required to dissolve an NGO.

Activities

- Prison penalties: The law establishes significant custodial penalties for engagement in the activities of a non-registered NGO.
- Interference in internal governance: The Law establishes government interference with regard to associations' board elections and other internal organisational decisions.
- Narrow scope of activities: The law significantly reduces NGOs' scope of permissible activities, prohibiting NGOs from engaging in "political" or unionist activities.
- Thematic and geographical clearance: The Law requires prior permission from the authorities for NGOs to expand their thematic and/or geographical scope of work.
- No foreign affiliation: The Law forbids affiliation or cooperation with foreign organisations.
- Burdensome reporting: The Law establishes a complicated, lengthy reporting system which imposes an inappropriate burden on small and/or underfunded NGOs in particular.

Funding

- Previous clearance of foreign funds: The law requires prior government clearance for foreign funding on grounds other than tax and customs, without clear and transparent criteria. As authorisation is rarely ever given to NGOs working in politically delicate fields, the provision equates to a prohibition of foreign funding. Given the insignificant domestic public funding options, NGOs must thus rely on private donations from domestic businessmen, or have to use illegal international funding, which entails a substantial risk both for the continued existence of the NGO and for the individual activists.
- No legal resources: The law fails to establish clear procedures as to what happens if the authorities withhold their response to a foreign funding request. In practice, whenever there is no reply, the funds remain frozen. The lack of clarity in the law on this point thus provides a convenient loophole for the authorities to bar funds from abroad without having to issue a formal prohibition.

2007 saw the enforced closure of two human rights NGOs, the Association for Human Rights and Legal Aid (AHRLA) and the Center for Trade Union and Worker Services (CTUWS). It was the first time in 25 years that a legally registered human rights organisation was shut down by the Egyptian authorities. AHRLA had been legally registered under Law 84, but began to get into serious trouble when it started working on torture cases, for it was very outspoken and filed torture cases against state security officers. It was closed by an administrative decision in September 2007, but eventually won its appeal against the closure decision before the

State Council in October 2007. However, at the time of writing, the decision has not yet been implemented, following appeal by the authorities. The CTUWS had been closed by the Ministry in March 2007 over its role in the massive workers' strikes in the delta region in Upper Egypt. The government closed the NGO on the grounds that it was not registered as an association but as a private company. A court allowed it to reopen in March 2008, but it was not before June 2008, following three months of CTUWS's negotiations with the security services, that the regime finally accepted the ruling and allowed CTUWS to reopen.

The popular movement Kefaya has a special role within Egyptian civil society as it is an informal, ad hoc mobilisation mechanism with no fixed structures, members or headquarters. Alongside the formal legal structures of parties and NGOs, the idea of the mobilisation movement was also born. Its lack of formal organisation brings a number of very tangible advantages that partly undermine the harsh operating conditions imposed on Egyptian civil society by the regime. The lack of an organisational structure deprives government and secret services of their main NGO control mechanisms of registration, monitoring and reporting, limiting activities and clearing funding. Moreover, the harassment of targeted security agents becomes difficult as there are no NGO premises to shut down, no central assets to seize, no listed founders and members to prosecute, and no funding to authorise. Moreover, the lack of formal structures keeps expenses very low, so they can be covered by private domestic donors and require no extra external funding.

Observers agree that Kefaya, which, for a brief moment in 2004/5, was able to nurture the people's hopes for a democratic Egypt, has now lost most of its clout. However, the movement's great achievement was –according to one of its founders– to “break the culture of fear”. By going on the streets and demonstrating, citizens “learned to exercise their constitutional rights”. The group opened the gates for political mobilisation, an achievement which has been benefitting other groups ever since. An emerging young generation of blogging and demonstrating activists is growing strong, and they are building on Kefaya's achievement and techniques of mobilisation. Lately, Kefaya veterans report, the grounds for mobilisation are becoming more theme- and sector-specific. At the same time, younger generations of political activists are succeeding in taking over and applying the innovative mobilisation techniques first used by Kefaya. In 2008, groups of factory workers managed to mobilise on the grounds of the deteriorating socio-economic situation. A joining of forces of all of these groups against the quality of Mubarak's governance may have huge potential in theory, but as of yet it does not appear likely. Kefaya veterans are aware of the great advantages of their organisational form and have occasionally expressed criticism of the traditional Egyptian NGO community, which they say has been largely shaped by the burdens placed on it by the regime, to the detriment of a dynamic, innovative activism.

The situation of political parties is not much better than that of NGOs. Currently, there are twelve political parties fighting before the Supreme Administrative Court of the State Council to push through their registration. However, most of them filed their application for registration prior to the 2005 amendments, so their applications are now outdated as they were based on the previous legal provisions. Now they have to meet the new requirements, which include a “distinguishing clause”: to be registered as a new party, aspirants have to show that they substantially differ from existing parties, thus adding value to the party landscape. But the law is very vague as to what that means.

The most prominent examples are the moderate Islamist party Wasat (a Brotherhood offspring), and Karama (a splinter from the Nasserist party), both of which are critical of the regime and have been applying for a licence for years. Karama applied in 1998 and was rejected. On the second attempt, the group's application was acknowledged by an official receipt, since which – on the basis of current legislation– the group considers itself a legal party. Wasat, on the contrary, did not receive any receipt, and thus has no access to legal resources. The group keeps on fighting for legal registration.

The Muslim Brotherhood (MB) has been banned as an association since 1954. They have never officially attempted to register as a party, and only lately expressed their aspirations

to do so. In their discourse, freedom of religion, but also of expression and assembly, are more dominant themes than free association. As an illegal organisation, the Brotherhood is subject to all kinds of clampdowns and its members face massive harassment in the form of surveillance and monitoring, travel bans, arbitrary arrests, and unfair military trials, all in the name of national security. On the other hand, for the MB there are also a number of tangible advantages to being outlawed, including the absence of fiscal and financial accountability requirements and funding restrictions. Currently, the MB does not depend on (and does not usually accept) foreign public funding, as it is financed via private donations and through its charities. However, it is very likely that in financial terms, its outlawed status is a great advantage. For this reason, even if the government allowed the group to register as a party or association, there would likely still be no internal consensus. The relationship between the MB and Egyptian human rights NGOs is rather ambiguous: apart from differences between both regarding religious rights, the MB resents that the Egyptian human rights community does not defend them more in the face of the recent crackdown on MB members. Historical reasons (dating back to the antagonism between the previously fundamentalist MB versus leftist human rights activists) play an important role here. Most importantly, in a barely veiled reaction to the MB's strong performance in the 2005 parliamentary elections, the 2007 constitutional amendments forbid not only the establishment of political parties but of all political activity that is based on religious principles.

Extralegal role of the security services

While the Ministry of Social Solidarity is formally in charge of NGO affairs, in practice it deals with their daily matters by permanent interference through the State Security Investigations (SSI) via demands, questions, orders etc. The SSI interferes massively in any matter of political significance and plays a central role in determining the fate of NGOs. Its interference is greatest with regard to politically significant issues such as the decision over whether to register a new association, nominate board members or allow foreign funding. Not the Ministry of Social Affairs but the SSI has the last word on any matter considered "political". The Minister of Social Solidarity himself takes his orders from the SSI and the Ministry of the Interior. Crucially, the massive interference by the SSI lacks any legal foundation. The SSI de facto controls not only the registration of new groups but also implements a policy of systematic monitoring and harassment of existing NGOs.¹¹ Activists also report a "culture of harassment" in the Ministries and the SSI, as well as anticipatory obedience to the perceived wishes of the ruling establishment. The Ministry of Social Solidarity also issues a lot of decrees imposing additional measures of harassment on NGOs, for example the Decree of Social Solidarity that forbids contacts with foreigners. Most NGOs interpret these as attempts at intimidation, and therefore try to ignore them as best as they can without jeopardising their own survival.

In practical terms, the influence and harassment of both the Ministry of Social Solidarity and the SSI are being felt by NGOs on a daily basis. For example, the SSI has given instructions to all hotels to notify it of any meeting held by an association working on human rights, and in many cases the security services have prohibited and/ or prevented the meetings. The SSI is becoming increasingly involved in NGO activities. NGO meetings at hotels rarely take place without the presence of an agent questioning participants. Only lately, this harassment has been extended to international/foreign NGOs, such as Freedom House or Transparency International. The harassment of human rights NGOs by secret service agents also creates additional funding problems: whenever private businessmen want to donate funds to one of those NGOs, they are systematically harassed, and on many occasions this has led them to withdraw the funds.

Furthermore, not even the Ministry of Social Solidarity bureaucrats appear to be clear about the legal provisions for NGO registration. This lack of knowledge is illustrated by the fact that, on occasion, official letters of rejection of the registration of an NGO state the

security services' disapproval as the official reason for rejection. NGOs also report that the Ministry of Social Solidarity blindly follows security service orders, at times blaming restrictive stances on an order received from the latter.

Permanent state of emergency

Since 1981 the president has exercised his powers under a continuous state of emergency, the renewal of which has been successively approved by the Parliament. The Emergency Law 162 of 1958, the Anti-Terror Law 97 of 1992, and a number of related military decrees, together give the authorities far-reaching powers to arbitrarily and systematically curb human rights and fundamental freedoms in the name of national security. Arbitrary arrests on the grounds of upholding "national security" or "public order", prolonged detentions, far-reaching media censorship, prohibition of strikes, demonstrations and electoral campaigns, the use of violence against people who are peacefully exercising their constitutional rights, and the referral of civilian cases to military courts, are just a few of the far-reaching powers the authorities can exercise with impunity. According to Human Rights groups, the state holds at least 10,000 people detained without charge on the basis of the emergency law.

Over the past seven years the Emergency Law has not been directly used against human rights groups, but there are still a number of serious concerns pertaining to the state of emergency that have affected civil society. First, arbitrary detention (powers under the state of emergency) has been used widely over the last three years against civil and political activists. Second, some articles in the Penal Code have been used to prosecute rights activists on the grounds of national security (for example, the prominent activist Saad Eddin Ibrahim was prosecuted in 2008 on the grounds of threatening national security and spreading false information about Egypt abroad, thereby harming national interests). Third, rights activists report an increasingly intimidating tone on the part of officials towards human rights defenders who are engaged with International Human Rights mechanisms, and who are being accused of espionage or of threatening the national interests of Egypt (for example, statements made by Egyptian officials after the adoption of a critical resolution on Egypt by the European Parliament in early 2008, for which Egyptian rights activists had provided substantial input).

On numerous occasions, including during his presidential campaign of 2005 and in the run-up to the elections for Egypt's membership in the UN Human Rights Council, Mubarak made pledges to end the permanent state of emergency. The government claimed that the old Emergency Law 162 (originally drafted by the Sadat government to secure safe rule in war times) would be amended to form a modern counter terrorism law. However, none of these pledges were ever fulfilled. As Prime Minister Ahmad Nazif claimed that the drafting process of the new anti-terror law needed careful attention and could not be finished in time, the state of emergency was again renewed in May 2008 against vociferous objections from the opposition and human rights groups. At the same time, rights activists are sure that the coming anti-terrorism law will substantially limit the space of civil society even further.

Approaching power shift

The restrictive provisions of the Associations Law and other relevant legal provisions, their arbitrary application in practice, and the overly dominant role of the security agencies create a highly difficult environment for NGOs to operate in. In addition to this, the space of NGOs, political parties and the media has substantially narrowed since the 2004/05 liberal peak. In a blatant reversal of the period of political opening in the first few years of the millennium, the past few years have seen the Constitution amended, laws modified, and activists, journalists, bloggers, union leaders and Islamists jailed and condemned to harsh prison sentences. Further restrictions are also underway. To some extent, all of these measures are an expression of the regime's nervousness with regard to the approaching power shift.

The regime is responding with a new wave of repression to the emergence of a massively successful political opposition (the Brotherhood in parliament, Kefaya on the streets) as the end of the Mubarak era is expected to lead to a political shift. This constellation has driven the country into a political stalemate in which all prospects of meaningful political reform appear frozen, or even in retreat.

In discussions among Egyptians, several possible scenarios emerge. The most common is a hand-over of power to Hosni Mubarak's son, Gamal Mubarak. As nobody can rule Egypt without the backing of the military, a take-over of the military via an acceptable non-civilian candidate seems another likely option. Finally, if the establishment is unable to agree on a successor in time, the emergence of a power vacuum and struggle, resulting in public riots and chaos, is another possibility. While Gamal appears to be the most likely candidate, several factors work against him. The NDP is not prepared for Gamal's succession, there is public rejection of Gamal as the next president and, in addition, it is not even clear what exactly his profile would be. But most importantly, the military establishment has repeatedly ruled out being commanded by a civilian leader, and rejects a direct succession just like the general public. Looking ahead to a future of great insecurity, the moment of "succession" is feared by the regime and opposition alike.

The current marked stalemate within the political opposition both reflects and influences the freezing of Egyptian political life as a whole. The generational divide within the parties contributes significantly to this scenario: the leaders of all the parties are around 70 or 80 years old, but Egypt's population is becoming younger and younger, thus also leading to a rift within the parties as the generation of younger leaders are rising and increasingly questioning the leadership of the old guard. The parties' focus on their own respective internal divides is reducing their attention to and capacity for dealing with societal problems.

Contrary to the political opposition, the NDP does not suffer from the same divisions and internal struggles as others – on the contrary, they are united in their wish to maintain the status quo. The main reason for this is that the NPD is a benefit community rather than an ideological community, so its members do not mainly share ideological principals or political convictions, but rather a determination to advance their interests and obtain tangible advantages and benefits, which can only be secured through the maintenance of the current power constellation.

Under these conditions, it is only logical that the authorities perceive the anticipated change as a danger. Their interest does not lie in democratisation but, on the contrary, in the maintenance of the status quo. They do not foresee the inevitability of change – indeed, any sense of inevitability would be perceived as equalling chaos and anarchy – and they are therefore taking increasing measures to reassert the control that has been reduced over the past decade. At the same time, they are keen to learn from their international authoritarian partners on how to manage a "safe transition". The result is the consolidation of an increasingly sophisticated authoritarian soft power toolbox that is flanked by a renewed resort to open repression to prepare for a smooth succession.

The role of civil society is often understood as a mediator between the state and society. In order to fulfil this role, NGOs that aim to bring forward reforms must aim to establish a critical but constructive relation with the authorities. The frequency, quality, mechanisms and institutions in which this takes place determine the extent to which NGOs can be effective societal mediators.

STATE – CIVIL SOCIETY RELATIONS

Reflecting a general trend in the MENA region, the Egyptian state's attitude towards political civil society has over the last two decades switched from open repression and total rejection of human rights activism in the 1990s towards an attitude aimed at more subtle forms of containment. In spite of this comparatively positive development, Egyptian NGO activists report that the traditional suspicion of the authorities vis-à-vis politically active NGOs,

as well as their lack of incentives to give civil society a meaningful stake in the process of political decision-making via systematic consultation, still inhibits the emergence of regular, productive consultation mechanisms that lead to tangible results. A systematic dialogue between NGOs and the government on reform issues is not taking place. Dialogue happens occasionally on an ad-hoc basis, and human rights and advocacy NGOs were able to press for a number of steps to be taken by the government, including the establishment of a National Human Rights Council, and the government's agreement to allow the monitoring of the 2007 elections. In spite of such selective gains, however, rights groups complain about the ad hoc nature of consultations, the lack of follow up, and the one-way nature of dialogues (which are always organised and managed by the Ministry of Social Solidarity). NGO activists report that such meetings are rarely real consultations for planned legal reforms but "include only stuff that has already been cooked" (as happened in the cases of consultations for Law 84 and the Constitutional amendments, among others). As such, activists claim that these meetings are PR appointments for the government, which serve the sole aim of conveying a liberal message to the West.

On the institutional side, a National Council for Human Rights (NCHR) was created in June 2003 as a dialogue forum on human rights and an interface between the government and civil society. Institutionally subsidiary to the Shura Council, the NCHR is officially "independent in practising its functions, activities and jurisdictions". Among the Council's members are a number of prominent human rights activists. NGO activists across the board complain, however, that the newly founded National Council for Human Rights has been used as a forum for holding meetings of Egyptian NGO representatives with foreigners to convey the message: "we know we have some problems, but all things are moving in the right direction". Some of the initial NGO board members resigned out of fear that membership of such an institution might be harmful to their reputation. Rights activists also criticise the NHCR for being more interested in meeting foreign than national actors and for helping to shield the government from international criticisms. The NHCR also plays a critical role in selecting the NGOs entitled to monitor elections or to engage in other significant activities involving national and international actors.

There is a consensus among civil society, however, that any successful lobbying for reform proposals requires the systematic establishment of contacts within the relevant authorities. Indeed, the only institution able to organise regular NGO dialogues with meaningful government participation has been the National Council for Human Rights. On the one hand, this is of course due to its closeness to the regime, almost as a governmental institution. On the other hand, many among its members do try to work towards facilitating dialogue and lifting some restrictions on NGOs. While the Council may have little added value in the existing human rights NGO landscape, the little added value it does have lies precisely in establishing contacts with the authorities.

Many NGO representatives report that "dialogue" between civil society and the regime is already taking place, as they have been in contact with the people in charge at the relevant ministries for some time. They emphasise that in their relationship with the Ministry of Social Solidarity, dialogue is not an achievement in itself, because such an approach would but mirror the strategy of the regime to replace action by talking. The problem, NGOs report, is not the lack of conversation, but the lack of follow-up. Indeed, many activists therefore say that the combination of dialogue without intention of implementation reflects a deliberate tactic on the part of the authorities that aims to provide a safety valve for opposition demands and to reconcile a reformist image with the maintenance of the status quo. NGOs are aware that they are the weaker party and depend on the authorities' good will to receive and consider NGO proposals. For this reason, according to activists, they always ask the authorities to tell them what they want but never get a clear and concrete answer. Instead, government representatives repeat the same lines, asserting their esteem and support for freedom of association in a general manner. For this reason, there is a sense of disillusionment and cynicism among the NGO community with regard to further dialogue

attempts. Debates with regime representatives are seldom useful, they say, because they lead to nothing and actually form part of the regime's strategy. Human rights activists report that in the run-up to the latest round of Constitutional amendments, they went to approximately 20 conferences about the amendment of the Constitution, but in the end, none of the many proposals made by civil society was taken into account.

In spite of this disillusionment, civil society at large remains aware that it is part of its role to mediate between the government and society, and remains open to dialogue and cooperation. However, most activists say that if mediation and cooperating with the regime means turning a blind eye to rights violations, they cannot accept it. The government has obvious reasons for why it makes it so difficult for NGOs to lobby for their proposals: there is no genuine incentive for the government to take those proposals into account, and even less so if these proposals imply a substantial reduction of effective government control over NGOs. According to the specific issue on the agenda, the government appears more or less open to negotiate on issues such as women and children's rights. However, when it comes to more narrowly political issues that have the potential to empower the opposition, such as freedom of association, the door to genuine negotiation remains shut. The authorities are aware that granting the right to truly free association and expression would likely end up jeopardising the regime.

At the same time, international NGO representatives in Cairo report that the Egyptian NGO community is often internally divided over the best strategy to adopt, and the rather static stances of some leading players at times reduce the possibility of successfully conducting dynamic, strategic lobbying with the regime. Indeed, human rights activists themselves complain that one of the greatest weaknesses of Egyptian NGOs is that "they do not work together very effectively", and therefore a "powerful collective advocacy is absent". In terms of institutions, the lack of an overdue nation-wide NGO network or platform may have contributed to the difficulties of fostering unity and consensus-building among Egyptian civil society and channelling national NGO demands effectively in a common direction. An embryonic structure of such a platform was organised in 2008 by one of the main Cairo human rights organisations, with the intention of institutionalising this mechanism and filling this gap in the Egyptian civil society landscape.

More recently, rights activists report that constructive relations between the state and civil society are put under further constraint by an emerging trend of the government to marginalise government-critical Egyptian NGOs internationally and prevent their effective participation in international and regional Human Rights mechanisms.¹²

LOCAL CALLS FOR REFORM

Intense local lobbying led the government in 1998 to initiate a process to reform the suffocating provisions of the previous Associations Law of 1964. The relatively open Minister of Social Solidarity at the time initiated a rather superficial consultation process with civil society over six months. At the end of these consultations, civil society submitted a draft law to the Ministry and to the NDP. The law eventually adopted by the cabinet, however, did not include most of the relatively liberal provisions of the initial draft from the Ministry of Social Solidarity. Brought before the Constitutional Court of Egypt in 1999, the law was declared anti-constitutional. A hastily amended version of the law was eventually adopted, namely Law 84/2002, as it is currently in force.

While having erased some of the harshest provisions of the previous law, Law 84 is still considered one of the most repressive associations laws in the Arab world. Widespread criticism has therefore led the Egyptian government in recent years to work on a set of new amendments to the bill. A commission was set up at the Ministry of Social Solidarity to discuss the issue and draft the amendments. However, after several years of debate on a renewed reform of the Associations Law, no clear outcome has yet been shown, and no official draft law has been made public. However, it is possible that a new draft law prepared by the Ministry may be introduced in parliament before the end of the parliamentary session in summer 2009.

Expectations for the new law are mixed. While it is likely that some of the harshest provisions (including the restrictive registration process and the ban on “political activities”) will be eased, it is widely expected that, overall, the new Law will impose further restrictions on NGOs. In particular, civil society representatives fear that the new amendments will include provisions aimed at curtailing NGO funding from abroad by greatly enhancing government oversight over NGO funds, which would have far-reaching consequences for many Egyptian NGOs that largely depend on foreign sources for their financial survival. In addition, some civil society activists fear that the law might further increase the role of the SSI in monitoring NGOs by making its role explicit.¹³

In order to provide input to the drafting process of the new law, Egyptian civil society has brought forward a number of initiatives and coalitions, often in collaboration with international donors, which have produced a series of concrete proposals regarding the upcoming amendments to Law 84. Several of these initiatives have drafted amendments to Law 84 or produced entirely new draft laws. Initially, internal divisions and disagreements on priorities, methodology and the best approach prevented the main human rights NGOs from effectively joining forces and agreeing on a common proposal. While the legal proposals of the three main initiatives shared a basic consensus on the reform requirements, they did not join forces initially. However, in late 2008, two of the main initiatives (a coalition of over 150 NGOs) agreed on a common draft law to be proposed to the Ministry as a replacement for the current legislation. The coalition is led by the Cairo Institute for Human Rights Studies (CIHRS) and the Egyptian Organisation for Human Rights (EOHR). Both organisations are well respected by both the regime and society, and are therefore considered well suited to putting forward this initiative.

There are several points that are deemed by a broad consensus among civil society to be the most urgent requirements for the new draft law:

1. It must **exclude prison sentences**;
2. It must **effectively establish the regime of declaration**, plus the necessary safeguards to ensure its implementation;
3. It must **not impose any restrictions on domestic or external funding**.

Moreover, on a more technical note, NGOs agree that it should not be too overregulated (reflecting a common criticism from legal experts). The above mentioned principles also reflect international standards of NGO legislation, to which the Egyptian government has subscribed via its international legal commitments. The NGO coalition asks the government to comply with those commitments, “trying to bring about a shift in NGO philosophy”.

Further specific requirements included in the NGO coalition's draft law include the following:

- A substantial reduction in the preconditions needed to establish an NGO
- Free choice of thematic and geographical scope
- Registration by certified letter, without possibility of rejection
- The publication of new NGOs in a newspaper (instead of official government bulletins)
- The acquisition of legal status following the signature and declaration of the NGO's by-laws on behalf of its founders
- Objections from the authorities only after effective declaration
- Dissolutions only by a final court decision
- Independent external auditing, with a copy of the final account to the authorities
- Full transparency regarding the NGO's activities upon request
- Full freedom to collect domestic and external funds and donations after notification
- Objections to NGO funding only a month after notification
- Withdrawal or freezing of funds only upon court decision

- Guarantee of full free assembly without government interference
- Full freedom to cooperate and affiliate with foreign associations or bodies after notification
- No custodial sentences
- Sanctions to be applied only upon judicial ruling, within a clear hierarchy of measures
- Establishment of adequate direct legal resources for the NGO to challenge administrative decisions.

Note: The full draft law proposed by the NGO coalition can be found in the annex of the present report.

In order to lobby for their proposals, the NGOs involved invited those in charge at the Ministry of Social Solidarity to several conferences and meetings to discuss the issue, and have also been lobbying with parliamentarians, NDP members and opposition parties. The NGO draft law was delivered to the human rights committee of the Parliament, the prime minister and the minister of social solidarity. However, members of the coalition lamented their reinforced impression that dialogue and consultation led at best to the consolidation of the government's position in being able to claim its commitment to a participative approach. In fact, according to NGO representatives, those they needed to enter into dialogue with on the governmental side were neither the Parliament nor the Ministry of Social Solidarity, but the Ministry of the Interior and the security services, given that formal competencies do not matter at all and sensitive, democracy-related issues such as freedom of association are decided upon by the security services. However, this poses a practically unsolvable dilemma since this extralegal competence rules out both legal resources and the possibility of effective lobbying.

In addition to domestic lobbying efforts, representatives of the NGO coalition have also been engaged in extensive lobbying in Europe, especially with the European Parliament, the African Union and the UN Human Rights Council, in order to raise awareness of the situation. NGOs agree that during the current process, the regime has neither entered into genuine negotiations nor responded to concrete legal proposals. They believe that the stronger reluctance of the government to actively involve civil society, compared to the previous consultation process in 1998, is partly due to the decentralised process whereby it was drafted, which also involved regional and local NGOs. This, they say, "makes the government more afraid." As of March 2009, no reply statement or government draft law had yet been issued.

With regard to the prospects for the success of the NGOs' initiative, there is little illusion in civil society that their proposals will be taken into account. Even if they were, there is no reason to assume that placed within an overly repressive political framework, a democratic Associations Law would actually have meaningful effect on the ground. Moreover, the current political stalemate in Egypt has frozen any impulse for further liberalising reform and appears, rather, to feed the regime's intentions to reverse the timid democratic gains of the past years. The few who entertain timid hopes in this regard rest them on the Egyptian regime's preoccupation with its international image, and the potential positive impact this may have on further reform. At the very least, representatives of the NGO coalition believe that their initiative "will increase awareness and factual knowledge about freedom of association and the situation of Egyptian civil society in and outside of the government." Many NGO activists believe that gradually increasing knowledge and awareness in an accumulative manner both in and outside of Egypt will eventually increase the internal and external pressures on the government to relax its rigid stance. Veteran activists know that real change needs time and have no illusions about ousting the incumbent immediately, hence they work for the future: "our role is to prepare everything for the next generation so they will smell freedom."

ANNEX:

Draft Law proposed to replace Law 84 / 2002, jointly presented by the Cairo Institute for Human Rights Studies (CIHRS) and the Egyptian Organisation for Human Rights (EOHR), October 2008

Draft Law on Associations (Non-governmental Organisations- NGOs) and Private Institutions

A joint project between the Cairo Centre for Human Rights Studies (CIHRS) and the Egyptian Organisation for Human Rights (EOHR).¹⁴

—
In the name of the people,
The President of the Republic,
The People's Assembly approved the following Law and it is hereby enacted:

Clause (1)

Without prejudice to the regulations of associations established by virtue of international conventions, private associations and institutions shall be subject to the provisions of the attached Law, with the exception of the following:

- a) Associations established in accordance with, or whose regulations are approved by, special resolutions from the Executive authority, or are subject to the control or supervision of such;
- b) Associations and institutions seeking financial profit for their members or staff;
- c) Political parties, professional syndicates, trade unions, and student unions;
- d) Commercial companies and companies established in accordance with the provisions of Article 505 and the subsequent articles of the civil law.

Foreign non-governmental organisations may be authorised to practice the activities of associations (NGOs) and private institutions subject to the provisions of the present Law pursuant to the rules established therein. The Executive Regulations of the said Law shall organise the facilitating procedures.

Clause (2)

Associations and private institutions in existence during the entry into force of the present Law and registered in accordance with Law No 84 of the year 2002 shall be officially registered. Said associations and private institutions shall amend their statutes and request the proclamation thereof in application of the provisions of said Law within one year as of the date of entry into force thereof if they desire to enjoy legal status.

Clause (3)

All associations or private institutions, the statutes of which have been re-proclaimed pursuant to the provision of the present Law, shall re-constitute the relevant board of directors in accordance with their re-proclamation within six months as of the date of completion of the proclamation, with the proviso that the executive and administrative structures of private associations and institutions existing upon the implementation of the present Law proceed with their activities until they have been re-constituted pursuant to the rules stipulated in the present Law.

Clause (4)

The term "administrative authority" shall, in the application of provisions of the attached Law, mean the Ministry of Justice.

Clause (5)

Law No 84 of the year 2002 on private associations and institutions shall hereby be repealed. Any other provision contrary to the provisions of the present Law shall also be repealed.

Clause (6)

This Law shall be published in the Official Gazette and shall come into force as from the date of publication thereof.

This Law shall receive the seal of the state and shall be implemented as a state law.

Issued at The Presidency of the Republic on

..... A.H corresponding to A.D

Chapter One: Associations

Article (1)

The term "Association" shall, in the implementation of the provisions of the present Law, mean any permanent or impermanent non-governmental organisation established by two or more natural or legal persons, for non-profit purposes either for the associations, founders or members thereof.

Article (2): The relevant association shall put forth statutes, signed by the founding members thereof and including the following data:

- 1) Name, purpose and headquarters of the association;
- 2) Name, surname, nationality, profession and place of residence of each founding member;
- 3) Requirements of membership and conditions of withdrawal thereof;
- 4) Rights and duties of members;
- 5) Bodies representing the association, competencies of each, means of selection and deposition of members, or withdrawing or suspending membership thereof;
- 6) Prerequisites for the validity of regular and extraordinary general assembly meetings;
- 7) Resources of the association and the means of financial audits;
- 8) Rules of statute amendment;
- 9) Rules for the dissolution of the association and the body to which the funds thereof will be reverted.

Article (3)

The purpose of the association may not contravene either international human rights instruments or the Constitution

Article (4)

Persons irrefutably convicted of crimes related to honour or integrity may not participate in the management of an association, unless they have been absolved.

Article (5)

The association shall, in all its affairs, be subject to the general assembly thereof exclusively; in situations where the number of active members of the association is less than ten, the competencies of the general assembly shall be reverted to the board of directors. The association may not be placed under seizure or the funds thereof under sequestration by any judicial or non-judicial authority except in circumstances exclusively provided for in the present Law or in the statutes of the association.

Article (6)

The statutes of the association may not provide for devolution of the association's funds upon dissolution thereof to members, their heirs or families.

Article (7)

The association shall notify the administrative authority, by means of a registered delivery return letter, of the establishment of the association, enclosing therewith a certified copy of

the association's statutes. A special register called the "register of private associations and institutions" shall be established at the headquarters of each court of first instance, in which the association shall be registered and assigned a serial number as soon as a copy of the statutes is deposited therewith, certified by the board of directors. The association may not, under any account, be denied proclamation.

Article (8)

The association shall be proclaimed by publicising the name, the registry number thereof, the court of law in the special register of which the association has been registered, the purpose of the establishment of the association, names of founding members and a detailed summary of the statutes in one of the widely spread newspapers. Proclamation procedures shall, within a one month term as of the date of deposition of the documents of the association, be carried out by a competent employee of the "registry of private associations and institutions", otherwise the legal representative of the association may carry out such procedures at the expense of the registry.

Article (9)

The judicial personality of the association shall be established once the founding members have signed the statutes thereof and upon notification of the competent administration and the court of first instance. The judicial personality may not be invoked against others except after the proclamation of the statute of the association.

Article (10)

The "register of private associations and institutions" shall issue a certificate to the association including the relevant name, purpose, place of registry and date of proclamation of such. The association shall be committed to registering and proclaiming all amendments introduced to the statute according to the same procedures as provided for in the previous articles. The amendment shall not be implemented except after the date of proclamation.

Article (11)

The administrative authority may demur the establishment of the association after such is fully proclaimed, or may object to the amendment of the relevant statute by means of a petition incorporating the reasons for the demur. The memorandum shall, within thirty (30) days of the date of proclamation, be submitted to a judge of provisional matters at the court of first instance with jurisdiction over the headquarters of the association. The judge shall, subsequent to hearing statements of the administrative authority and the legal representative of the association, order either the corroboration or dismissal of the objection of the administrative authority.

The order of the judge of provisional matters may, within thirty (30) days, be challenged pursuant to the rules established in the Code of Civil Procedure.

Article (12)

The association shall, upon establishment thereof, be committed to matters avowed by relevant executives or employees; such avowals may be enforced on matters concerning the association but may not be invoked in order to slacken registration and proclamation procedures.

Article (13)

The right to voluntarily adhere to or withdraw from the association is guaranteed.

Article (14)

Membership of the elected bodies of the association and paid work therein shall not be combined.

Article (15)

The association shall carry out the following tasks:

- 1) Keep documents, correspondence and records at the headquarters thereof;
- 2) Register the data relevant to each member of the association in a special register;
- 3) Keep in special records the minutes and decisions of the sessions of the general assembly and elected bodies of the association;
- 4) Book-keep relevant accounts showing revenues and sources thereof, expenses and accounts thereof;
- 5) Appoint an external auditor if the budget thereof surpasses L.E 250,000 (two hundred and fifty thousand Egyptian pounds).
- 6) The association shall deliver to the competent administrative authority a copy of the relevant final annual accounts, certified by the general assembly and the external auditor, as well as decisions of the general assembly and the board of directors. The association shall also notify the administrative authority of the sources of funding thereof.

Article (16)

All persons, bodies or institutions may have access to all books and records relevant to the activities of the association upon submission of a request to the administrative body where such documents are deposited. The competent administrative body shall establish the rules organising such an undertaking to ensure the right of all to have access thereto.

Article (17)

The association may, after notifying the administrative authority, carry out all money-generating activities, including fundraising from agencies, institutions and the public at large, through all possibly available means, such as television campaigns, charity concerts and correspondence, while being exempt from all prescribed charges and taxes on such services. The administrative authority may object to fundraising within one month from notification of such, by means of a petition including the reasons for the objection, submitted to the judge of provisional matters within the competent court of first instance.

Any association taking part in economic activities helping such to fulfill its objectives may allocate the profits generated by such activities for the purposes of the association.

Article (18)

Funds of associations shall be exempt from all kinds of dues, taxes and customs.

Article (19)

Donations made by individuals, institutions and companies to associations shall be assessed from the tax base of the donor.

Article (20)

Associations shall be entitled to convene plenary meetings either at the headquarters of such or in any external halls.

Associations shall be entitled to publish brochures or magazines of a periodic nature without being subject to restrictions prescribed in the Law on the Regulation of the Press.

Associations may be affiliated with, participate in or adhere to any association or body residing outside Egypt, pursuant to the rules defined by the statute or the board of directors. The board of directors shall be under an obligation to notify the administrative authority of such.

Associations shall be entitled to establish chapters and offices in governorates of the Republic and in cities pursuant to the rules defined by the statute.

Chapter Two: Private Institutions

Article (21)

The term "Institution" shall, in the provisions of the present Law, mean any judicial person establishing by virtue of the allocation of funds not less than L.E. 50,000 (fifty thousand Egyptian pounds) for a specific or non-specific period and for a purpose not contravening provisions of the present Law. Institutions established and proclaimed prior to the enactment of the present Law shall be excluded from this stipulation, unless such wish to become an association.

Article (22)

Institutions shall be established by virtue of an official deed or testament. Such deed or testament shall be equivalent to the statute of the institution and should include the following data:

- 1) Name of the institution, field of activities, scope of work and headquarters thereof;
- 2) Purpose the institution was established for ;
- 3) Accurate statement of the funds allocated for this action; and
- 4) Hierarchy of the administration of the institution, the method of selecting, dismissing and replacing members of the board of directors thereof.

Article (23)

Establishment of an institution shall be deemed, for creditors or heirs of the founder, a donation or testament. If the institution was established in detriment to the rights thereof, they may file legal action as prescribed in the law for cases of donations and testaments.

Article (24)

In the event the institution was established by virtue of an official deed, the founder(s) may waiver such by means of another official deed until the institution is proclaimed in accordance with the provisions stipulated in the present Law.

Article (25)

Institutions shall be proclaimed upon the request of the founder(s) or first executive director thereof pursuant to procedures for the proclamation of associations established in the present Law.

Article (26)

All special provisions on associations prescribed in the present Law shall apply to all institutions subject thereto unless otherwise provided for in the Law or in the deed of establishment thereof, except for special provisions on associations.

Chapter Three: The Right to Form Networks, Coalitions, Thematic and Regional Federations

Article (27)

Associations shall be entitled to establish or join local networks or coalitions which help such in coordinating their activities and support their joint objectives.

Article (28)

Any number of associations shall be entitled to create thematic or regional federations among themselves for a limited or unlimited period. The founding agreement of this federation shall specify the statute, regulations, institutions, method of exercising competencies thereof, funding methods, dissolution thereof and termination of same activities. Notification of the creation of this federation shall follow the same method prescribed for notification of associations in the present Law, if the founders wish to enjoy legal personality.

Article (29)

The board of directors of the federation shall notify the administrative authority of any development taking place in the formation or competence of the federation, and also of the new members adhering thereto or old members having withdrawn therefrom.

Chapter Four: Concluding Provisions

Article (30)

The administrative authority or any person or entity having interests may be entitled to resort to courts of law to challenge any decision or activity of the general assembly or board of directors of the association. The court of first instance in the jurisdiction of which the association headquarters is situated shall, after examining the request and hearing the defense of the association accompanied by corroborating documents, order either the repudiation or acceptance of the request, including all the ensuing sanctions. The court may incorporate in the same ruling an expedited validation, but except in the case of ruling for the dissolution of the association or liquidation of funds thereof, the ruling shall not be executed except when it is pronounced finally.

Article (31)

Sanctions which may be inflicted on the association by virtue of a court ruling, if it were proved that the said association had contravened the statute and rules prescribed in the present Law, include the following:

- 1) Warning the association to rectify the established infraction;
- 2) Annulling the decision or suspending the objected activity;
- 3) Freezing the activity of the contravening member or freezing said membership in the board of directors;
- 4) Fully removing the board of directors or some members thereof;
- 5) Freezing the activities of the association for a limited period;
- 6) Dissolving the association and liquidating funds thereof.

Article (32)

The court of law shall, in the event of a ruling being passed to dissolve the elected board of directors of the association, include in the same ruling the appointment of a member of the general assembly, other than the members of the dissolved board of directors, as a receiver. In the case that the general assembly had itself been the board of directors, the court shall appoint a receiver outside the assembly. The receiver shall be assigned, within a period not exceeding sixty (60) days as of the date upon which the ruling to appoint same became final, to hold new elections pursuant to the statute of the association, and shall have the competences of the chairman of the board of directors to preserve relevant rights provided that a full report of the activities of the receiver be submitted to the first general assembly meeting for approval.

Article (33)

If an association is dissolved, one or more liquidator(s) shall be appointed. The liquidator(s) shall be appointed by the general assembly if the dissolution is voluntary or by the court of law if the dissolution is judicial. In all cases, the rules prescribed in the statute of the association shall be followed with respect to the outcome of liquidation. In the case of failure to do such, the decision to appoint a liquidator(s) shall include the assignment of same to transfer the funds of the dissolved association to an association whose objectives are closest to those of the said association.

Article (34)

The association shall be entitled to challenge any administrative decision against same and to present the reasons for such challenge to the court of administrative judiciary

within whose jurisdiction the headquarters of the association are located. The court shall, after examining the challenge and hearing the defense of both the association and the administrative authority, either order the annulment of the administrative decision or repeal the challenge presented by the said association.

Notes

¹ Steven Heydemann: 'Upgrading Authoritarianism in the Arab World', Brookings Institution Analysis Paper n° 13, October 2007. On a similar note, see Larry Diamond: 'Thinking about Hybrid Regimes', *Journal of Democracy* - Volume 13, Number 2, April 2002, pp. 21-35; Andreas Schedler: 'The Menu of Manipulation', *Journal of Democracy* - Volume 13, Number 2, April 2002, pp. 36-50.

² Michel Doucin (Ed): 'Guide de la liberté associative dans le monde', La Documentation Française, Paris, 2007, p. 245; Euro-Mediterranean Human Rights Network: 'Freedom of Association in the Euro-Mediterranean Region', Copenhagen, December 2007, p. 29.

³ Constitution of the Republic of Egypt of 2 September 1971 (amended in 1980, 2005 and 2007).

⁴ See also Amr Hamzawy: 'Arab Constitutional Manipulations', *Arab Reform Bulletin*, Carnegie Endowment for International Peace, 9 January 2009.

⁵ For a detailed analysis of the latest constitutional amendments, see Nathan J. Brown, Michele Dunne and Amr Hamzawy: 'Egypt's Controversial Constitutional Amendments', Carnegie Endowment, 23 March 2007.

⁶ See also Dina Guirguis: 'NGO Bill Imperils Civil Society Funding', *Arab Reform Bulletin*, Carnegie Endowment for International Peace, February 2009.

⁷ For the purpose of this report, the term non-governmental organisation (NGO) is used to describe all Egyptian civil society organisations, whereas the terms association and civic foundation refer to the two categories used in the Egyptian Associations Law (Law 84 of 2002).

⁸ Other internal governance and administrative procedures are specified in detail in the Executive Regulation articles 81-90.

⁹ For more detail on the Political Parties Law, see Human Rights Watch: 'Monopolising Power: Egypt's Political Parties Law', Human Rights Watch, Number 1, January 2007.

¹⁰ See Human Rights Watch: 'Egypt: Margins of Repression. State Limits on Nongovernmental Organisation Activism', Human Rights Watch Vol. 17 N°8, 2004.

¹¹ For more details on the SSI's role see also Human Rights Watch: 'Egypt: Margins of Repression. State Limits on Nongovernmental Organisation Activism', Human Rights Watch Vol. 17 N°8, 2004.

¹² For example, under the framework of the Euro-Mediterranean Partnership (the 'Barcelona Process'), the Egyptian government voted against the representation of NGOs at the review process of the Istanbul Action Plan on Women's Rights. Numerous other examples are documented at the UN Human Rights Council.

¹³ See Dina Guirguis: 'NGO Bill Imperils Civil Society Funding', *Arab Reform Bulletin*, Carnegie Endowment for International Peace, February 2009.

¹⁴ This project supported by a number of human rights organisations, namely: members of the Freedom of Association Campaign, members of the Egyptian NGOs Freedom Coalition, the Democratic Development Foundation, the Association for Human Rights Legal Aid, the Egyptian Association for Community Participation Enhancement, the Human Rights Center for the Assistance of Prisoners, the Center for Trade Unions and Workers Services, the Arabic Network for Human Rights Information, the New Woman research center, the Egyptian Initiative for Personal Rights, the Land Center for Human Rights, the Andalus Institute for Tolerance and Anti-violence Studies, and the Arab Organisation for Penal Reform.

PLANTING AN OLIVE TREE: THE STATE OF REFORM IN JORDAN

EXECUTIVE SUMMARY

While Jordan has succeeded since 1989 in providing a limited space for civil society organisations (CSOs) to operate, the initial promise of reform has receded in recent years, and the parameters and limitations under which CSOs operate remain both overly restrictive and intrusive. Jordan's relative stability and important strategic position in the region has reduced external pressure to reform with no consequences for its aid dependent economy and the country continues to be held up as an example of one of the more progressive and democratic Arab states.

The regime has struggled to maintain national unity and security while addressing a series of challenges such as the demographic changes caused by the surge in the population of Jordanians of Palestinian origin, the rise in support for political Islam and the threat of terrorism. The Arab-Israeli conflict has had a significant effect on Jordan's domestic balance of power and Palestinian refugees remain a major undercurrent to all political issues and national debates. Their integration as Jordanian citizens has generally been successful although they continue to be underrepresented in the public sector and in the political establishment. The electoral law continues to be the single most contentious domestic issue. The "one person one vote" law together with the uneven distribution of parliamentary seats among electoral districts are designed to under-represent urban areas that are bastions of Palestinian or Islamist support and over-represent rural segments of the population that are allied with the regime. This has favoured the entrenchment of tribal allegiances in Jordan's Parliament to the detriment of national political parties. The king retains a monopoly on power in the country, while the Parliament remains weak and ineffective. Much of the current distrust between the government and civil society arises from the 2001-2003 period when King Abdullah issued 211 provisional laws and amendments, many of which reversed civil liberties, including through the introduction of tighter restrictions on many aspects of freedom of association. This was despite the contemporaneous launch, with much fanfare, of numerous reform initiatives, which nevertheless have failed to be implemented.

Freedom of Association is guaranteed by the Constitution and should be protected by the international instruments that Jordan is party to, namely the International Covenant on Civil and Political Rights. Nevertheless the legal framework and regulations relating to civil society in Jordan contain provisions that restrict the right of association and limit the freedom of civil society. Legislation grants extensive powers of oversight to the government, including the right to refuse applications for licences with no explanation, the power to replace the governing body of an association, and full inspection powers over an association's premises and records. The powers of central government and local administrators to regulate non-governmental organisations are excessively intrusive. The key obstacles that civil society organisations encounter in the development of their activities pertain to the registration process, extensive and intrusive supervision on the part of the Ministry of Social Development and the Ministry of the Interior, the threat of dissolution and suspension and the lack of access to funds. The government's relations with trade unions remain highly adversarial.

In order to regain confidence in and the momentum of Jordan's efforts to continue recent reform initiatives, there should be a process of Constitutional reform leading to a greater balance of powers and the establishment of a truly independent judiciary, a Parliament with full legislative and oversight power and a government representative of the winning majority parliamentary coalition. Legislation should be reflective of the international conventions signed and restrictive laws such as the Public Meetings Law and the Anti-Terrorism Law should be repealed. Reform of the electoral framework before the next elections is one of the keys to successful reform towards a more progressive and democratic system.

POLITICAL CONTEXT: THE DEMOCRATIC REFORM PROCESS TO DATE

The political situation in Jordan is obscured by the fact that although it is far from being a democracy, in terms of civil and political liberties it fares much better than most Arab states, at least formally. Political parties are legal, parliamentary elections are held more or less regularly and the reform process started in 1989 did bring about positive changes if not a fully-fledged democracy. Furthermore, compared to its neighbours Iraq and Palestine, it is an oasis of stability. The regime uses this image of precarious stability (and the threat of chaos and Islamism) to stem any push for political reform (domestic or external) and to secure international aid. The truth, as conceded by a senior European diplomat, is that Jordan is a security state, if a less extreme, less openly repressive version of one than Tunisia or Egypt.² The regime banks on its key geographic position and its role in the maintenance of regional security to secure the foreign aid it needs to palliate its lack of resources and help maintain domestic stability. The distribution of the rents from foreign aid as well as government jobs and other privileges allow it to maintain a more or less stable base of support from a certain segment of the population and a loyal security establishment.³ The monarchy has thus consolidated its rule by aligning itself with the Transjordanian population concentrated in the rural areas and shifting the electoral balance from growing urban population centres to these rural areas. Members of the tribal rural areas occupy most public jobs and their over-representation in Parliament is guaranteed by the electoral law. Any challenges to the system are addressed by weakening institutionalised opposition.⁴ Admittedly, the security threat is real and the Arab-Israeli conflict has indeed had a profound effect on Jordan's domestic balance of power. However while the monarchy struggles to maintain stability, discrimination and the curtailing of individual liberties are not likely to achieve the social cohesion needed to overcome such threats.

In 1989 Jordan initiated a political reform process which won much praise from the United States and the European Union. The reform process included the legalisation of political parties and the holding of parliamentary elections. Despite these positive changes, which contributed to the country's image of progressiveness and tolerance, the changes hardly constituted the development of a true democratic process and the country has since seen increasing restrictions of fundamental freedoms and rights as well as constraints on political participation.⁵ These contradictions stem from the fact that political reform was initiated not as an end in itself but rather as a strategy for regime survival in the face of pressures of economic discontent which derived from the International Monetary Fund (IMF) requirement that external debt be restructured.⁶ The reform process was characterised by its hesitant top-down nature and by its aim of maintaining domestic stability and expanding the monarchy's support base rather than achieving genuine structural reforms.⁷

The regime has struggled to maintain national unity and security while addressing a series of challenges such as the demographic changes caused by the surge in the population of Jordanians of Palestinian origin, the rise in support for political Islam and the threat of terrorism. At the same time it has sought to protect the interests of the ruling elite and the traditionally dominant Transjordanian tribal structures. Any threats to the precarious balance of power have historically been dealt with by the repression of the opposition. Challenges posed by Arab nationalist and Palestinian militant groups throughout the 1950s, 1960s and early 1970s led to repressive measures including the banning of political parties, the imposition of martial law and the suspension of Parliament. The most significant challenge to Hashemite authority has been the Arab-Israeli conflict which has had a significant effect on Jordan's domestic balance of power. Palestinian refugees remain a major undercurrent to all political issues and national debates. The exact composition of the population is a sensitive and contested issue, with figures for Palestinian Jordanians somewhere between 40 percent and 60 percent. The integration of Palestinian refugees as Jordanian citizens has generally been successful, although Palestinian Jordanians continue to be underrepresented in the public sector and in the political establishment. The electoral law and the distribution of parliamentary seats

among electoral districts are designed to under-represent urban areas that are bastions of Palestinian or Islamist support and over-represent rural segments of the population allied with the regime.⁸

In 1989 the process of political liberalisation was initiated with the holding of parliamentary elections, which had been postponed since 1967. Although political parties were still illegal, candidates could run as independents and the elections saw a big success for Islamist candidates, who gained close to 40 percent of the seats. In 1991 King Hussein appointed a 60-member commission, including government loyalists, members of the leftist opposition and the Muslim Brotherhood (MB), to draft a charter to outline the goals and characteristics of the liberalisation process. The National Charter ultimately saw the expansion of political freedoms and the space for civil society in exchange for recognition of the legitimacy of the Hashemite monarchy. As a result of the charter, martial law was lifted, political parties were legalised, political exiles were permitted to return and restrictions on demonstrations were relaxed.⁹

Nevertheless King Hussein started undermining the reforms as soon as he saw an opportunity to regain the external support he had lost through his refusal to sign a peace treaty with Israel in 1980. In order to quash internal opposition a series of measures were put in place to diminish its voice and influence. Most important among them, and one of the most contentious issues to this day, was the amendment to the electoral law. The 1993 amendment restricted each voter to choosing only one candidate, regardless of the number of seats to be filled in the district. The controversial "one-person, one-vote" law favoured tribal candidates to the detriment of parties, and as a result, the 1993 elections saw a decrease in the presence of the Islamic Action Front (IAF) in Parliament. In November 1994, the peace treaty with Israel was ratified, despite strong opposition. Consequently, the United States would write off its debt and progressively raise aid levels until Jordan became the fourth largest recipient of US economic and military assistance. Jordan was also one of the first countries in the region to sign a partnership agreement with the European Union. By the time of Hussein's death in February 1999, it seemed clear that liberalisation had been a temporary means of reducing opposition to unpopular economic policies. Since then, repeated commitments by King Abdullah and his government to democratic reforms have not been implemented. The deteriorating regional situation and continuing economic woes have pushed Abdullah to clamp down on political and civil liberties and lean on the pervasive role of the security services.¹⁰ The situation can best be characterised as one of highly regulated freedoms within specific limits, with close monitoring and regulation increasing notably in the past five years.

In 1999 King Abdullah's accession to the throne intensified expectations of political reform. Nevertheless economic reform quickly took precedence, with a focus on attracting foreign investment and increasing exports. Economic reforms led to Jordan's entry into the World Trade Organisation in 2000, to the signature of a Free Trade Agreement (FTA) with the United States in 2001 and to the establishment of the Qualified Industrial Zone (QIZ) programme. The king prioritised administrative reform and the fight against corruption in the public sector. But increasing regional pressures related to Palestine and Iraq placed security concerns at the forefront and brought about restrictions on political activity which have had lasting implications for freedom of association. The regime, concerned with public opposition to its stance both towards Iraq and Palestine, delayed parliamentary elections, originally scheduled for 2001. While Parliament was suspended (between June 2001 and June 2003), King Abdullah issued 211 provisional laws and amendments, many of which constituted a reversal in civil and political liberties. The Public Meetings law of August 2001 requires the government's prior written consent for any public meetings or rallies, while amendments to the penal code in October 2001 impose penalties and prison sentences for publishing "false or libellous information that can undermine national unity or the country's reputation".¹¹ Another decree allows the prime minister to refer any case to the State Security Court, and 2008 draft laws on NGOs and public assembly continue to limit and interfere with their activities.

These clampdowns on the ground were contemporaneous with successive reform initiatives. In 2002 the "Jordan First" initiative was launched; in 2003 the Ministry of Political Development was created, to increase political participation and advance democratic dialogue; in 2005 the National Agenda was conceived; and in 2006 the "We are all Jordan" action plan was launched. The National Agenda seems to be the most comprehensive so far and is a reflection of 13 months of work. Its planned implementation would run until 2020. Reforms have generally aimed to stabilise the regime in the face of regional and economic challenges rather than to significantly open up the political system. They were much more explicit in terms of economic reforms than political reforms and none of them have targeted the distribution of political power. Power is concentrated in the hands of the royal court and the intelligence services while the Cabinet and Parliament merely execute policies which they do not decide upon. Demands for structural reform, such as addressing the shortcomings of the Election Law, remain unheeded. A new party law was passed in an attempt to encourage the consolidation of political parties but there have been no advances on electoral reform.

While the 1952 constitution declares Jordan a constitutional monarchy, the king retains a monopoly on power in the country to the extent that the concept of separation of powers is not really applicable. Officials can be heard referring to the "Government as directed by His Majesty" and often use the terms state, government and king interchangeably. Constitutionally, the king can appoint and dismiss the prime minister, the Cabinet and the upper house of parliament. He is also entitled to dissolve Parliament, veto legislation, decree "provisional laws" when the Parliament is dissolved, establish governmental and legislative policy and appoint the judiciary.

The Constitution balances these powers with a requirement that the executive acts with the confidence of the lower house of parliament, but in the history of Jordan there have only been three votes of no confidence. In addition, institutions outside constitutional structures, namely the Royal Court and the intelligence services, exercise substantial power. Both the Royal Court and the intelligence services report directly to the king. Their mandate and structure remain obscure and they are not constrained by parliamentary oversight. The Royal Court plays a key role in defining government and the intelligence services have influence over legislative and political policies, especially when considered a threat to the country's stability.¹² Institutions outside the monarchy, such as the Cabinet and Parliament, are left with limited powers and the government at best executes what is decided elsewhere. Governments serve at the king's pleasure, with Parliament having little to say on its formation and dismissal.

Although governments must be endorsed by Parliament, the lack of parliamentary majority governments precludes holding the government accountable to the people. Parliament has repeatedly been suspended and elections postponed. As a result of the electoral system Parliament has a majority of independent members, unaffiliated to any political parties, who represent a range of tribal interests and who provide weak oversight of the executive. The powers of the lower house of Parliament are constrained by an appointed upper house. The executive often legislates by issuing temporary legislation and decrees that function with the force of law without parliamentary approval. Parliament can debate, approve and initiate legislation but, in practice, it rarely debates legislation or initiates new draft laws.¹³ The executive's role in the promotion, punishment or sanction of judges is an expression of the lack of independence of the judiciary, as are the State Security Courts which remain outside the competence of the judicial council. Between 1952 and 1976 the constitution was changed or amended 28 times in a way that took power from Parliament and the judiciary and increased the power of the monarch.

Although the constitution recognises the basic freedoms of expression and assembly, press and penal laws prohibit criticism of the royal family and the armed forces or any statement considered harmful to national unity or Jordan's foreign relations. Editors and journalists continue to receive official warnings not to publish certain articles, and security

officials pressure printers to hold publication until editors agree to remove sensitive stories. Polls show that 74.6 percent of Jordanians fear punishment or retribution by the authorities for criticising the government.¹⁴ The right of assembly is restricted through the requirement of prior consent for all public meetings (with the excuse of security). The regime also interferes with the activities of non-state actors (professional associations, NGOs, not-for-profit companies) which are not allowed to be involved in "political" issues. Freedom of association can be exercised within a controlled environment and new legislation, such as the anti-terrorism law, is leading to increased restrictions.

The various reform initiatives have failed to be implemented. The lack of deadlines, means of implementation and monitoring and evaluation systems has fuelled claims that they are just exercises aimed at appeasing the West. Others insist that the Palace and government are genuine in their enthusiasm and commitment to these initiatives but that they are all eventually aborted because of the regional situation or the lack of support from the conservatives. Status quo forces are an obstacle as they feel their privileges and position will be threatened and the king does not want to undermine his most loyal base of support. Since King Abdullah's accession there have been five different governments. The instability of the governments and their dependence on the king also renders it impossible for them to meet any demands for reform. Generally there is a cleavage between those who believe that any reform will jeopardise security and those who believe that stability lies with the implementation of reform. Further complicating matters, the rise of Islamic political movements in the region, especially the success of Hamas in the 2006 Palestinian elections, has increased concerns that any opening-up of the political space may strengthen the IAF's popular support. The relationship between the government and the Muslim Brotherhood is complex and has shifted from one of mutual support to a more confrontational stance. The IAF is abandoning its neutral position towards the government and increasingly playing the role of main opposition party. Government pressure on the MB could eventually lead to a division within the moderates, leaving extremists with greater freedom to work underground and gain support.

In the long-run the lack of freedoms together with the failure of socio-economic programmes could lead to problems. In polls 85 percent of the population state that their economic situation has either not improved or deteriorated. Despite increases in exports because of the FTA and the construction boom there have been few benefits for the majority of the population. Future reform depends on whether the regime believes that Jordan's stability is best maintained through political liberalisation or through repression. The official position is that much has been achieved in the past few years and that the challenge is to keep moving on the road towards democracy under the security circumstances.

ASSOCIATIONS LANDSCAPE¹⁵

It is estimated that there are around 2,000 civil society organisations in Jordan. Although most analysts highlight the weakness of civil society in the country - it is true that most organisations are small in size and some even lack head offices - the sheer number of organisations seems to point to increased mobilisation efforts. Nevertheless, in spite of the large number of organisations civil society cannot be said to be very active as most NGOs have minimal outreach capabilities (1,000 per organisation at the most). Most organisations work within significant constraints, most pertaining to the legal framework, the difficulties inherent in raising funds and interference from the authorities. Additional problems include the lack of internal democracy within the organisation's own structures, the non-renewal of leadership positions and a lack of efficiency or capacity. Positions of leadership rarely change, elections are either not held or are not transparent and fair. This may be one of the reasons for the low levels of participation in civil society organisations. The majority of civil society work in Jordan is based on the voluntary efforts of organisations' members who do not receive any wages or salaries for their administrative activities.

Civil society organisations have been successful in joining regional and international organisations but they have not been successful in establishing local networks within Jordan. Alliances among civil society are uncommon. Nevertheless recent years have witnessed the establishment of several networks and coalitions such as the "Jordanian Coalition for Civil Society Organisations", which comprises the Arab Organisation for Human Rights in Jordan, the Amman Centre for Human Rights Studies, the Association of Jordanian Jurists, the Centre for Children's Rights "Haq", the Jordanian Society for Human Rights, the Arab Women Organisation and the Jordanian Youth Forum. The challenges to the establishment of networks and alliances in Jordan are numerous: legislation such as the Public Meetings Law and the Right of Access to Information Law; prevalence of individualism over collective action at work; competition among organisations rather than integration; lack of experience of associations governing bodies; competition for limited funding sources.¹⁶

Voluntary societies make up more than one-third of civil societies. They are governed by the 1966 Social Societies Law and supervised by the Ministry of Social Development. There were 783 in 2003. They flourished, especially after the banning of political parties between 1957 and 1967. They include tribal and family groups, women's groups, religious societies and ethnic societies, among others. Their funding comes from membership dues, project proceeds, from the Ministry of Social Development and foreign and local support. They are organised under the general union of voluntary societies, which was taken over by the government in 2006, and a voluntary societies union in each governorate.

There are 14 **professional associations**. These are the most effective organisations within civil society. The investment of their membership fees and funds has allowed them to gain financial clout and independence from the government. Their membership, which is compulsory in order to practice a profession, is around 100,000. Membership is mostly drawn from the elite and the middle classes. They are usually involved in the drafting of legislation relevant to the practice of their profession and their main objective is the defence of the rights and interests of members. They also offer pension, health insurance and social security funds to their members. The formation of such organisations is governed by by-laws issued by the Council of Ministers. The laws establishing these associations allow them to exercise an independent internal democratic process, including the election of leadership, without the interference of the government. It is almost impossible to establish a new association, however. This was demonstrated when an attempt to establish a new teachers association was declared unconstitutional by the High Judicial Council.

After 1967 they adopted a more political role, focusing both on pan-Arab issues (Palestine, Lebanon, Iraq) and national issues (the economic adjustment programme, peace treaty with Israel). This political stance, especially the active resistance to normalisation, has often led to conflict with the government. The government has at times threatened the professional associations with rescinding compulsory membership and also with referring the laws under which they are established to the Higher Council for an interpretation of their constitutionality. The 2001 Law on Public Gatherings created tensions with the government, as did a proposed professional associations law which meddled in their internal affairs and allowed the Audit Bureau to audit their accounts and access their funds. At times appointed committees from the ministries have attempted to supplant the elected councils of the associations. Despite their uneasy relationship with power they are generally allowed to hold activities within their own headquarters without permission from the government, and require consent only for activities outside their headquarters.

Each association operates under a specific ministry with which they hold some form of semi-structured dialogue and which allows them input into the laws proposed by that ministry. Parliamentary committees also sometimes call on associations to discuss issues such as the income tax law, but this is done more out of courtesy than because they have any real influence. Associations meet annually with the prime minister to discuss issues such as electoral and political party law but dialogue with government is generally unstructured and dependent on the personal connections of the president of each association. Leadership of

the associations has seen distinctive trends: nationalist until the 1970s, leftist and Palestinian up to the 1980s and currently Islamist. The Islamic movement has the upper hand in most associations and in all the most important ones (engineers, the bar and agricultural engineers).

There are 16 registered **political parties**, down from 33 before the New Political Parties Law took effect. Most political parties in Jordan are small, personalised organisations with limited political influence, weak institutional capacity, and low levels of popular support. All but the IAF have less than one percent representation. Many of these parties are formed by pro-government individuals who held decision-making positions in the past. Political parties are fragmented and attempt to gain public support through patronage rather than by appealing to political programmes and grassroots activities. Most parties seem unable to create effective political platforms or to represent political interests. This is in part due to a lack of resources, but it is also due to public fear of joining political parties given their recent proscribed status and to an electoral law which favours independent candidates. Public apathy towards political parties is affected by the weakness of Parliament,¹⁷ and by the fact that parties do not form the government nor design government policy. The new political parties' law which took effect after the 2007 parliamentary elections was an attempt to consolidate the political scene with fewer, stronger parties. Although it achieved its goal of reducing the number of parties, these remain just as ineffective, reflecting the fact that they lack political incentives to be active given the marginal role played by Parliament.

The electoral law encourages individuality, tribalism and sectarianism to the detriment of a process based on electoral programs. Candidates tend to be elected based on their ability to provide services to their constituents rather than on the electoral programme of their party. Individual candidates are considered better suited to deliver on election promises through their tribal ties. Political parties play a limited role in parliamentary elections. Most parties therefore seek tribal support to assure their success in the elections and candidates are referred to the political programmes once elected. Party alliances are sometimes formed around certain issues. Some argue that the legal framework provides a convenient excuse for the lack of progress, that parties have become lazy, and that those elected to Parliament have the wrong motivations: travel, money and benefits. According to this view, with the right legislators Parliament could be more active.

Parties can be roughly classified as: those that were active underground until their legitimisation in 1992 (such as the Ba'ath and Communist parties and some linked to Palestinian movements such as the Jordanian People's Democratic party and the Jordanian Democratic Popular Unity Party), the MB party (IAF), parties formed by political figures that previously occupied prominent positions in government, the majority centrists (such as the National Constitutional Party), and formations that have split from parties or coalesced into new ones (such as the Jordanian Democratic Leftist Party or Al-Nahda Political Party). The executive authorities have been calling for political parties to integrate and reduce their numbers to a few big political parties representative of the different currents, and a political party law has been passed to this effect.

The IAF is the strongest party. Although it was traditionally aligned with the government, it now represents the only solid opposition party. The dominance of foreign issues on its agenda, namely the Israeli-Palestinian conflict, the war in Iraq, and the US war on terrorism, has led to a confrontational relationship with the regime. The regime regards the Islamist movement as its most significant domestic rival, taking the place earlier occupied by Arab nationalists, leftists and Palestinian nationalists. The question remains whether the regime will ultimately treat the Islamist movement as a security challenge to be crushed or a political one to be co-opted and contained. The party has traditionally strived not to alienate the regime and has largely accepted the limitations put in place against it and worked around them. It is forced to operate under an electoral framework deliberately designed to keep it at a parliamentary minority, which has led to a strategy of running only a limited number of candidates. In the November 2007 elections it ran a slate of only 22 candidates, which

was purged of extremists, in an apparent agreement reached with the government. The effectiveness of the IAF in influencing Jordanian policy has thus been limited by its small parliamentary representation and by the limitations of the Parliament itself. Nevertheless, parliamentary representation has given it considerable experience in using the body as a platform, and in recent years its abilities have been enhanced by its newfound willingness to forge opposition alliances, with nationalist and leftist parties. While these parties contribute little in terms of a popular base, the opposition front (which the IAF can dominate) allows the movement to speak as something more than a narrow political party. It has sometimes been able to obstruct or delay government action, though it has done so by direct bargaining or confrontation with a government keen to avoid controversy (such as when the Parliament delayed consideration of an amended law of professional associations in 2005), rather than through a parliamentary vote. Some of the extra-parliamentary reform initiatives such as the National Charter or the National Agenda have provided similar opportunities to press issues.¹⁸

There are 17 **labour unions**. Unions are required by the government to be members of the General Federation of Jordanian Unions (the sole trade union federation) which has been criticised for being too close to government and for centralising decision-making to the detriment of the autonomy of the unions. The federation is financed by government, applauds every new government and never objects to any government measures. Unions have thus limited power and independence. Unions operate under the 1960 Labour Law which was amended in 1976. Political parties have historically had a large influence on unions, with leftist parties being the most influential, and Islamists characterised by their absence. Therefore the decline in influence of leftist forces has been accompanied by a decline in union influence on national policies. There has been a recent decline in membership, from around 200,000 to 100,000. Only six or seven of them are seen to be active in defending workers rights. The flood of expatriate labour workers has also decreased the unions negotiating potential as they are not allowed to join unions.

The other two groups that are not allowed to form unions are students and teachers, presumably because, as the largest sectors of the community, they could have a significant effect on changing policy and this instils fear in the authorities. Elections have been held in only six of the unions, with officials being appointed in the rest. Dialogue between unions and the government is confrontational and unions feel that they are treated as opponents and constantly face the threat of dissolution for being unconstitutional.

Human rights organisations started to surface in the 1970s but didn't begin to thrive until after the 1990s when seven international conventions were ratified by Parliament and the government started presenting human rights reports to the UN.

The National Centre for Human Rights was established in 2002 by Royal Decree and in accordance with provisional law 75 of 2002, which was approved by Parliament and made permanent in 2007. The centre is said to be financially and administratively independent, although its board of trustees is appointed by royal decree and the government allocates money to it from the national budget (there is a part of the national budget which is allocated to all independent institutions and ratified by Parliament). The fact that it was led by an ex-head of intelligence has been the subject of much criticism. In fact, Ahmad Obeidat was head of intelligence in 1981 and since then has been part of the mainstream opposition. He was forced to resign in 2008 after the publication of a report highlighting instances of fraud and the overall lack of integrity and fairness of the electoral process. There has been some speculation that the centre could become one more element within the state apparatus. Some NGOs feel that it duplicates their work instead of working on changing the laws and that it is too soft on some issues (as reflected when comparing its report on torture with that of the UN rapporteur on torture).

The main **women's organisations** are the Jordanian Women's Union, the General Federation of Jordanian Women (created by the Ministry of Social Development), the National Commission for Women and the Jordanian National Forum for Women.

Institutions for public support and research centres are either semi-official (under the supervision of the Royal Family or government) or belong to the private sector. Research centres require a licence from the Ministry of Trade and Industry.

Employers' professional associations, which defend private sector interests, include chambers of commerce (63,000 members; membership is compulsory), chambers of industry (15,000 members), employers' professional associations, employers' societies, the Association of Banks in Jordan and the Jordanian Business Association.

Civil protection and health care societies operate under the 1966 Social Bodies Law but are registered under the Ministry of the Interior instead of the Ministry of Social Development. Some are also registered as civil corporations with the Ministry of Trade and Industry (Centre for Defending the Freedom of Journalists, Law Group for Human Rights (MIZAN)). Most were established in the 1990s, post-1989 reforms. Most are directed towards the handicapped and special needs and therefore have government approval.

Other categories of organisations include: cultural associations and leagues, sports clubs, environmental societies, teachers forums and foreign NGOs.

LEGAL FRAMEWORK

Constitution & international treaties

Freedom of Association is guaranteed in Jordan by article 16 of the 1952 Constitution, which allows Jordanians to form associations and political parties. The Constitution also provides guarantees to protect the fundamental freedoms and rights that relate to democratic elections, freedom of expression and assembly. Article 16 states that "(i) Jordanians shall have the right to hold meetings within the limits of the law. (ii) Jordanians are entitled to establish societies and political parties provided that the objects of such societies and parties are lawful, their methods peaceful, and their by-laws not contrary to the provisions of the Constitution. (iii) The establishment of societies and political parties and the control of their resources shall be regulated by law". The Associations and Social Entities Law No. 33 of 1966 amended by Law No. 2 of 1995 regulates the work of associations. Since 2004 several draft laws have been presented by the government to replace it. A new Political Parties Law has recently replaced Law No. 32 of 1992 which regulated political parties. Other laws regulating the work of civil society are the Trade Unions and Professional Associations Law, the Public Meetings Law No. 7 of 2004, the Labour Law, which regulates the activities of union workers, the Cooperative Societies Law, the Political Parties and Associations Law, and the new Company Law of 1997.

The international instruments ratified by the Jordanian government are considered national laws only after they are endorsed by both houses of Parliament and ratified by the king as stipulated in the Constitution. These instruments become effective laws only after they are promulgated by the king, and after 30 days from the date of their publication in the *Official Gazette*. Thus, although Jordan has endorsed the majority of international instruments and conventions on human rights, most of these agreements have not been presented before Parliament for discussion and endorsement.¹⁹ The International Covenant on Civil and Political Rights (which was ratified by Jordan in 1975) and the International Covenant on Economic, Social and Cultural Rights were published in the *Official Gazette* in June 2006, giving them the force of law. The Convention on the Rights of the Child, The International Convention on the Elimination of All Forms of Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were also published in the *Official Gazette* in 2006, years after having been signed and ratified. The Convention on the Elimination of All forms of Discrimination Against Women was signed and ratified (with reservations) and published in the *Official Gazette* in July 2007, two days before the UN was due to review Jordan's compliance with it. Jordan has not ratified the Convention on Freedom of Association and Protection of the Right to Organise (No. 87).

Other international conventions have been signed without the requisite adaptation of the local legislation. For example some aspects of the labour laws are in contradiction with the international conventions signed. The articles on the freedom to form unions contradict the international conventions signed as does the fact that public servants and foreign labourers cannot join unions. Articles 134-135 violate the right to stage strikes.

There appear to be contradictions between some of the provisions in the Constitution and obligations under international law pertaining to the international covenants ratified. Article 91 of the Constitution stipulates: "The Prime Minister shall refer to the Chamber of Deputies any draft law, and the Chamber shall be entitled to accept, amend, or reject the draft law, but in all cases the Chamber shall refer the draft law to the Senate. No law may be promulgated unless passed by both the Senate and the Chamber of Deputies and ratified by the King." Control of the legislative process thus rests with the king and the executive through the constitutional power to reject legislation, the control of the upper house of parliament and the possibility to issue provisional legislation and decrees. In this sense there is no guarantee that legislative power represents the will of the elected house of Parliament, which contravenes one of the central tenets of international standards related to democratic governance (Article 25 of the International Covenant on Civil and Political Rights). In the same way, the fact that both houses of Parliament have equal powers in the legislative process, although only the lower house is popularly elected, also appears to undermine the concept of democratic ascendancy within the Constitution. The Constitution allows the executive to postpone elections for up to two years and to suspend Parliament indefinitely, which undermines Jordan's obligations under international law to guarantee periodic elections (Article 25 of the International Covenant for Civil and Political Rights). These constitutional provisions create a possibility for the arbitrary suspension of Parliament (indeed, it was under these powers that Parliament was suspended in 2001 and parliamentary elections were postponed for two years).²⁰

In the same way, many of the laws that are being legislated contain provisions contradicting the principles and standards contained in the international charters and conventions ratified by Jordan. The Jordanian Constitution lacks any provision giving priority to the application of international treaties over domestic legislation. Neither has the Jordanian legislature addressed clearly the question of the relationship between international and domestic laws, nor whether priority should be given to applying international law over domestic law or vice versa. Lack of amendments to domestic legislation reflective of ratified agreements reveals a lack of real commitment, as does the non-enforcement of the provisions of those agreements as law before national courts.²¹

National legislation

The legal framework and regulations relating to civil society in Jordan contain provisions that restrict the right of association and limit the freedom of civil society. These regulations contain restrictions that prevent associations from achieving their goals, do not provide adequate safeguards to ensure respect for the right of association and facilitate the executive's interference in the activities of the associations.²²

The lack of a clear legal framework under which to operate is one of the main hindrances to freedom of association as organisations end up being subject to the prerogatives of the authorities. A wide range of organisations exist and they operate under different laws: some were created under the 1966 Law of Charitable Societies, some under the Non-Profit Private Company Law, and others by royal decree. This lack of homogeneity constitutes a problem. Additionally, there are a range of other laws, some recently enacted, such as the Anti-Terrorism Law and the Public Meetings Law, which impinge in one way or another on the activities of civil society organisations. Restrictive articles of legislation have also been introduced in the Political Parties Law and there have been attempts to amend

the Professional Associations Law so as to enable the government to restrict the work of those associations.

The 1966 Associations and Social Entities Law (No.33) is the main legislation governing charitable and voluntary societies reporting to the Ministry of Social Development. It also regulates civil society organisations reporting to the Ministry of Youth, Culture and the Interior and governs groups that do not report to a particular ministry such as human rights groups, development, democracy, environment and women's groups. The law defines a "charitable (or voluntary) society" as a "body consisting of seven or more persons whose main objective is to organise its endeavours for offering social services to citizens without aiming, through its activities or work, to make or share material profits, secure a personal advantage or achieve any political goals." This definition does not include political societies or societies established by special legislation.

The law grants the Ministry wide supervisory powers over these groups which can be used to interfere with and restrict their work. It gives the Ministry and the governor the right to approve incorporation applications, inspect their operations and records, audit their headquarters, supervise their elections and dissolve them. The Ministry may also examine the group registers and accounts to ensure that the funds are being expended for their designated purpose and that the work is being conducted in accordance with the requirements of this law, towards its established goals, and in cooperation with the ministry concerned. The level of intrusion is such that Article 15 stipulates that the association must inform the Ministry of Social Development of the election day of its governing body at least 15 days before the set date such that the Ministry may send an employee to verify that the election is conducted in accordance with the statutes.

Associations must obtain a written authorisation from the minister in order to establish an association, and the refusal of such authorisation need not be specified. The Ministry must decide within three months on an application for registration. The minister may seek the opinion of the administrative governor before granting approval for the establishment of an association or organisation. In practise approval is usually contingent on security considerations. The law did not originally give the applicant the right to contest the Ministry's decision but this changed with the Higher Court of Justice's granting of the right to challenge administrative decisions.

Another form of restriction is the requirement of a minimum number of members to establish an association, in this case seven. The law also allows the minister to interfere in the administration of associations and in the organisation of their elections by appointing an interim governing body in place of their original governing body. The Associations and Social Entities Law, together with the Penal Code and the Anti-Terrorism Law, allow the search of the headquarters of associations and the monitoring of their funding sources on grounds of suspicion alone. Associations may not have any political goals, although the term "political goal" has not been legally defined, leaving interpretation to the discretion of the Ministry of Social Development. Associations are free to hold meetings at their headquarters and centres without obtaining permission, but need to notify the concerned administrative governor and obtain a written approval when organising any activity outside their headquarters. The minister may dissolve any organisation that has contravened its basic regulations or expended its funds in inappropriate ways. Article 16 lists the reasons for dissolving an association:

- "A. Should the number of the governing body members become inadequate to properly convene because of resignation, death or failure to attend three consecutive meetings without excuse, and the failure to fulfil the sufficient number of members in accordance with the provisions of the statutes.
- B. Should the governing body violate the provisions of statutes related to the reelection of its members or to summoning the General Assembly to convene, or to accepting

memberships, and fail to rectify the violation within a month from the date of the Minister's written warning. The interim governing body shall summon the General Assembly within sixty days from the date it was formed, and present a detailed report to the Assembly on the situation of the concerned association. The General Assembly shall elect in this session a new governing body."²³

Two new draft proposals were submitted to the prime minister's office, one drafted by the Ministry of Social Development and the other by the Ministry of Political Development, in 2007:

The law drafted under the Ministry of Political Development was the result of a participative process which included civil society organisations and various different ministries, including the Ministry of Social Development. It streamlines the registration process, provides for improvements in funding by removing restrictions and states that organisations cannot be shut down without a court order. The draft law proposed by the Ministry of Social Development was much more restrictive. Under this draft the government does not act as a regulatory but rather as an authorisation organism. It allows the Ministry to police organisations' headquarters, granting Ministry employees judicial police powers. It requires pre-authorisation to receive foreign funds. This is the version that most expect will be passed.

The cabinet in October 2007, days before the parliamentary elections, proposed the more restrictive draft law. The parliament never voted on the draft and following civil society protests it was eventually withdrawn by Prime Minister Dahabi in January 2008. The Ministry of Social Development then led a series of consultations on a new draft law, only to disregard civil society input. In June 2008 a draft NGO law as restrictive as the one put forth in 2007 was introduced by the government. The law, which places harsh restrictions on foreign funding of NGOs and allows Ministry officials to reject NGO attempts to register for almost any reason, came into force after being approved by Parliament, signed by the king and published.

Some civil society organisations, in an attempt to avoid interference from the Ministry of Social Development, are registered as non-profit companies under the Ministry of Trade and Industry. Nevertheless, in 2007 the Ministry issued new regulations extending its supervisory role to monitoring funding. The provisions adopted are similar to those proposed by the Ministry of Social Development in its draft law. All organisations are also required to re-register.

Unions are regulated by the 1953 Labour Union Law and 1960 Labour Law for Political Associations. Contrary to the freedoms guaranteed by the international conventions signed, the government continues to ban the right to organise unions among public servants, including teachers and the workers of Jordanian pharmaceutical factories, whose numbers exceed 5,000. Foreign labourers are also banned from joining unions. The law limits worker rights to freedom of association and collective bargaining, with articles 134-135 violating the right to stage strikes. Unions are required to obtain the approval of the administrative governor for any activity they wish to hold, even within their headquarters. Article 13/B of the Labour Law grants labour inspectors the right to inspect the registers of trade unions, which is considered interference in the affairs of the unions and a diminution of their independence in the administration of the affairs of their members. The Universities Law prohibits the formation of student unions and tasks the university president's office with the appointment of half of the student council members while the remaining half is elected by the students.

The Jordanian Cabinet approved a draft law on professional associations in 2005 which would bar professional associations from engaging in politics and change the way in which they elect their leadership. The generalised outcry against it and the strong opposition from the IAF prevented it being presented to Parliament for endorsement. It stipulated that members of the local branches of the associations would elect intermediary councils and that the members of these councils in turn would elect each association's president and general council, changes which aimed to minimise the influence of Islamist candidates. The draft also authorised the Audit Bureau to inspect the associations' financial records, and restrict their activities to internal and professional matters. Written approval from the Interior

Ministry, obtained three days in advance, would be required to hold a gathering or meeting. The law would also create a disciplinary council to judge offences. The law also prohibits ties between the professional associations in Jordan and those in the Palestinian territories.

The 1992 Law on Political Parties regulated until recently the formation of political parties. It introduced a liberalised regulation for the formation of political parties through registration with the Ministry of Interior (MOI) and, in general, allowed for parties to function without governmental interference. The new Law on Political Parties passed in 2007 increases the number of founding members required for a political party from 50 to 500 members (the initial draft law proposed an increase to 250 but Parliament raised it to 500) with a requirement that the party must also have members in at least five different governorates. Most political parties have expressed concern over their ability to meet the proposed new requirement. Another important aspect of the new law is the condition that political parties must be non-discriminatory. This requirement prohibits any party to discriminate on the grounds of religion or ethnicity and there is some concern that the provision may be used as a means to restrict parties that stand on a religious or ethnic platform. The law also restricts the use of religious premises for political party activity. The IAF may be particularly adversely affected by these aspects of the new law as the measures restrict party activities and election campaigning in its traditional areas of support, especially in mosques.²⁴ Every year political parties must submit their budget to the MOI and prove that their membership dues have been paid. Positive aspects of the new law include the inadmissibility of harming or questioning citizens or holding them accountable or prejudicing their constitutional rights because of their party affiliation. It also provides for state funding of registered parties and allows for the utilisation of official media outlets and the opening of public facilities for partisan activities.

The new law aims to reduce the number of political parties by forcing them to consolidate. The goal is to force the creation of political parties that can act as a counterweight to the IAF but it is doubtful if parties can be created from above in such a manner. The government contends that once this consolidation is achieved the majority party would be able to form the government. All parties have agreed to reject the new law which they feel represents a reversal in terms of its numerous penalties, regulations and prohibitions. They feel the new law has doubled the emphasis on security considerations and that it does not deal with parties as political institutions with a right to access power, but rather portrays them as a hindrance rather than as a contribution to public life. Some would prefer a percentage threshold for parliamentary representation as a means of consolidating the party scene.

By far the most contentious law is the electoral law which since 1993 is based on the "one man one vote" system. This system allows the individual one vote regardless of how many parliamentary seats represent their district. The law benefits independent candidates with strong personal or tribal connections to the detriment of political parties that cannot effectively run lists of candidates in each district as voters get only one choice. The Election Law that regulates the conduct of parliamentary elections was issued as provisional legislation in 2001 and amended again in 2003. The TEL has never received the formal approval of Parliament and its constitutional legitimacy is therefore questionable. By law, provisional legislation is valid only if it is placed before Parliament at the beginning of its next session. This temporary legal framework falls short of international standards for democratic elections, most notably by not guaranteeing the universal principle of equality of suffrage amongst voters.²⁵

A policy to ensure the over-representation of parliamentary seats from rural areas at the expense of urban areas, where most Jordanians of Palestinian origin live, has led to large discrepancies in the number of voters that each seat represents. The regime sees the large population of Palestinian origin in urban areas as a political obstacle to any process of electoral reform and this situation may continue until the final status negotiations between Palestinians and Israelis reach a permanent solution on the issue of refugees. The Cabinet of Ministers has discretionary power to decide on how the 104 directly-elected parliamentary seats should be distributed among the 45 different electoral districts. A governmental decree is issued ahead of an election stating how many seats have been allocated to each

electoral district. There are no established criteria, such as population size or geographical or regional representation, for the method by which the government determines the allocation of seats.

Other shortcomings of the Election Law that need to be addressed include: the lack of a mechanism that allows citizens to seek legal remedy to protect or enforce their electoral rights or to ensure that there is compliance with the law, the lack of legal requirement for a detailed and prompt publication of results, insufficient safeguards of the right to vote in secret for illiterate voters, the lack of a set campaign period or rules on campaign spending, lack of guarantees for equitable access for candidates to publicly-funded media and administration of elections by the Ministry of Interior instead of an independent electoral commission.²⁶

There have been numerous proposals for amendment of the law, starting in 1999 with the Jordan First Committee through to the suggestions made by National Agenda in 2005, but none of them have been taken up. The National Agenda Committee brought together some 400 representatives to, among other things, "enhance public participation in the decision-making process and strengthen the role of the civil society institutions". This initiative produced a comprehensive national action plan with one of the key recommendations being for electoral reform so as to strengthen the public's engagement in politics and build the capacity of Parliament and political parties as democratic institutions. All sides participating in the initiative were unanimous on the need for electoral reform, differing only on the type of election system that should be adopted, although all professed a preference for a "mixed" system. Despite such consensus, the government seems to have chosen not to follow the recommendations of the National Agenda. Parliament is unlikely to present a bill to change the electoral law as its MPs have been elected under the existing law. Any dialogue on a new law will therefore have to be spearheaded by the prime minister. There seems to be a generalised consensus, at least among parties, that any proposal should include a combination of one man one vote and proportional representation with one vote for the locality and one vote for a national list.

Another contentious issue regarding elections is the issue of observers to ensure fairness and transparency. Many civil society organisations fear that transparency will be undermined by the lack of local or international observers and accuse the government of interference in the appointment of individuals to act as observers. The government has informally conceded the possibility of monitoring but there are no laws to establish rules and regulations concerning monitoring. The government referred all organisations interested in monitoring the November 2007 parliamentary elections to the National Centre for Human Rights (NCHR), which was advised that it could only enter the area outside the schools where voting took place, thereby precluding the observation of counting, sorting and voting itself. The NCHR notified the government of their intention to observe and offered to train observers but did not receive an official response. Additional problems with the elections include the lack of specific voter lists by precinct (all voters need is their ID with which they can vote in any polling station within their constituency), "ironing" of voters (using an iron to remove the impression on the ID card so that people can vote more than once), transfer of voters from one constituency to another, buying of votes and government interference in candidate's submission and withdrawal.

The Public Meetings Law of 2004 constrains the right of associations to organise rallies, sit-ins and demonstrations, contradicting the principles contained in signed international covenants. It restricts freedom of association through its requirement of submission of a request, three days in advance, to the administrative governor in order to hold a public meeting or march. The law also requires specification of the names, addresses and signatures of the applicants, the goal of the meeting or march as well as the location and the time set for either event. Article 8 holds those requesting permission to hold a meeting or rally responsible for any damages in the event of a breach of public security during the meeting or a march. Violations of this law can lead to imprisonment for a minimum period of one

month and a maximum period of three months or fine of JD 200 to JD 1,000, or both. Under this law unions must obtain approval from the governor for any activity they hold, even within their headquarters. Following the issuance of the Public Meetings Law, the Minister of the Interior issued additional regulations on meetings and rallies through which he prohibited "the use of slogans, expressions, songs, drawings or pictures that are detrimental to the state's sovereignty, national unity, security or public order."²⁷

A new draft law on public meetings passed both houses of parliament in 2008. It presents a minor improvement over the old law but continues to be very restrictive. While it still requires prior written approval by the governor in order to hold a public meeting, the response time has been reduced from three to two days and a lack of response is considered to be an approval. The governor is still not required however to justify any refusal to grant permission for any gathering.

The media is regulated by the Press and Publications Law of 1998, amended in 2003 and again in 2007. The law allows the authorities to be overly intrusive and in this way encourages self-censorship among journalists and editors. The lower house of parliament finally endorsed changes to the law in March 2007, abolishing clauses allowing the imprisonment of journalists. Instead journalists can face fines of up to JD 28,000 for violations relating to defaming religion, offending religious prophets, inciting sectarian strife or racism, slandering individuals, and spreading false information or rumours. It requires that "publications shall adhere to... principles of... national responsibility... and the values of the Arab and Islamic Nation". Such broad-based restrictions are open to wide interpretation and are likely to continue to limit the freedom of the media. While there is some improvement in the protection of journalists from arrest, they are still vulnerable to arrest and detention under provisions of the Penal Code Articles 150 and 195 ("stirring up sectarian strife or sedition among the nation "and lèse majesté ") which continue to be used against journalists and in this way contribute to a climate of self-censorship. Free speech seems to end when it comes to sensitive political issues.²⁸ There are certain issues which are off-limits to the press such as: demographics of Jordanians of Palestinian origin, the Royal Family, the judicial system, the Ministry of Planning and the Army. Basic information/statistics (such as the number of Christians or Jordanians of Palestinian origin) are not available.

In this sense, the laws do not fully protect freedom of expression and legislation is used by the authorities as a means to restrict journalists. On 9 October 2007 a State Security Court sentenced former parliamentarian Ahmad Oweidi al-Abbadi to two years in prison for "attacking the state's prestige and reputation". Al-Abbadi, a Member of Parliament from 1989-1993 and 1997-2001, and head of the Jordan National Movement (a party not recognised by the government), was arrested on 3 May after posting an open letter to US Senator Harry Reid on his party's website that accused Interior Minister Eid al-Fayez and other government members of corruption.

Journalists are required to be members of the Jordan Press Association, in violation of international conventions, while attempts to establish an alternative writers union of reporters have been legally refuted. Media owners must grant the Ministry access to budget information of all media organisations.

Most media can best be described as governmental. Conflict of interest is rampant as a large percentage of journalists are consultants in governmental organisations. The government has its TV and newspaper as well as ownership of the distribution. The lack of professionalism in the media is another problem, as coupled with a spirit of intimidation and the fear of ending up in court, it leads to greater self-censorship. The Protection of State Secrets and Documents Law turns all information in the possession of the state into confidential information unless allowed to be published.

There is strict security monitoring of the media, particularly websites. The Jordanian Press and Publications Department announced in September 2007 that regulations of the Press and Publications Law would be extended to websites and online publications. The department stated that it will not attempt to censor content, but will monitor it and prosecute if needed.

Journalists and civil rights activists protested the measure as “damaging to freedom of expression”.

The 2008 rankings published by Journalists without Borders rank Jordan 121st (it was 109th in 1996).

The Anti-Terrorism Law adopted in 2006 allows anyone to be held on suspicion and entitles the State Security Public Prosecutor to detain suspects, carry out surveillance, prevent suspects from travelling, and monitor financial assets. The suspect may file a “grievance” against these decisions before the same State Security Court by challenging them “within three days from the date the individual was informed” of the decisions. If the complaint was rejected by the State Security Public Prosecutor or extended for a period exceeding one week, the individual may appeal before the Cassation Court. The Cassation Court’s decisions in such cases are final. The legislation was first proposed in November 2005 in the wake of the terrorist bombings in Amman. The House of Representatives approved on 29 August 2006 the controversial draft law despite objections by Islamist deputies and human rights activists.

The Crime Prevention Law allows the administrative government to detain people under suspicion that they will commit a crime. Detention can be renewed based on the governor’s judgement. According to the NCHR Human Rights Report for 2006, the current implementation of the Crime Prevention Law violates both international and national legislation and leads to arbitrary behaviour on the part of judicial police officers, with persons being punished twice for the same offence, once by the judiciary and again by the administrative governor. It contributes to the generalised climate of fear.

Fiscal regime / taxation

Civil society organisations are tax exempt by virtue of being volunteer non-profit organisations. Some organisations receive exemptions from customs or taxes accrued on property. Royal foundations often further benefit from exemption from paying sales taxes, a measure other associations believe should be extended to them too.

Foreign associations

Foreign associations operate under Law 33 and must register prior to their establishment. They may start their activities prior to registration but must negotiate on a case by case basis the development of their activities and their tax exemption. International organisations must register under the Ministry of Social Development. The Ministry may authorise a foreign organisation to open one or several antennas in Jordan which will be subject to the same rules and control as Jordanian associations. In practice, foreign associations usually open their local antennas without prior authorisation as the registration procedure can take years to become effective.²⁹

KEY OBSTACLES

Most of the key obstacles highlighted by civil society representatives are contained within the legislation described above, the main issues relating to: registration, dissolution and oversight. Additional complaints refer to the elasticity of the laws, that is, the flexibility in their implementation and difficulties pertaining to funding.

Registration

The Associations and Social Entities Law requires a minimum of seven founding members and the submission of a request for registration to the Ministry with the statutes attached in order to approve the registration of a society. The request should include:

- Name of the charity, social entity or union.
- Addresses of the society's headquarters and branches.
- Names, professions, ages and places of residence of the founding members who must not be under 21 years of age.
- Detailed account of the purposes and goals for which the society was created.
- Membership requirements, fees and ways to revoke membership.
- Method for electing the governing body tasked with conducting the business of and overseeing the entity's affairs.
- Convention and dissolution of the entity.
- Monitoring and managing the financial affairs of the entity.
- Disposal of the entity's funds in case of dissolution.

The Law requires a written permission or authorisation from the minister prior to the formation of any association. If after three months from the receipt of the request by the Ministry the applicants have not yet received a notice of the decision, or of the presence of legal deficiencies in the application or the statutes presented, they can then start their activity as if the association were registered. The denial of registration is often attributed to security considerations but reasons for the denial are most often probably undisclosed political matters. In 2006 the Ministry of the Interior denied the licensing of four associations. In the event of rejection, associations can appeal this administrative decision before the Cassation Court. They also have the right to seek compensation before regular courts.³⁰

Oversight

There is extensive and intrusive supervision over associations (administrative, financial, members, activities) by the Ministry of Social Development and the Ministry of the Interior. This has led many organisations to register under the Ministry of Trade and Industry in an attempt to avoid such scrutiny. Under the Associations and Social Entities Law, the Minister for Social Development assumes oversight over the different types of charities, social bodies and federations. Organisations are required to maintain the following information in their headquarters: the statutes and names of the governing body's members during each election cycle and the date of their election; the names of all members, their identification information, age and date of affiliation; minutes of meetings of the General Assembly in sequence; minutes of meetings of the governing body in sequence; detailed income and expenditure accounts; supplies and assets.

In addition they must notify the minister of every modification to their headquarters, amendment to their statutes or change to their governing body. Amendments to the statutes will only take effect after obtaining written approval from the minister after consultation with the concerned federation. The change in the governing body will only take effect after obtaining a written approval from the minister after consultation with the governor. Every organisation has to submit two copies of its annual report outlining its activities, the overall amount spent to achieve its goals and sources of income. Each organisation must obtain a certificate from a licensed auditor at least once a year. If these provisions are not adhered to, the minister can order the dissolution of any charity, social entity or federation.³¹

The Ministry can send representatives to observe any meeting or election and to inspect any records at any time. Permission to organise a workshop has to be requested two months in advance. In general there is little interference in associations' activities as long as they are within the goals and objectives set forth in the statutes, and loyal to the government. However, opposition associations are subject to dissolution and interference, such as was the case of the Jordanian Women's Union, which was dissolved twice because of its political positions. There is also more informal monitoring and supervision by the Jordanian intelligence services, which are often accused of planting people (their presence at workshops and intimidation of participants is notorious). This discourages citizens from joining organisations for fear of being persecuted and encourages self-censorship. During the few months in the run up to

the 2007 elections, scrutiny intensified. This seems to be the expression of a concerted effort from above rather than simply the initiative of an isolated ministry.

Dissolution and suspension

The Associations and Social Entities Law allows the Ministry to dissolve any organisation without judicial oversight if the association has breached its statutes, has not implemented the goals set forth in its statutes, has stopped working for six months or displayed shortcomings in its work, has refused to allow officials to attend its meetings, inspect its premises, documents or records, has expended its funds for purposes other than those specified, has submitted to concerned official authorities incorrect data, generally violated any provision of the Law, or if one third of its general assembly members who are entitled to vote voted in favour of its dissolution. The reasons for dissolving associations are as unclear as the reasons for denial of registration. Dissolution is often justified by and attributed to “undermining the objectives or legal violations”. The Law allows association founders to resort to the judiciary in order to challenge the dissolution decision before the Cassation Court. Associations targeted for dissolution are usually those with political or ideological orientations opposing that of the government, such as Islamist organisations, or those associations whose founders include individuals with a partisan history of opposition to government policies.³²

NCHR reports that the number of associations dissolved by the Ministry of Social Development was nine in 2005 and five in 2006. The reasons cited were deviations from the goals they were founded to pursue or their statutes and contravening the Associations and Social Entities Law.³³

Funding

Most organisations suffer from a lack of financial resources and depend on government and foreign support. The funds allocated to support social and charitable work in the general budget are very limited, which obliges civil society organisations to resort to international donors for funding. The most important sources of funding include the United Nations agencies, the European Union and international organisations of different nationalities. The law establishes many restrictions that limit the right of associations to acquire or own property and funds or use property other than those licenced. Some analysts are beginning to note that this is leading to a civil society driven by donors. Professional associations are more sustainable due to compulsory membership fees. The IAF and some other political parties rely on influential leaders or regional affiliations that can provide necessary financial resources. Most other parties face difficulties in financing their activities.

In theory the government does not limit access to foreign funding but it does require express authorisation from the ministry concerned. Some organisations complain that they have not been able to accept foreign funds because the Ministry of Social Development has simply not responded to their request and accompanying proposal, even a year after it was made. The Ministry sent a letter to all embassies in 2007 reminding them that they may not fund Jordanian organisations or foreign organisations operating in Jordan without prior consent. In practice, some organisations accept foreign funds without government approval and have thus far had no problems. In general terms regional organisations seem to be less constrained by regulations than local ones, an example of the inequity in application of the law. The Ministry has attempted to take over some aspects of the administration of the financing of civil society organisations. Donor countries are expected to provide the funds to the Ministry, which in turn finances the projects of associations applying for funding using applications specifically designed for this end. However, the Ministry is accused of not being objective in the disbursement of these funds and has the option to deprive associations of funding based on its own criteria, which makes many associations and organisations reluctant to request funding from the Ministry and resort to donor parties directly instead.

The Anti-Terrorism Law allows the government to control the bank accounts of associations, and punishes them for donating to charities suspected of supporting militant groups in Palestine, Lebanon and Iraq. While the Audit Bureau was established to monitor the financial behaviour of the government, the government issued a decision that obliges professional associations to subject their accounts and general budgets to the scrutiny of the Audit Bureau. In this way it interferes with the freedom of associations to manage their financial affairs and their own resources.

Targeted/excluded groups

In the aftermath of the US invasion of Iraq and the election of Hamas the relationship between the IAF and the Jordanian regime has become steadily more adversarial with some of the regime's actions prompting speculation that it is moving towards open repression of the Islamist movement. In 2006, security agencies arrested some members of the IAF based on the unlikely claim that Hamas was preparing to launch attacks within Jordan. Although the detainees were eventually released, they were held in solitary confinement with some of their wrongful detentions lasting more than five months without their being charged. Shortly afterwards four members of the IAF were arrested and charged with incitement after visiting Al Zarqawi's funeral tent and offering comments that implied support for Al Zarqawi's actions in Iraq. The parliamentarians were arrested for their statements and tried in the State Security Court. In July 2006, the Cabinet took an additional step, acting on a report by the public prosecutor alleging irregularities in the management of the Islamic Centre, the largest NGO associated with the Islamist movement, to replace the organisation's board. The king finally issued a pardon of the deputies.

The leftist parties have not escaped the harassment of the security agencies either, as a number of their members were detained and arrested on the basis of participation in and calling for rallies and popular actions to support the resistance in Palestine, Lebanon and Iraq. In addition, in 2006, the security services arrested a number of professional association members based on expressions of their political views on the regional situation. Furthermore, the Minister of the Interior and the Governor of the Capital denied licences to a number of activities and festivals marking Land Day and those supporting the resistance in Palestine, Lebanon and Iraq. Likewise, the security forces prevented some of the festivals and rallies by force, including a rally the opposition parties and professional associations called for to support the Lebanese resistance in confronting Israeli aggression.

There are no specific restrictions on women joining associations, yet women's groups are especially susceptible to interference by the security services, given that often their members are of Palestinian origin. Although women enjoy significant presence and representation in many organisations, this is not the case in political parties, professional associations and trade unions, where women have a low presence. This is attributed to dominant social perceptions and patterns that promote women's presence in charitable activities and diminish it in political circles, parties and associations.

STATE – CIVIL SOCIETY RELATIONS

While the reform process initiated in 1989 did lead to an increase in cooperation between civil society and the government, the government is still reluctant to grant these organisations too much space and independence in the fear that they may gain political influence. While the state views national organisations as partners in development issues it is suspicious of any initiatives in the political arena and so attempts to rein them in through legislation that restricts their operations. The government does consult some organisations in regard to decisions relevant to the public interest, such as personal status laws, employment and development projects especially with regard to the Millennium Development Goals, and when writing country reports on its commitment to international human rights conventions

like those submitted to the CEDAW Committee or the Committee on the Rights of the Child. Nevertheless, the government usually enacts laws independently and without consultation with civil society, particularly with regard to political and economic affairs such as the Political Parties, Elections and the Income Tax Laws.³⁴

In those instances where dialogue has taken place between civil society and government on more political issues, concrete results have yet to be implemented. The Ministry of Political Development, charged with nurturing the relationship between state and society as well as furthering a participative society, is also said to be the weakest ministry and the one with least support. Although it has initiated multiple stakeholder processes for the purpose of reforming legislation on political parties and associations, these have yet to bear concrete results. For the purpose of the Political Parties Law a joint committee was formed of political party representatives and government representatives from the Ministry of the Interior and the Ministry of Political Development. They held extensive meetings on the development of the law and jointly produced a draft. Despite supposed party representation in the joint committee all parties have come out against the new law, so there seems to have been some flaw in the process. A civil society draft law was also drawn up after a process that included participation from a broad spectrum of NGOs, but nevertheless a much more restrictive version which disregarded civil society's concerns was the one to be presented to and approved by Parliament.

In terms of political parties, the state's general approach towards Islamist, nationalist or leftist parties has oscillated between co-optation and repression. Most recently, however, it appears to be combining the two strategies at the same time, initiating formal processes of political reform (with various new campaigns, dialogues, and laws) while not actually contributing to their strengthening.³⁵

The pervasive role of the king in all aspects, executive, legislative and judiciary, has created expectations among both his supporters and the opposition that any reform must originate from the Royal Court. Thus political and social campaigns, whether by parties or civil society, focus on attracting the attention of the king as progress in any area is seen to depend on his will. The king actively encourages and initiates policy discussions outside Parliament, seeking a direct dialogue among key interlocutors. While the outcomes of these initiatives have no legally binding force and mostly remain unimplemented, they do provide an indication of the consensus for reform. Yet, while these initiatives offer an important platform for interlocutors to exchange ideas and reach political compromises, their set-up sidelines the institutional framework for political discussion and contributes to the further weakening of an already feeble Parliament.³⁶ In a similar fashion, civil society organisations, especially the royal NGOs, often find that they have greater support from the Palace than from the government. The NCHR for example has had several conflicts with the government, such as in relation to the issuance of the anti-terrorism law. In several of these confrontations with the government the king has ended up overruling the government in favour of the centre, hardly a way to give credibility to the government.

In any case, participation in any of these reform initiatives, as is the case with policy-making and implementation generally, has been mostly relegated to the ruling elite. The regime is known to act single-handedly in the implementation of top-down policies. Any reform efforts are imposed from the top after being initiated and designed by the Palace's multiple initiatives. Effective involvement of different stakeholders is lacking perhaps because civil society, political parties, and unions are too weak to play a role in supporting or blocking reform. The state does not perceive these groups as influential stakeholders to be considered in the process of designing and introducing reform measures. The state's institutional capacity to promote participation, make information available, and facilitate the process of debating reform and potential changes is either limited or withheld. There are no effective channels of communication between the state and society in place. Available networks are not independent and are often controlled by the state and its security branches. The appointment of former Director of the General Intelligence Department, Ahmad Obeidat,

as chairman of the National Centre for Human Rights, is a case in point. The GID stands accused by human rights groups of major human rights violations.³⁷

Furthermore the average term of Jordanian governments during the last fifteen years has been less than two years. This has often made governments and individual ministers hesitant to implement reform programmes. Despite the regime's claim to prioritise reform of administrative structures, any fundamental changes to the system are often avoided by the government. The public sector is the key instrument of the state–society relationship and the main pillar of rent distribution by the state. Appointments in the public sector (representing close to 50 percent of total employment) are an important instrument towards the maintenance of the patron–client networks that help sustain the state. Reforming this sector would entail changing the social contract between state and society and reducing privileges to politicians and tribal leaders which provide stability and support to the regime. Structural changes to this system of privileges face severe resistance from entrenched and privileged groups. Thus little progress has been made to reform public administration and introduce merit-based recruitment and payment.³⁸

Future reform will depend on whether the regime is convinced that Jordan's stability is best maintained through political liberalisation or through repression. The regime believes that socio-economic developments will take pressure off but the question is how long the country can sustain the status quo. The later the reform the more destabilising the situation will be. A lack of progress could lead to a rise in support for the more extreme elements of the Islamist movement and growing discontent could lead to the IAF adopting a more confrontational stance.

DOMESTIC CALLS FOR REFORM

Calls for reform from local activists and civil society range from broad appeals for a more balanced distribution of power through constitutional reform to detailed proposals on the Association Law governing their activities. These include the following:

Constitutional reform to ensure balance of powers

- Government should be formed by the winning majority parliamentary coalition as opposed to being appointed by the king.
- Parliament should be granted full legislative and oversight power, unchecked by an appointed upper house.
- The judiciary should be truly independent.
- Independent Constitutional Courts should be established.

National legislation

- Should be in accordance with the international conventions signed.
- Should guarantee the liberties established in the Constitution.
- Should not be decreed by the king as "temporary legislation".
- Repeal the Anti-Terrorism Law.
- Repeal the Public Meetings Law.
- Amend Associations and Social Entities Law.

Elections

Reform of the electoral framework is needed before the next elections in 2011. The absence of political reform has already undermined the public's confidence in elections and the role of Parliament. The "one man one vote" system should be replaced by some form of mixed system, and parliamentary seat distribution should be revised towards a more proportionate allocation that ensures equal suffrage. The Ministry of the Interior should adopt

measures to increase the transparency of the electoral process, through independent election observation, involve parties and candidates more in the preparation of the elections and provide for a prompt and detailed publication of results.

Political parties

- Remove requirements on number of founding members and provenance.

Civil society

- Abolish the requirement of prior authorisation by the Minister for Registration and prior consultation of the governor by the minister.
- Simplify requirements for establishing an association, including removal of required number of founders.
- Allow organisations to freely adopt and modify their statutes.
- Prohibit official bodies from interfering in the administration of associations or from dissolving them except in the case of a decision issued by the judicial authority.
- Abolish the requirement of informing the authorities in advance of upcoming meetings of the organisation's electives bodies.
- Abolish the requirement of authorisation for activities outside the organisation's headquarters.
- Allow the formation of national, regional and international coalitions without prior authorisation.
- Allow civil servants, teachers and university students to form unions.
- Remove restrictions on funding from foreign donors.
- Allocation of public funds to civil society in an equitable and transparent manner.
- Abolish requirement for unions to obtain the approval of the administrative governor for their activities, including within their headquarters.
- Formalise and encourage the participation of civil society in the decision-making process regarding public policies.

Media

- Remove required membership of Jordan Press Association.
- Remove broad-based restrictions which are open to wide interpretations.
- Improve access to information.
- Contribute to professionalism in journalism through training.
- Refrain from using penal code to prosecute journalists.

Education

- Public-awareness campaigns.
- Democratic curriculum in education system.
- Ensure academic freedom.
- Ombudsmen.

Remove all administrative and security-based restrictions imposed, directly or indirectly, on the work of trade unions, professional associations, political parties, civil society and the media.

CONCLUSION

Jordan's path to reform has been a carefully managed top-down process which has all the trappings of democracy while lacking substance. The balance of power is highly

slanted towards the king, his ministers and the unelected upper house, while the elected lower house of parliament remains constrained in its powers and thus ineffective and lacking in credibility. This has created grave disillusionment in Jordan as well as a continued lack of oversight of legislation affecting civil society. While in some areas the government reported an official 54 percent turnout for the recent elections held in November last year, the figure was much lower for many urban districts populated mostly by citizens of Palestinian origin.³⁹ The large number of civil society organisations masks the constraints that they operate under both in terms of the specific legal framework that regulates their activities and the broader democratic deficits related to the monarchy's concentration of power, the lack of independence of the judiciary and the overly extensive and intrusive supervision they are subjected to.

Without further substantial reform, it remains to be seen whether Jordan's status as a favourite of foreign donors and King Abdullah's economic reform strategy will be sufficient to stave off rising dissent over the government's lack of accountability to the electorate and disappointed hopes for further liberalisation of laws regulating civil society. The question remains as to whether the regime is willing to continue with political reform or will use security as an excuse to stall or even backtrack on liberties achieved so far.

Notes

¹ "Planting an olive tree" is a reference to a speech given by King Abdullah II to the European Parliament in Strasbourg on 12 December 2007, in which he referred to the reform process in Jordan and broader initiatives required for the region: "We in Jordan know that when an olive tree takes life, planting is only the first step. A hundred processes then go active to create the cells and structures of life. Roots emerge, growth occurs, and a core of strength ensures survival. From outside comes water and support to sustain life and create new fruit." <http://www.jordanembassyus.org/new/jib/speeches/hmka/hmka12122007.htm>

² Interview in Amman on April 17, 2007.

³ Choucair, Julia., "Illusive Reform: Jordan's Stubborn Stability", Washington: Carnegie Endowment for International Peace, Democracy and Rule of Law Project, Middle East Series, Number 76, December 2006, pp 3-4.

⁴ Ibid, pp 4-5.

⁵ Democracy Reporting International and Al Urdun Al Jadid Research Center, "Assessment of the Electoral Framework, Final Report The Hashemite Kingdom of Jordan", January 2007, p. 4.

⁶ Brand, Laurie., "In the Beginning was the State: The Quest for Civil Society in Jordan", Civil Society in the Middle East, Norton, Augustus Richard., (ed). Boston: Brill, 1996.

⁷ Choucair, op. cit, p.3.

⁸ Democracy Reporting International, op. cit, p.3.

⁹ Choucair, op. cit, p.7.

¹⁰ Choucair, op. cit, p. 7-8.

¹¹ Choucair, op. cit, p. 8-9.

¹² Democracy Reporting International, op. cit, p. 5-6.

¹³ Democracy Reporting International, op. cit, p.1.

¹⁴ CSS Democracy in Jordan, 2006

¹⁵ Most factual information is taken from "The Directory of Civil Society Organizations in Jordan" supervised by Hourani, Hani., Al Urdun Al Jadid Research Center, 2006.

¹⁶ Rahal, Ghosoun., "Freedom of Assembly and Association", the Euro-Mediterranean Network for Human Rights, June 2007.

¹⁷ Democracy Reporting International, op. cit, p. 8.

¹⁸ Brown, Nathan J., "Jordan and its Islamic Movement: The Limits of Inclusion?", Washington: Carnegie Endowment for International Peace, Democracy and Rule of Law Project, Middle East Series, Number 74, November 2006.

¹⁹ Rahal, op. cit.

- ²⁰ Democracy Reporting International, op. cit, p. 7.
- ²¹ Rahal, op. cit.
- ²² Rahal, op. cit.
- ²³ Rahal, op. cit.
- ²⁴ Democracy Reporting International, op. cit, p. 8.
- ²⁵ Democracy Reporting International, op. cit, p. 1.
- ²⁶ Democracy Reporting International, op. cit, p. 2.
- ²⁷ Rahal, op. cit.
- ²⁸ Democracy Reporting International, op. cit, p. 30.
- ²⁹ Doucin, Michel., (ed.), "Guide de la liberté associative dans le monde", La Documentation française, Paris, 2007.
- ³⁰ Rahal, op. cit.
- ³¹ Rahal, op. cit.
- ³² Rahal, op. cit.
- ³³ NCHR report for 2006
- ³⁴ Rahal, op. cit.
- ³⁵ Brown, op. cit.
- ³⁶ Democracy Reporting International, op. cit.
- ³⁷ Alissa, Sufyan., "Rethinking Economic Reform in Jordan: Confronting Socioeconomic Realities", Washington: Carnegie Endowment for International Peace, Carnegie Middle East Center, Carnegie Papers, Number 4, July 2007, p 9-10.
- ³⁸ Ibid
- ³⁹ "54% of eligible voters cast ballots in 'smooth' elections", *The Jordan Times*, November 27 2007 <http://www.jordanembassyus.org/new/newsarchive/2007/11212007001.htm>

MOROCCO: NEGOTIATING CHANGE WITH THE MAKHZEN

EXECUTIVE SUMMARY

Freedom of association –the right to form an association able to freely develop its activities– is an often-neglected cornerstone of any democratic transition. Morocco compares very favourably throughout the region in terms of democratic achievements, and has often been held up as a model of Arab progressive political liberalisation by Moroccan authorities and international observers. Upon closer inspection, however, the picture of Moroccan democratic reform does not appear quite as bright. While King Mohammed VI and the government have implemented a number of very important and valuable reforms, these have remained selective, ad-hoc, and in many cases flawed and superficial. Most importantly, the concentration of all meaningful political power in the palace has remained untouched.

The Moroccan civil society landscape is known to be among the most diverse and vibrant in the region. While associative life has been benefiting from a series of legal and political improvements in recent years, a number of important challenges to free association remain. This report, intended to accompany the Club de Madrid's efforts¹ to strengthen freedom of association throughout the North Africa and Middle East region, provides an independent analysis of the situation of civil society in Morocco. Findings and recommendations are based on interviews among governmental and non-governmental Moroccan stakeholders.

Civil society interviewees identified four main areas in which important obstacles to free association remained, referring to both legal provisions and their practical implementation. Firstly, NGOs across the board described a large number of difficulties regarding the process of registration of an association, and its ability to freely develop its activities thereafter. While some of the difficulties were attributed to flaws in the law regulating public liberties, most were said to be rooted in the predominance of informal rules and the lack of practical implementation of legal provisions.

Secondly, the limited access of associations to the public sphere, both in terms of public assembly and in terms of access to a wider audience via independent broadcasting media, was harshly criticised. Unnecessary administrative hindrances and informal rules regulating free assembly, the persistent de-facto state control over broadcasting media, and the flawed legal framework for freedom of expression and the press were highlighted in this regard.

Thirdly, security and anti-terror measures, and in particular the anti-terrorism law adopted in the aftermath of the 2003 Casablanca terrorist bombings, were said to essentially undermine human rights and fundamental liberties, among them freedom of association. The frequent discrimination or exclusion of some constituencies, in particular some Islamist and Saharawi groups, received special mention.

Fourthly, the lack of independence of the judiciary as a guarantor and safeguard of all codified fundamental liberties was underlined by all interlocutors as an overarching problem, which must be solved before any legal amendments to specific laws can take meaningful effect. Efforts to establish a strong and independent judiciary must therefore be at the forefront of all reforms aimed at strengthening freedom of association. The judiciary, however, cannot be independent without an effective separation of powers in constitution and practice, paired with major efforts to combat the widespread corruption of judges.

Finally, in order for reforms to be sustainable, they must be based on a broad societal consensus which involves state as well as non-state actors. The broad number of reform initiatives and proposals regarding the aforementioned problems already elaborated and advocated by Moroccan civil society requires a regular forum through which consultations and involvement of civil society in reform processes are institutionalised. Present ad-hoc consultations must take a step towards institutionalisation in order to guarantee civil society's

involvement in all societal issues, and especially the controversial and politically delicate ones. Already existing intermediary institutions can potentially play an important role, but need to become fully state-independent in order to become credible mediators. These or newly created structures of institutionalised consultation should channel reform proposals and recommendations, with the aim of generating a broad dialogue which leads to a sustainable societal consensus on democratic reform.

DEMOCRATIC REFORMS UNDER MOHAMMED VI

Since the accession of King Mohammed VI to the throne in 1999, the international community has been looking to Morocco as a shining example of democratic reform in an otherwise volatile region. Morocco enjoys the reputation of a relatively progressive country where modernisation and political liberalisation are being brought forward by a comparatively open-minded leadership. After a reluctant initial opening during the last years of Hassan II's reign, ambitious expectations that his young son Mohammed VI would lead the country irreversibly towards genuine democracy went unfulfilled. While the young king has been committed to democratic transition in discourse, and did accelerate the pace of reforms considerably by implementing change in a number of important areas, reforms have been selective and, most importantly, the centralisation of factual executive power in the palace has remained untouched.

The 1996 Constitution defines Morocco as a "democratic, social and constitutional monarchy". However, the king's denomination of Morocco as an "executive monarchy" describes the distribution of powers more adequately. The king is by order of the Constitution both the highest political authority and "commander of the faithful". This unique double political and religious supreme authority provides the monarch with a political impunity justified by religion. With the help of his extended power apparatus, commonly called the *Makhzen* (Arabic for storehouse), the king governs as the de-facto head of the executive. He presides over the Council of Ministers and appoints the government as well as high officials in strategically important ministries (interior, foreign affairs, defense, and religion). Royal counsellors, loyal technocrats of the king's personal entourage, (some of them appointed deputy ministers) are the true decision-makers in the ministries. At the local level, the *Walis*, usually close to the palace, take all significant decisions. The king also approves and adopts legislation, can rule by decree and can veto any parliamentary or governmental decision.

In short, decision-making power on significant political change does not lie in the hands of the elected, and a separation of powers, both institutionally and in terms of political practice, is not in place. In addition, the judiciary is not explicitly recognised as a power and is not independent from the executive. Against this background, public liberties (including freedom of association) become relative, as the absence of the rule of law means that no rights can ultimately be guaranteed.

Although the palace holds all executive power, the king has implemented a number of far-reaching reforms. Most notably, the establishment of an Equity and Reconciliation Commission (IER) to shed light on human rights violations committed between 1956 and 1999 constituted, in spite of its flaws, a revolutionary initiative in Moroccan politics, unprecedented in the Arab world. Other notable and widely praised reforms included a comprehensive revision of the family code (*mudawanna*), a reform of the association law, and new legislation regarding torture, the audiovisual sector, and political parties, among others. The penal code and the press code are currently under revision. Not surprisingly, such reforms are held up by the authorities as democratic achievements and indicators of the Moroccan government's genuine commitment to reform. At the same time, high government officials admit that a genuinely democratic culture in Moroccan society has yet to develop.

Accordingly, some areas have also witnessed a reinforcement or even introduction of constraints during Mohammed VI's rule. On the legal side, these have included some aspects of the new party law and the general electoral framework, the press code, and

human rights restrictions deriving from the anti-terrorism law adopted following the 2003 Casablanca terror attacks. Ratification of several important international rights conventions is also still on hold, as the regime sees them as limiting the sovereignty of the monarch. The press is relatively free in regional comparison, but is becoming increasingly limited in absolute terms. While in practice societal taboos setting limits on free speech (the monarchy, Islam, Western Sahara) are softening, journalists remain under heavy government pressure, and the last few years have seen some of the most far-reaching and widely criticised sentences imposed on independent journalists for critical reporting.

In spite of selective political liberalisation, the *Makhzen's* vision for Morocco appears to be one of economic prosperity via modernisation, rather than democratisation. According to some critics, the king does have a genuine interest in the welfare of his people, but this entails "making them happy through economic development and consumption, rather than political reform". The flattering regional comparison provides the grounds for Morocco's well-cultivated image as an Arab reform pioneer. According to some high government officials, Morocco's comparatively advanced democratic reform process, and its modern approach to human development, are the subject of both envy and alarm in some of the less democratic and modern countries in the region, which have criticised Morocco for jeopardising their own internal stability.

Local human rights activists, however, stress that this favourable image helps stall the domestic political reform process, as it reduces foreign pressure on the Moroccan government to consolidate initial steps towards genuine democratisation. Especially since 9/11, which focused international attention on the value of democratic governance, foreign actors have seen Morocco as "one of the easy cases" which required comparatively little attention. At the same time, the Moroccan experience has increasingly been held up as a regional model for democratisation, even though political reforms have in fact remained ad-hoc, partly superficial, and have notably failed to establish any accountability of decision-makers vis-à-vis the citizens.²

In domestic debate, while there is general consensus that there must be some democratic reforms, society is divided over both the pace and nature of the reforms required. Some (notably those close to the *Pouvoir*) argue that transition must be gradual in order to be sustainable. According to critics, however, selective reforms and democracy discourse have not only been insufficient, but have been utilised by the *Pouvoir* in order to preclude popular demands that might undermine the primacy of the palace, or jeopardise the image of the supposed "model Arab democracy".

While liberalisation under Mohammed VI has partially widened the space for political debate, the mechanisms of democratic governance have hardly been further developed, and popular participation has remained largely superficial. For civil society, this means that (with a few notable exceptions), critical NGOs and opposition forces are no longer forbidden but are being kept "on a long leash". Legal provisions provide for a largely free associative life, but critics say that in practice true participation through organised civil society has so far been largely avoided thanks to the setting up of a "façade of involvement". Consultations on political reforms are taking place in a selective, ad-hoc manner only, but are not institutionalised. Morocco's flourishing civil society thus exists largely outside the sphere of traditional politics.

While Morocco's flourishing and relatively free civil society is a great achievement compared to other countries in the region, in absolute terms freedom of association can still not be guaranteed in law and practice as a means to ensure participation of the various constituencies as a precondition to a sustainable reform process. The creation and maintenance of associations must take place in a political, legal and social framework in which a critical civil society can freely develop its activities. Effective safeguards, not only of freedom of association in a narrower legal sense, but also freedom of assembly, expression, information and of the press, are preconditions for a civil society that actively participates in shaping the fate of the country. Finally, laws are only as good as the mechanisms to enforce

them: without an independent judiciary and effective law enforcement mechanisms, no public liberties can be guaranteed. The gap between legal theory and practice, between the formal and the informal, as well as the absence of the rule of law and efficient law enforcement, make Morocco a case of (albeit subtly) flawed freedom of association.

ASSOCIATIONS LANDSCAPE

In the whole of the Middle East and the North African region, a maturation of civil society to varying degrees is becoming manifest. Enhanced mobilisation is increasingly aimed at turning citizens into agents of development. Since the late 1980s, the Moroccan NGO sector has experienced a considerable boom. In spite of certain restrictions, estimates suggest between 30,000 and 80,000 associations are registered in Morocco, making the country the regional leader in quantitative terms. The unavailability of official statistics or a comprehensive national association database, however, makes it impossible to verify the exact number of registered associations.

This information and transparency gap also means that the typology of the Moroccan NGO sector can only be roughly estimated. Several Moroccan NGOs dedicated to promoting civil society are trying to set up databases with comprehensive statistical information.³ Associations cover a wide range of sectors of economic and public life, especially in the areas of health, childcare, integration of women into the labour force, promotion of women's personal status and women's rights in general, along with rural and national development, youth, education, and human rights. Moreover there are 17 labour and trade unions in Morocco. A particularly high share of associations are dedicated to fostering associative collective action, promoting literacy, education, environmental and women's issues, and fostering human, rural and local development.

In addition to non-governmental organisations, the legal form of an association is often used by the authorities to organise their activities in the areas of humanitarian and social services, via governmental NGOs (GONGOs), the most notable example being the *Fondation Mohammed V pour la Solidarité*.

LEGAL FRAMEWORK

In 1979 Morocco ratified the International Pact on Civil and Political Rights, Article 22 of which proclaims freedom of association. Of the two other international conventions cited by the UN High Commissioner for Human Rights as directly relevant to freedom of association, the Right to Organise and Collective Bargaining Convention (No. 98, 1949) was ratified by Morocco in 1957, while the Freedom of Association and Protection of the Right to Organise Convention (No. 87, 1948), has not been ratified by Morocco so far.

Since 1962, freedom of association has been a constitutional right in Morocco. In contrast to most other countries in the region (except Israel), Morocco has formally guaranteed freedom of association without any constitutional restrictions since 1996. Morocco is also one of the few countries (along with Jordan, Lebanon and Israel) which has formally adopted the principle of declaration⁴ in their legislation regarding associations, all others having introduced, to a greater or lesser extent, elements of previous formal authorisation.

The principle of freedom of association is recognised in Article 9 of the constitution, which states: "The constitution shall guarantee all citizens the following:

- a) freedom of movement through, and of settlement in, all parts of the Kingdom;
- b) freedom of opinion, of expression in all its forms, and of public gathering;
- c) freedom of association, and the freedom to belong to any union or political group of their choice.

No limitation, except by law, shall be put to the exercise of such freedoms."

Based on the Constitution, associative life is regulated by Dahir (royal decree) no. 1-58-376 of 15 November 1958 regarding the law of associations, which was modified and completed in 2002 (henceforth called "the association law").⁵ The association law, together with the law regulating public assembly⁶ and the press code⁷, form the Code of Public Liberties.⁸ The last modification of the association law in 2002 introduced considerable measures of liberalisation, including the introduction of the principle of declaration, enhanced financial capacity for registered associations, and details regarding the procedure for recognition of status as a public utility.

According to Article 1 of the association law, an association is an "agreement for achieving ongoing collaboration between two or more persons in order to use their information and activity for a goal other than the distribution of profits among themselves". There are special provisions for trade and labour unions, association networks/federations, and cooperatives.⁹ In order to be legally created, every association must obtain official recognition by the authorities. This recognition is formally determined by the regime of simple declaration. Legally, the association is founded once it has submitted its statutes and a series of other documents to the local administration. As a proof for submission of this dossier, the local authority must issue to the association a provisional receipt immediately, followed by a definitive receipt within 60 days. The issuing of the provisional receipt is fundamental in order to prove the submission in accordance with the statutes.

Afterwards, the authorities must respond to the association to confirm that the dossier of declaration does not, in form or content, contradict any current legislation. In the case that there are no legally founded objections, a definitive receipt must be issued within a maximum of sixty days. Otherwise, after 60 days have expired, the association may freely carry out its activities according to the declared statutes (art. 5). So in theory, if there are no legal grounds for rejection, the association is automatically legally registered. No such automatic legality, however, is provided if the authorities fail to provide the provisional receipt in the first place. In this case, associations remain without proof of having submitted the dossier, and without legal recourse.

In the case that there are objections and the declaration is rejected, the founders of the association may take legal action as detailed in a 2002 law that obliges authorities to state the motives of any individual administrative decision which disfavours the interested party.¹⁰ The fact that reasons must be given for negative administrative decisions allows the founders of the association to take legal action against the rejection before an administrative court (or appeal court).¹¹

Once legally registered, the association has the status of a legal entity and may freely acquire and administer public subventions, the admission of members, annual membership fees, support from the private sector, support from foreign or international bodies (under certain restrictions), and mobile and immobile goods necessary for the execution of its activities and the realisation of its objectives (Article 6).

An association can be declared null and void by a court ruling when it is founded with any illicit or illegal objective, against moral customs and/or aims to tamper with the Islamic faith, the integrity of the national territory or the monarchy, or incites discrimination (Article 3). Once declared null, the association can be dissolved, its venues closed and any assembly of its members prohibited, the competent court being the court of first instance (Article 7). No repressive or civil measures can be taken against associations without a court ruling from the *tribunal de première instance* (Article 39). Previously associations could be dissolved by simple administrative decision, but following massive pressure from civil society the association law was modified in 2002 eliminating any possibility of dissolving an association by any means other than judicial decision.

The status of public utility (Articles 9-13) implies a series of privileges, especially in terms of funding and the fiscal regime. With the exception of political parties and "associations of a political character" (which fall under the political parties law), any association can –its objective and means of action having been previously examined by the relevant administrative authority– demand recognition as an organisation of public utility by

discretionary power of a royal decree (Article 9). Likewise, the attribute of public utility can be withdrawn by royal decree. The local authority must decide on any request for recognition of public utility, stating the reasons for its decision, within a maximum of six months from the date of submission.

Associations recognised as being of public utility possess greater patrimonial capacity and enjoy tax exemptions and other financial advantages. In addition to the aforementioned privileges for regular associations (Article 6), they can receive donations and legacies and possess the movable and immovable goods necessary for the fulfilment of their goals, once their assets fall within the amount fixed by the decree of recognition. Moreover, they can make a public appeal for donations once a year (*appel à la générosité publique*¹²).

The conditions necessary for recognition of public utility are fixed by administrative regulation. According to the decree of 10 January 2005, any association that seeks recognition of public utility must fulfil a number of conditions, among them that they “pursue a goal of general interest on a local, regional or national level” and “respect the obligations of information and commit themselves to the administrative controls foreseen by current legislation”. Other criteria include management, capacity, legal and accounting issues.¹³ The responsible governor must, within three months of receipt of the demand, provide a preliminary analysis of the goals and means of the association to the general secretariat of the government. The prime minister takes the final decision (which is eventually announced by decree, and includes the maximum value of goods the association may possess).

The decision by the authorities of whether or not to grant the status of public utility must be taken within a maximum of six months from the submission of the request to the local authority. In the case of rejection, the authorities are obliged to state the reasons, against which the association may appeal. However, the law does not foresee any legal recourse the association can take if the six months deadline is not met.

According to Article 21 of the association law, “foreign associations” are those associations that either have their base in another country, or are administered by foreign personnel, or of which at least 50 per cent of the members are foreigners.

The registration process follows the same procedure as domestic associations, as outlined in Article 5 of the association law. In contrast to Moroccan associations, however, organisations classified as foreign do not obtain full legal recognition before three months has expired (Article 24). During this period of time, the Moroccan government may object to the constitution of the foreign association (a de-facto regime of authorisation). Once full legal capacity is obtained, Moroccan legislation makes no distinction between Moroccan and foreign associations, the latter benefiting from the same legal status.

Foreign associations may also sign a convention with the relevant ministry (for example, a medical association will sign a convention with the Ministry of Public Health). Some have signed accords with the Moroccan Ministry of Foreign Affairs (Directorate of Treaties and Judicial Affairs) in order to be able to carry out their activities. Other foreign associations operate through partnerships with associations registered under Moroccan law. The latter practice has some consequences for their judicial capacity, as they lack status as a legal entity in their own right within Moroccan legal space.

The regime for political parties differs from that of ordinary associations and is regulated by the political party law.¹⁴ According to this law, any political party that has the objective of interfering with the religion of Islam, the regime of the monarchy or the territorial integrity of the Kingdom, is considered null and void (Article 4). Likewise, any party that is founded on a religious, linguistic, ethnic or regional base, or on any other discriminatory base contrary to human rights, is forbidden.

Whenever the activities of a political party may interfere with “public order”, the Minister of Interior and the President of the Administrative Tribunal of Rabat may order the suspension of the party and the provisional closure of its offices. If no legal procedure for dissolution has been initiated within four months (with a possible extension to six months) in order to make the closure permanent, the party can resume its activities as before (art. 50 and 51).

The 2005 political party law (adopted after extensive debate between the political parties and the Ministry of the Interior) led to intense controversy, particularly regarding the introduction of a ban on any political party founded on the base of religious, racial, regional, socio-professional or linguistic characteristics. For many observers this provision had been tailor-made to exclude, in particular, Islamist parties (notably the de-facto banned Justice and Charity) from participation in the political process. Activists also reported that the Ministry of Interior had been encouraging the creation of some façade political parties, while at the same time refusing legal recognition to some active and well-known opposition groups.

With regard to funding, Article 6 of the association law allows legally registered associations to freely acquire, possess and administer public subsidies, annual membership fees, private sector aid, foreign funding (under certain conditions), localities and materials aimed at the administration of the association and assembly of its members, and real estate strictly necessary for the accomplishment of the association's objectives. The mode of financing of an association must be specified in its statutes. Political parties cannot receive funding from international sources.

With international intervention being a matter of great concern throughout the region, foreign funding to Moroccan NGOs is strictly controlled. Associations are obliged to declare all funding from foreign sources to the General Secretariat of the Government within 30 days of its receipt, specifying the exact amount received and its origin (Article 32 bis). Foreign funding of and investment in the Moroccan press is illegal.

Since July 2002, associations may receive funds from the private sector, both Moroccan and foreign. Public grants are given on a project basis. Any public subsidy amounting to 50,000 Dirham (4,520 euros) or more for a single project must be subject to an agreement between the association and the respective ministry. The projects must, a priori, be examined by an eligibility committee which addresses the financial contributions granted. A regime of follow-up, evaluation and financial control has been put in place in order to monitor/supervise the application of internal governance and management principles.

Associations that periodically receive subventions from a public body are obliged to present their budget and accounts to the respective ministry (Article 32). Associations of public utility, in line with their enhanced ability to receive public funds, also face a number of supplementary requirements regarding internal management, transparency and accountability to the Moroccan authorities, including an annual report to the Secretary General of the Government giving evidence of the use of obtained resources. (Article 9)

In fiscal terms, associations (except for those of recognised public utility and humanitarian associations) are considered private enterprises and charged the same tax quotas as private businesses. Associations of public utility and humanitarian associations are exempted from VAT and enjoy a range of additional tax advantages.

There are no legal restrictions or regulations with regard to private assembly. Public gatherings can –according to the law regulating public assembly¹⁵– take place freely and without authorisation, but must be previously registered with the local authorities. The declaration to be issued to the authorities must include the day, time and venue of the assembly, as well as its objective, and bear the personal details and signatures of three people with residence in the prefecture in question. Immediately upon submission of the declaration, the local authorities must issue a receipt which serves as proof of registration. The public assembly cannot take place before a minimum period of 24 hours has passed after the issuing of the receipt. Associations with a sporting, humanitarian, cultural or artistic purpose are exempted from previous declaration.

The law establishes a distinction between a public meeting/assembly and a demonstration. Ordinary public meetings cannot take place on public roads/places. Every public assembly must be represented by one of the signatories of the declaration and two assessors, who are in charge of maintaining order, impeding any illegal activity, inhibiting any discourse that is contrary to public order, good customs, or contains any provocation to break the law. The responsible local authority may send an observer, who may also dissolve the meeting if legal provisions are not met.

Demonstrations on public roads are subject to previous declaration, and the right to stage them is limited to political parties, unions, professional organisations and other legally registered associations. The relevant declaration must be submitted to the local authorities between three and 15 days in advance. The declaration contains the same information as that of any other public assembly, along with data about the participating and invited groups, as well as the itinerary of the manifestation. Again, a receipt must be issued immediately. If the local authority later "esteems that the envisaged demonstration is of a nature that interferes with public security", it can prohibit it by written notification to the signatories of the declaration. The organisation of, or participation in, a prohibited or undeclared manifestation may be punished with six months in prison and/or a fine of 1,200 to 5,000 Dirhams. Gatherings on public roads that could "interfere with public security" are prohibited.

Freedom of association being closely linked to liberty of expression, a free media is indispensable for NGO advocacy. The Moroccan Press Code regulates relations between the state and the media. There is no law, however, that defines the media's role in its relationship with society. The Press Code has been subject to broad criticism, inter alia due to the vagueness and potential exploitability of its provisions, and is currently under revision.¹⁶ A draft text for a new press code has been submitted to the Secretary General of the Government and circulated among members of the government. Eventually, the draft law will be presented to parliament for legislative review and adoption as law.

The current press code formally guarantees freedom of the press, freedom of information, as well as the press' right to free access to sources of information, except if the information in question is "confidential by act of law". These liberties must be practised according to constitutional principles, legal provisions, and the "deontology of the profession", the latter being an extremely vague term that is easily subject to arbitrary interpretation.

Any "offence" directed towards the king or his family, or "damage" done to the religion of Islam, the regime of the monarchy or the territorial integrity of the country, is punishable with a fine of 10,000 to 100,000 Dh. In the case of a condemnation, the same court ruling may order the suspension or complete interdiction of the journal or publication (Article 41). Moreover, the Minister of the Interior may stop the publication of any media or journal that contravenes Article 41 or interferes with public order.

The main exception to freedom of the press is the act of "defamation"¹⁷, which includes every. Every defamation or injury, even if expressed doubtfully or if it is directed towards a person or body not directly named but still identifiable. Any defamation against the courts, tribunals, the armed forces, the public administration of Morocco, ministers, civil servants or other agents of the public authorities, or any person in charge of a public service or holding a public mandate, is punished by imprisonment of one month to one year and/or a fine of 1,200 to 100,000 Dh. In all these cases, defamation can be established by simple administrative decision.

KEY OBSTACLES TO FREE ASSOCIATIVE LIFE

Asked about the remaining challenges to freedom of association in Morocco, the Minister of the Interior replied he was "not aware of any particular problems". Civil society representatives, however, identify five main impediments to freedom of association, deriving either from deficiencies in current legislation or, more importantly, a lack of implementation and enforcement in practice which limits the room for manoeuvre of Moroccan associations.

Flawed registration process

Legal provisions and/or a lack of implementation of the law in the **registration process** and the free development of activities thereafter have been major obstacles to freedom of association.

Denial of receipt: The main achievement of the 2002 association law reform was that the new system abolished the principle of authorisation, giving way to the principle of declaration

and thereby implying that the legal registration of an association no longer required any administrative act, but was automatic if the authorities did not bring forward objections within a certain period of time. In practice things are often different, however. While the law foresees a simple declaration as enough to register an association, in practice the authorities often refuse to give a provisional receipt, thereby circumventing the automatic legality of the association. As a consequence, the registration process is stalled without the need for official rejection. As the deadline passes, associations are forced to work in illegality.

While a failure to issue the second, definite receipt after a maximum of 60 days would be followed by an automatic recognition of the association after this period has expired, no such automatic safeguard is given in case the first, provisional receipt is not issued, thus leaving the declaration without any record. If the administration abstains from issuing the provisional receipt, the dossier can also be submitted to the Ministry of Justice via the intermediary of a bailiff who can later certify the submission at a certain date. However, receipts are often denied here, too.

The lack of correct implementation of the law by the responsible local officials leads to an often arbitrary registration process and the practical exclusion of certain groups from obtaining a licence. Officials' frequent refusal to confirm receipt of the dossiers, sometimes in order to avoid the unpopular act of official rejection, forces many organisations to operate illegally or on the basis of temporary three-month permits, which leaves them without any legal protection. Moreover, as the status as a legally registered association is linked to the status as a legal entity, the lack of this prevents the association, inter alia, from taking legal action, opening a bank account, renting office space, paying salaries or other administrative costs, organising public events or manifestations, and receiving private or public funding. Under such conditions it is difficult to function effectively.

While the government affirms such irregularities to be the exception rather than the rule, civil society representatives claim the opposite, saying that in the vast majority of cases (estimated at 90 per cent) associations that apply for registration do not get the required receipt upon submission of their dossier.¹⁸ In addition, denials of receipt are often based on grounds of public security, most notably the fight against terrorism, although the anti-terror law adopted after the 2003 Casablanca bombings does not provide any authorisation to do so.¹⁹ Many organisations (eg: Forum des Alternatives) have been working for years without official registration and depend on administrative loopholes in order to counter the arbitrary application of the law and to be able to function in a legal no man's land. For example, a bank account can be opened with a dispatch note from the post office to prove submission of the dossier of declaration. Instead of gathering in a public meeting space, people meet at someone's home. The inability to prove their declaration represents a serious burden, especially to smaller, less well-known organisations, which lack the legal expertise, means and experience to make cases of arbitrary behaviour known to the public. Most associations manage to operate somehow, but these conditions are a heavy burden, especially for small NGOs, and do little to contribute to the consolidation of a strong, professional civil society.²⁰

So while the legislative text of the association law suggests that the receipt is meant as a mere administrative formality proving the date of the dossier's submission, the practice of frequent denial of the provisional receipt turns the formal system of declaration into a de-facto system of authorisation. Despite the 2002 revision, which provided important improvements, the law still leaves too many loopholes for arbitrary behaviour and, most importantly, fails to effectively establish the system of declaration.²¹

Complicated registration requirements: According to Moroccan associations, another administrative barrier to registration is the unnecessarily complicated provisions regarding the procedure of registration. Firstly, the state demands too many documents, some of which are difficult to attain. This requirement is an unnecessary obstacle which again disfavours small organisations with low capacities in particular.

Secondly, associations must deposit their dossier in the prefecture of their place of domicile. But if they do not have an office they must either use a tiny privately rented apartment, the

office of another organisation, a company, or similar (a post office box is not sufficient). The authorities can reject a domiciliation, but the law is not very clear on that point.

Thirdly, the requirement of submitting the criminal records of the founders has been criticised as unnecessary harassment, as these records are more difficult to get than other official records, such as the *fiche anthropometrique*, that contains the same information and has the same administrative/ informative value. Other than the *fiche anthropometrique*, which can be obtained at the place of residence, the criminal record file (*casier judiciaire*) must be solicited at the individual's place of birth, which often implies displacements of several hundred kilometres.

Special difficulties for foreign associations: The founding of a foreign association remains delicate. Foreign associations must request permission to operate on Moroccan territory, to which the authorities must respond within six weeks. In practice, however, they do not comply with that deadline, with the result being that the foreign organisation lacks official recognition, so the authorities can stop their activities without notice at any time –a “factual political acquiescence in a legal vacuum”. In some cases, newly founded Moroccan chapters of international NGOs, such as Transparency and Amnesty International, were initially treated as foreign associations.²²

Criteria for public utility: In practice, very few organisations are granted the status of public utility, and even though in theory the criteria for public utility are more specific since 2002, the reasons why certain organisations have been granted or rejected this are still opaque (*and often not given*). Moreover, associations must justify in their application why they deserve the status of public utility. The criteria for the granting of public utility status, particularly with regard to what does or does not constitute a valuable contribution to the public good, are too vague, thus allowing for arbitrary behaviour on the part of the administration. The few that are granted the status of public utility in practice are said to be mostly GONGOs, ie: not totally independent from the government. However, the two biggest human rights organisations, AMDH and OMDH, do have the status of public utility. They explained the success of their applications by the fact that both organisations demanded public utility in a common petition, and the fact that each of them is unofficially linked to one of the major parties (“Yousoufi did not want to discriminate against any party”).

Burdensome tax regime: The tax regime which treats non-profit non-governmental organisations like private (profit-seeking) enterprises constitutes a heavy financial and administrative burden on NGOs, which is further aggravated through restrictions on fundraising.

Funding restrictions: In order to be eligible for most public funding, an association must be recognised as being of public utility and have a special limited authorisation from the General Government Secretariat.²³ For the latter, some NGOs must wait for years. Moreover, a few big GONGOs close to the palace (such as the Fondation Mohammed V) receive most of the public funding. Some interviewees said that the authorities used the funding mechanisms to block the capacities and autonomy of NGOs by not authorising those that are not close to the government. Instead, they argued, NGOs should be free to collect funds as they wished, especially given that the majority of small NGOs lack funds and can hardly survive. Moreover, the NGOs receive funding only on a project basis (instead of funding for administrative & HR costs). Such limited availability of public funding, NGO representatives stressed, constitutes a significant hindrance to the development of a strong and professional civil society.

With regard to funding from foreign sources, some stressed that in spite of remaining constraints, compared to past decades foreign funding to NGOs presented no substantial problem anymore. There was controversy regarding the degree to which external funding (both domestic and international) might present a risk to Moroccan NGOs' independence. Those who did see this as a risk ascribed the problem either to the need for technical adaptation of projects to the requirements of “calls for proposals” or direct attempts at political influence. Others disagreed, saying there were enough foreign funds available,

from a variety of sources, to securing diversification of funding sources in order to avoid dependencies. Again, others stressed that the independence of civil society may be at risk anytime when funding sources are not being diversified, be they foreign or domestic (eg: via the INDH).

Politically motivated restrictions: Assessment of a registration dossier by the authorities must have as its sole objective the verification of the formal legality of the declaration. No evaluation on political grounds should take place. While Moroccan association legislation foresees legal assessment only, in practice the administration also revokes the legal status of associations depending on "problematic" activities. According to an official in the Ministry of the Interior, some associations have had their registrations revoked for being "too active or busy". Again, vague formulations in the law help in justifying such actions.

The groups and constituencies most affected by such discrimination are reportedly Islamist and leftist organisations, but also certain Berber and Saharawi groups. Associations are considered anti-constitutional whenever they publicly challenge the monarchy, Islam or the territorial integrity of the Kingdom. In practical terms, this means that any association that expresses dissent with the *Makhzen* regarding the Western Sahara, the institution and order of the monarchy and the king, or the primacy of Islam, can expect to be denied registration (directly via rejection, or indirectly via denial of receipt or other administrative barriers).

A representative of the Berber association *Mouvement Amazigh* reported that, after having received the provisional receipt four years after submitting the dossier, the authorities asked them to review their proposed statutes with regard to the recommendation to establish secularism in the Moroccan political system. As the prohibition of unwanted associations is not in the authorities' interest, these and other administrative barriers serve to buy time and prevent the foundation of politically unwanted associations, *per se* (for example, by withholding the founders' identity documents until they expire). In addition, intimidating behaviour by local authorities, who play on the citizens' lack of knowledge of the law and on the psychological legacy of the dictatorship that still provokes fear of local authorities, is being used to foment anticipatory obedience.

Outlawed associations/constituencies: In contrast to the denial of receipt of a dossier, formal rejection of a legally declared association is unusual. According to human rights activists, most of the cases where registration is actually rejected are either Islamist or extreme leftist organisations, which are considered anti-constitutional, ie: do not recognise the political and/or spiritual authority of the king. The most notable case is the de-facto outlawed organisation *Al Adl Wal Ihsane* (Justice and Charity), a popular Islamist movement whose relationship with the authorities has become increasingly confrontational in recent years.

Unlike the moderate Islamist Justice and Development Party (PJD), *Al Adl Wal Ihsane* publicly rejects the king's supreme political and religious authority, and calls for the elimination of the monarchy in favour of an Islamic republic. Because of this stance, the group has been declared illegal by the authorities, their activities have been prohibited and some of their members arrested. According to Justice and Charity members, the group had been a legally registered association since 1983, until it was declared illegal by the Moroccan authorities in 1998. Previously, in 1981 the movement had applied for registration as a political party, but was rejected. Today, the provisions of the current legal framework make it impossible for the movement to register as a party. In this context, recent amendments made to the political party law, introducing a clause that forbids any political party founded on a religious, linguistic, ethnic or regional base (Article 4), is seen by the group as having been designed specifically to prevent *Al Adl Wal Ihsane's* participation in elections.

As the rejection of the group's status as a legally registered association has never been explicitly confirmed by a court ruling, the group continues to consider itself a legal association. In fact, the organisation was able to keep on developing its activities as usual and without major interference by the authorities until 2000, when the latter initiated measures to inhibit these activities (eg: summer youth camps, which were forbidden by court order). Official discourse by the Moroccan authorities explicitly calls the group an "illegal"

and “unrecognised” organisation, and state agents persecute the movement and treat all of its activities (publications, associative activities, assemblies etc.) as illegal. While members of the group cite a number of court rulings in favour of individual members to prove their legality, the Ministry of Interior insists on the movement's unlawfulness. Others stress that the movement's argument is flawed, as the competence to declare an association legal or illegal does not lie with the mentioned courts. In practice, the accused Al Adl Wal Ihsane members were still condemned and imprisoned, but for other charges.

The de-facto illegality of Al Adl Wal Ihsane affects not only the movement's members but also other organisations, and freedom of association in general, as any link to the group. For example, the participation of a member in an event or activity, almost automatically leads to the suspension of this activity. Human rights activists report cases where a neighbourhood association could not be founded because of a single Justice and Charity member living in the locality; and public roundtables organised by other NGOs being prohibited due to the participation of individuals linked to Al Adl Wal Ihsane. Letters of complaint that human rights associations have sent to the ministry, demanding explanation, received no response.

Beyond freedom of association, the existence of the Justice and Charity movement outside of the legal sphere presents a number of risks for Morocco's democratic development. While the movement is neither likely nor willing to participate in the political process in the near future, the political weight of Al Adl Wal Ihsane is still significant. The organisation, whose outreach in universities and among the marginalised rural population is far more influential, is thus situated outside of the political-electoral sphere, meaning that the moderate and increasingly co-opted PJD only partially represents the overall Moroccan Islamist movement. Observers therefore fear that the *Pouvoir's* course of confrontation harms Moroccan interests, as it contributes to polarising society and strengthening extremism.

Limited access to the public sphere

The second set of impediments to free association revealed by Moroccan NGOs related to **access to the public sphere** for non-governmental organisations, which is often hindered by a whole range of formal and informal provisions.

Permission for public assembly: The main obstacle mentioned with regard to public assembly was the informal requirement to get authorisation from local authorities for any public event. As outlined above, the law expects any denial of public assembly to be justified by the authorities. In spite of the law, which foresees a regime of declaration, denials are often based on personal arbitrary judgement, as a planned activity can be classified as representing a “risk to public order” and thereby prohibited. While by law public activities do not require permission, in practise authorisation is required and easily denied. Permission for public activities has been denied most frequently to radical movements, extreme leftist and Islamist organisations, but very rarely to human rights organisations.

Reasons for rejection are hardly ever given, and denial of official permission almost automatically leads to the cancellation of the reservation of the conference venue, as hotel managers are reluctant to oppose local authorities even when the latter's actions have no legal backing. Authorities are said to be rigorous with regard to prohibiting meetings, and people have been arrested for simply holding a meeting at a hotel. In part, the arbitrary behaviour of the authorities is due to vague formulations regarding the limitations of freedom of assembly in the law, but there is also little awareness, and a lot of anticipatory obedience, among local administrations.

Groups in conflict with the authorities –mainly Islamist, radical Left and Amazigh groups, as well as Saharawi groups advocating independence– are usually free to gather in private venues, but cannot organise public meetings and demonstrations. Likewise, public events organised by other organisations with, for example, a Justice and Charity member on the guestlist are either cancelled, denied access to venues, or boycotted by government and the media.

Limits on free expression & access to the mass media: In spite of favourable regional comparisons, truly free expression and a genuinely free press remain elusive in Morocco, too. Deficient press laws, the lack of independence of the judiciary, and the gap between legal standards and their actual application have led to numerous detentions and incarcerations of journalists. The legal base for freedom of expression remains weak as long as the press code's formulations remain vague, and especially as long as it names "defamation" as an exception, without defining the term more concretely. By a similar token, what does or does not constitute an "offence" to the king is very much a matter of arbitrary interpretation, and the "deontology of the profession" is too vague and exploitable a term to define the limits of freedom of the press.

There is a broad consensus in Morocco that societal taboos have considerably softened up, thus widening the space for public debate. However, a set of core taboos remain which continue to cause trouble for journalists. The *Makhzen's* de-facto monopoly on the media, via state-owned private enterprises or other forms of direct or indirect influence, was considered very problematic, as all broadcasting media and the vast majority of the print media depend on the state. The Minister for Communication does not play a major role; instead, the Ministry of the Interior controls the media (for example via its leading role in the reform of the Press Code). A handful of print media, called the "independent press", are the only media that neither belong to the state nor follow its editorial line. Broadcasting media –the only media with significant coverage across the country– are entirely dependent on the *Makhzen*. Most media coverage remains within certain limits set by the palace, whose margins are being pushed by the independent press only.

The relationship between the state and the independent press is frequently tense, with the last few years witnessing the highest fines for critical coverage so far. Alongside several others, the case of *Le Journal Hebdomadaire* (a critical independent weekly whose editor had to flee the country after having been convicted and handed the highest fine ever for defamation), has attracted particularly broad international attention. As in the case of associations, the prohibition of a group or paper is unusual, but the media are being controlled and their work hindered through a range of indirect methods. Journalists and members of the press union report that there are directives given to private enterprises on where to place advertisements, thereby condemning non-conformist magazines to bankruptcy. Other methods are said to include bribery, control of advertisements, or playing journalists against each other. Anticipatory obedience also plays an important role. While the public media receive clear editorial instructions, most private media lack independence because of self-censure.

Freedom of information is not guaranteed in practice. The authorities are still very closed and their mentality is not one of transparency and accountability to the public. Journalists depend on the information the state (or individual civil servants) chooses to give them. This again favours those who enjoy good relations with the *Makhzen*: the closer you are to the *Pouvoir*, the more likely you are to be given information for your investigation. Journalists who do not limit their reporting to certain margins therefore face difficulties in obtaining information from the authorities. Moroccan journalists complained that often the foreign press had greater access to government sources for news on Morocco than local journalists, as the authorities on occasions preferred to speak to foreign journalists directly in order to promote a specific strategic image abroad (for example in the case of conflict in the Western Sahara). The independent press is invited to official press briefings, but is (both in terms of reporting and talk shows) practically non-existent on TV.

International funding of the press is prohibited, according to the current press code (except with special permission from the prime minister). This provision substantially hampers the situation of the independent press. The inability to attain foreign funds, paired with the reduction of advertising income, and recent unmeasured fines on editors, constitutes a massive financial burden which puts the very survival of the few independent media in danger.

Contrary to frequent assumptions, it was only under Mohammed VI's rule that the major constraints on freedom of the press were implemented. According to some independent journalists, the "modern packaging" of the new regime even makes it more difficult to attract international attention and support. Some suggested that the *Makhzen's* strategy was to choose in every civil society sector a small group or actor to promote as an alibi, while at the same time endeavouring to control the others by indirect means of obstruction. According to some independent journalists, the *Pouvoir* wants to institutionalise the press, but in a way controlled by them, in an attempt to create "a façade of a diversified press".

Security/Anti-Terrorism Measures

Anti-terrorism and other security measures taken in the aftermath of the 2003 Casablanca bombings have generally involved tightening regulations on free association, thereby undermining many of the benefits provided by previously introduced legislative improvements regarding free association, assembly and the press. The anti-terrorism law passed in May 2003 (Law 03.03.) has given the authorities sweeping powers of control over civil society, strongly limiting fundamental freedoms such as freedom of association, expression, assembly and circulation. The law defines terrorist infractions and the respective sanctions, increases the number of offences punishable by death, modifies penal procedure with specific measures in cases of terrorism, and sanctions interference in mailings, telephone monitoring and personal observation. It puts serious constraints on foreign funding for associations, which can now, either formally or informally, be directly controlled by the government.

Under the new law, acts of terrorism are broadly defined as "any premeditated act, by an individual or group that aims to breach public order through terror and violence". This general definition also includes the "promulgation and dissemination of propaganda or advertisement" in support of deliberate acts whose "main objective is to disrupt public order by intimidation, force, violence, fear or terror".²⁴ The law has also been applied to convict and imprison journalists who "incite violence". Anyone who is "privity to information pertaining to terrorist offences" and does not report it to the authorities can be sentenced to prison for up to 10 years.

Since the adoption of the law in 2003, fundamental rights and freedoms have been curtailed, arrests have been made (including human rights activists and journalists) and convictions have been handed down to peaceful demonstrators and journalists. Islamist groups have been particularly affected by these measures, but so have many others such as workers' unions, human rights associations etc. The renewed 2007 bombings have led to a new wave of repression, including massive arrests and violent repression of peaceful demonstrations.

Moroccan human rights organisations, as well as international watchdogs (Human Rights Watch, the Committee to Protect Journalists, Reporters Sans Frontières and the International Press Institute) have been harshly criticising the law, warning that it undermines Moroccan citizens' human rights and fundamental freedoms. In particular, the law has been criticised for its imprecise definition of terrorism and the introduction of provisions that could potentially lead the state to criminalise peaceful and legitimate acts of protest and expression. According to some Moroccan human rights activists, the law –which had been adopted without taking into account civil society concerns– not only undermined fundamental freedoms but also counterproductively weakened Moroccan society's support for its government's legitimate and necessary effort to combat terrorism.

Weakness of the Judiciary

Fourthly and most importantly, the **weakness of the judiciary** and other key state institutions was mentioned by the majority of interlocutors as the greatest obstacle to freedom of association, human rights and public liberties in general. They argued that the effectiveness,

transparency and accountability of the judiciary were key and a precondition to all of the aforementioned problems. At the same time, there was broad consensus that the weakness of the judiciary is directly linked to the overarching lack of a separation of powers, which can only be established via comprehensive constitutional reform.

No separation of powers: The judiciary is not recognised in the constitution as a separate power, and both the executive and the legislature are subject to the veto power of the king. The prime minister and parliament lack real power. In other words, formal democratic institutions are void of their democratic content, as decision-making power (in strategic issues) does not lie with elected, representative organs. Instead, the three powers are in reality being run by the same people and thus do not comply with their function of providing effective vigilance and control over each other. The king in practice not only possesses greatest executive power but also exercises significant competences in justice and legislative matters. Operational changes can be made by the elected government alone, but strategic/sensitive matters are dealt with by the palace and its entourage. With decision-making power so concentrated and no effective control mechanisms in place, political decision-making and legal procedures are neither transparent nor accountable.

The dualism of formal and informal rules that becomes apparent in legislation is also reflected in official institutions: behind the formally democratic governance scaffold, the *Makhzen* constitutes a shadow power structure that extends from the palace over the media, business etc. and down to the local councils. Royal counsellors are the true decision-makers in all ministries of strategic political importance. The role of the government, appointed according to the king's will following legislative elections, hence degenerates into little more than the state's operations manager, with independent decision-making power only in politically harmless areas. Likewise, parliament is weak and has no legislative power without the king's approval.

The gap between legal provisions and implementation exists not only on the central level, but also in the distribution of competences to the various regional and local levels. For example, by law the elected president of the *Conseil Régional* has the responsibility to implement a regional development plan, but in practice it is the "Wali" who has factual control over the budget and decides where money is spent.

Lack of independence: The judiciary is not recognised as a power in the constitution and is largely controlled by the executive. According to NGO activists, it was common knowledge among Moroccans that practically all the judiciary processes are politicised, and judgements are often not decided on by the judges but dictated by the ministry. The massive corruption of judges, rights activists say, is overseen and instrumentalised by the ministry in exchange for obedience and impunity. The *Conseil National de la Magistrature* is a constitutional entity which decides on disciplinary measures against judges, and the eradication of "bad practices", presided over by the king. Moreover, royal appointments of many of its members inhibit the independence of the organ, which must not be controlled by the executive per se.

Corruption of the judiciary is a major problem. Morocco's rank in TI's Corruption Perceptions Index has worsened from 70 to 79 (with a score of around 3.2 out of 10, the worst possible score being 0), indicating a heavy systemic corruption, tendency worsening. According to TI's global corruption barometer 2006 survey, at least 60 percent of Moroccans said they had to pay bribes during the past year. When asked how they assessed their government's action to fight corruption, 77 percent considered them not effective or inexistent, and 15 percent even said the government encouraged corruption rather than fighting it. The judiciary, the police, public registry and permit and medical services were considered by Moroccans to be the most corrupt sectors (all receiving a value four or over, with five being the maximum possible level of corruption).²⁵

No rule of law: The lack of independence and corruption of the judiciary impedes the impartial application and effective enforcement of existing democratic laws. Associations are greatly affected by this as the legal resources they have at their disposal to defend

their rights are not effective.²⁶ As several interviewees pointed out, under these conditions appealing to the judiciary meant, first and foremost, dealing with the administration. This in turn means depending on the arbitrary behaviour of local civil servants. In short, the dualism of the formal and the informal, of elected and powerful, of laws and legal practice, plus the ineffectiveness of legal appeal to claim one's codified rights, are greatly hampering freedom of association.

The breaking of certain taboos is often followed by legal persecution. For example, people denouncing cases of corruption in the government or judiciary are persecuted and convicted even if they have valid proof for their claims. Witnesses of corruption are not protected by law and often persecuted for defamation. Lawyers who file the respective cases have been sanctioned with loss of their professional licenses as a direct consequence of their prosecution of corruption cases. NGOs' efforts to advocate the adoption of a law to protect witnesses of corruption are meeting with strong resistance from a lobby that wants to preserve its income. There is broad societal consensus that corruption is an important problem, but this consensus appears not to be shared by the executive.

Constitutional reform: As the constitutional framework fails to establish a separation of powers, creates a weak judiciary and a largely powerless government and parliament, and instead gives all meaningful executive power to the king, accountability and rule of law have no constitutional safeguards. Most civil society representatives therefore consider constitutional reform as the first priority to effectively strengthen freedom of association, based on real participation. The recognition of the judiciary as a "power" and the modification of Article 19 dealing with the competences of the king²⁷, are considered among the most crucial and delicate of the changes required.

The debate about constitutional reform is a debate on the distribution of powers in the country, and as such it touches the very heart of the Makhzen. The true distribution and centres of power have ceased to be a real taboo, except if anyone demands a real change. The Pouvoir, however, is able to mobilise forces against unwanted debates and has the means and methods to exclude those in favour from public space and debate. But while broad segments of civil society keep demanding constitutional reform, for the palace-dependent government the issue is not on the agenda. When taking over power, the king signalled that he was not opposed to such reforms, including ceding some of his powers. Some years later, however, it became clear that he has no intention of ceding any significant power (beyond increasing participation to some degree). While both governmental and non-governmental bodies, in one way or another, refer to the need for some sort of constitutional reform in their discourse, there is no consensus regarding the urgency, timing, modalities, scope and content of such reform. Notably, there is a marked breach between the discourse and demands of those close to the Pouvoir, on the one hand, and human rights organisations on the other.

The Minister of the Interior underlined that the 1996 Constitution was by no means unchangeable and "might be amended in the future". This illustrates the general government discourse about constitutional (and other delicate matters of) reform, which signals openness on a general level, but does not admit details or timeframes. According to critics, the king sends positive signals by endorsing far-reaching reforms (for example, those included in the recommendations of the IER), on a general level, while at the same time maintaining control over the process and paralysing it, with follow-up in terms of practical implementation or concrete deadlines lacking.

Among Moroccan human rights associations, the need for constitutional amendments is a consensual issue. Many demand a constitutional assembly to draft such amendments, and the consultation and involvement of civil society in the process. Article 19 of the constitution gives the king powers that should belong to parliament alone, but parliamentarians are considered, by some, "not brave enough" to demand a constitutional amendment. Crucially, human rights activists that try to advocate for a societal debate on constitutional reform point out that while raising the topic in public is not a strict taboo anymore, it has proven

impossible to display this message on public broadcasting media. A general discourse on human rights and a “democratic culture” is allowed, but no concrete reform proposals are being aired. It was therefore seen as crucial to develop the debate on constitutional reform at a more meaningful level. The debate on constitutional reform comes and goes periodically, usually tied to some specific event. Even though some issues are largely uncontested (eg: the abolition of the second parliamentary chamber), so far the debate on constitutional reform has not been picked up by the “internal apparatus” to convince the king to become active on this matter.

Judicial reform: The problematic lack of independence of the judiciary is generally recognised, and many organisations have already made declarations about what needs to be done in order to reform the judiciary, for example regarding the reform of the Conseil Supérieur de la Magistrature (CSM). The CSM is supposed to supervise and discipline the judiciary. Constitutionally, the body is presided over by the king. In practice, the Minister for Justice has fulfilled the role for the last three decades, though, meaning that a member of the executive presides over the judiciary. A draft law on judicial reform (*projet de loi sur une réforme judiciaire*), which aims at reforming the organisation of the magistrature, which is still based on a law dating from 1914 and urgently needs revision, has been elaborated in parliament.

STATE – CIVIL SOCIETY DIALOGUE

NGO consultation & involvement: There was agreement among NGO interviewees that in order for civil society to be able to stimulate reflection and propose scenarios to the political actors, there must be regular exchange between the two on all matters of societal concern (including the obstacles to free association mentioned above), via institutionalised mechanisms of dialogue and consultation.

A 2003 *circulaire* by Prime Minister Driss Jettou established the basis of an official government policy towards associations. The *circulaire* “aims to prepare the ground for a new partnership policy, understood as the entirety of relations of association, participation and merging of human, material or financial resources, with regard to the execution of social contributions/benefits, implementation of development projects, or assumption of services of public interest.”²⁸ It characterises civil society as agents of socio-economic development and basic service providers (focusing explicitly on poverty reduction, women and children, adult literacy, youth and education, and other socio-economic issues), and stresses the need for transparency and good governance in the execution of those projects. Accountability, however, is only mentioned as NGOs’ accountability towards the government, not vice versa, hence delineating transparency and good governance as a one-way street. Moreover, the cooperation discussed is limited to the area of socio-economic development, and does not mention any role or contribution of civil society in the political sphere. Consultation and dialogue on political and legal reforms and democratisation are not foreseen.

There are a number of government initiatives in which NGOs have been systematically involved, most notably the National Initiative for Human Development (*Initiative Nationale pour le Développement Humain*, INDH). A decentralised development initiative launched by the king himself, the INDH has been hailed by the international donor community as a new participatory way of promoting development. The INDH’s approach suggests enhanced participation of the often marginalised rural population. In particular, the enhanced engagement of associations in local development allows young people and women, who lack representation in the local *Jam’a*, to participate in shaping the community by designing and implementing local and regional development projects.²⁹

According to critics, however, the INDH framework simultaneously helps the state to maintain control over NGO activities through its funding and project planning schemes. Institutionally located at the Ministry of Social Development, the INDH provides funding to NGOs, which helps small associations, but also implies greater proximity to the state. Project

planning and implementation is closely monitored by state agents, and the denomination of project leaders is led by the authorities. A frequent criticism from NGOs therefore was that the INDH risked co-opting civil society in an attempt by the regime to manipulate and control the Moroccan association landscape.

Some critics see the INDH as a tool used explicitly to present a façade of decentralisation and civil society involvement, while in reality the framework provided by the initiative allows only superficial participation and moreover provides the *Pouvoir* with a convenient means of control. Some interviewees even viewed the state's encouragement of NGO activity in local development as an attempt to partly redistribute the burden of providing basic services from the responsible state institutions to NGOs. At the same time, critics mentioned that the image of enhanced participation created by the INDH reinforced Morocco's international reputation as a pioneer in human development. Some activists said the authorities in charge of the INDH had on some occasions asked people close to them to found new façade associations to which they could formally channel INDH funds. Moreover, it was argued that the success of the initiative in fostering development had been limited, but as it was an initiative of the king's, nobody could be held accountable for its failure.

According to the highest government officials, the INDH is an essential instrument for implementing Morocco's new model of human development, based on a decentralised bottom-up approach to rural development through capacity-building and the involvement of local stakeholders. Minister of the Interior Ben Moussa stressed that the INDH was an instrument designed to strengthen civil society at large through systematic involvement and capacity building. He also mentioned that, as part of the INDH, a watchdog institution had been set up that aimed at assessing the impact of the INDH's implementation on the ground and helped to coordinate efforts. The king "gave the general direction", which was then applied by the government, it was affirmed. Through the INDH, the minister said, NGOs were becoming true partners to the government and service-providers to society (eg: in tackling illiteracy), agents of development, "*accompagnateurs du pouvoir publique*", as well as a "social barometre".

Government representatives underline the arguably low level of management capacity in most local associations, and stress the need for professionalisation. While NGOs demand accountability from state agencies, the latter talk of accountability only with regard to the NGOs that receive public funds. The low level of professional management, critics say, provides a good pretext for the government to demand accountability and/or control mechanisms. Control measures are being justified through NGOs' general management deficiencies and the need for financial accountability.

Apart from the INDH, NGOs confirm that there have been some dialogue activities between the government and civil society with regard to political decisions of public interest. The Minister of the Interior emphasised that regular dialogue was being held with civil society, and that "the door remains open". At the same time, he also made it clear that associations must abide by current legislation, notably the constitutional order, otherwise they could "not be dealt with". NGOs stress that the opinions of associations working on specific issues and unions have often been sought (for example regarding the 2003 revision of the penal code). The government regularly invites some NGOs to conferences on issues of national interest, which have on occasion led to the adoption of common recommendations. Eventually, the NGOs lobby for the implementation of these recommendations.

In 2000, the umbrella organisation Espace Associatif organised a campaign for the modification of the association law, including a political and jurisprudential study of the law that compared Moroccan legislation with that of other Arab countries. The campaign mobilised around 1,200 associations, and also some parliamentary groups. The campaign initiated a dialogue with the government on this issue via the then Ministry of Human Rights, which in 2002 led to the adoption of the new, revised association law. Even though the new law still needs some improvements, it was considered both legal progress and a success in terms of civil society mobilisation. This success was also linked to the political climate at that time (*alternance*), which was particularly favourable for bringing forward such dossiers.

Given the palace's sensitivity with regard to certain topics, NGOs seeking dialogue must adopt a cautious and well-measured discourse when lobbying for reforms. For example, one of the main human rights associations lobbied for Moroccan ratification of the Rome Statute, subjecting itself to the jurisdiction of the International Court of Justice, including the abolition of the death penalty. As the Minister of Foreign Affairs says this ratification would limit the king's sovereignty, instead of directly questioning the palace's democratic credentials the group has argued that this is a technical mistake as the ICJ only acts where national justice systems fail.

According to a member of the parliamentary committee on human rights, given the lack of systematic civil society consultation, the confidentiality of parliamentary committee meetings sometimes posed a "big problem in terms of transparency". With substantial change to the role of civil society in recent years, and NGO involvement becoming more and more common, some MPs "often close their eyes and pass on information informally". However, he stressed that institutionalised consultations with civil society were not foreseen, as this was "more the work of the parties".

Indeed, various interviewees of both government and civil society suggested that the relationship between civil society and the state remained unclear, and in particular there was controversy regarding the nature and scope of the role of civil society in the political process. Whereas associations are not allowed to engage in party politics, in practice many NGOs maintain close relations with a particular party. The weaker the parties and parliament are as the traditional public representation bodies, the greater is the need to open up other channels that allow people to have a significant influence on public decision-making. Consultation of civil society and strengthening parliament must therefore go hand-in-hand in order to guarantee broad participation.

Human rights activists point out that institutionalisation of dialogue is necessary in order to guarantee civil society's involvement before laws are adopted, in particular with regard to legislation on politically sensitive matters. If consultations only take place after everything is settled, or the most sensitive issues on which consultation is most crucial are left out, laudable dialogue initiatives turn into fig-leaf consultation that instrumentalises civil society in order to legitimise new laws. By contrast, a genuine involvement in the legislation process, via mandatory consultation on all relevant societal issues, which allows civil society's concerns and proposals to be taken into account, is yet to be established.

Some interviewees moreover emphasised that debate on specific political reform projects must not be limited to the elites but, in order to create sustainable societal consensus, be based on a broad public debate. For this, a free media is required to act as interlocutor. Independent journalists stressed that they would like to establish a relationship with the Monarchy in order to hold meetings to discuss issues regarding the remaining challenges to freedom of the press in Morocco, but had so far not been able to establish this type of dialogue. In sum, interviewees stressed that those dialogues that had been taking place were a good start, but had only been open to certain groups, on certain topics, and most importantly, no significant institutionalisation of dialogue/consultation on all relevant societal issues had taken place. There was consensus among NGOs and government representatives that the role of civil society in the political process needed greater clarification.

Intermediary institutions: The main national institution intended to provide a link between (human rights) NGOs and the government is the Advisory Council on Human Rights (*Conseil Consultatif des Droits de l'Homme*, CCDH). Placed under the direct authority of King Mohammed VI, the CCDH is assigned a consultative mission, proposing and triggering issues regarding the "promotion of a human rights culture in Morocco". Part of its mission is to "facilitate cooperation between authorities, on the one hand, and representatives of both national and international associations, as well as human rights activists, on the other". It may also present direct proposals for legal reforms to parliament and to the king, and has been directly involved in the drafting of some legal texts, for example the ongoing revision of the Press Code.

Created in 1990 and having its prerogatives redefined and extended in 2001, the CCDH played a key role in the Instance Équité et Réconciliation (IER), a truth commission so far unique in the Arab world which was set up by the government in order to shed light on human rights abuses during the decades prior to Mohammed VI's rule. When the IER concluded its work, the CCDH was put in charge of fulfilling the needs and expectations of the reconciliation process. The CCDH has worked in partnership with various ministries to promote human rights and gender equality within the government structures. Every four years the Executive Board of the CCDH is partially renewed. Members are appointed by the king, who chooses among three nominees agreed upon by civil society representatives. Government representatives form part of the Council in an observer function.

According to both Council Members and NGO representatives, the Justice and Reconciliation Project and the creation of the CCDH to support and ensure that reconciliation and justice are achieved, represent the most successful collaboration to date between the government and civil society. They ascribed this achievement largely to the support and dedication of both the king (and government) and the main human rights organisations. The dialogue between state and civil society was of particular importance in the processes of reconciliation and the production of dossiers of grave human rights violations under Hassan II, on which Moroccan NGOs have been working hard. The Equity and Reconciliation Commission (IER) eventually issued a comprehensive set of recommendations. The king has endorsed these recommendations, but not actually ordered their implementation. The CCDH is now in charge of the follow-up. Regarding material compensation, implementation has begun, with the CCDH issuing the first cheques to victims. While the IER has been an admirable achievement and far more than just a fig leaf for the government, its main significance, initially, was to give the general signal that the Moroccan state is ready to deal with the past. Human rights activists agree that the IER in itself was a revolution, but implementation remains lacking, and this has led to controversial debate.

Since 2004, the CCDH has organised annual meetings on the promotion of human rights throughout the Arab world, encouraging participatory citizenship in Morocco, gender equality and the promotion of community reparation, along with dealing with past human rights abuses related to the equity and reconciliation process. In addition, the CCDH is preparing to establish a Commission for the Independence of the Judiciary. In terms of institutionalised cooperation, in 2007 the CCDH signed an agreement with the Ministry of the Interior for the training of "authority agents" (policemen, civil servants, prison staff etc) in respect for the law and its correct application. Main criticisms of the CCDH include that it lacks independence from the palace, failing to comply with the Paris Principles³⁰ which are meant to guarantee its independence from the state, and therefore has limited impact. In some cases, critics say, the body even contributed to covering up some cases of human rights violations. Moreover, it is generally lamented that the CCDH has only consultative functions and lacks the political influence needed to implement real change.

Representatives of the CCDH admitted that there was controversy over the degree of independence of the body, but insisted that its very composition (most members are prominent human rights activists and/or members of the opposition to Hassan II's regime) was proof enough of its independence. Moreover they argued that the presence of civil society in the CCDH had helped to lend credibility to the institution, to the IER recommendations, and to advance its general agenda.

In addition to the CCDH, there are a number of other structures which could potentially link state and civil society, such as the Superior Council on Education, the Administrative Council and the Municipal Councils. These institutions, however, have so far not developed an interaction with civil society dynamic enough to ensure broad participation on public policy issues. Moreover, the constitution (Articles 93-95) envisages the creation of an Economic and Social Council, which could provide another forum for dialogue and participation but has not so far been established. Likewise, the creation of a Superior Council of the Press could provide a valuable forum regarding issues of free expression, information and the media. Generally

speaking, there is a need for more effective intermediary institutions as fora and links between civil society and government that facilitate dialogue on all essential societal issues.

Some civil society activists pointed out that the lack of institutionalisation of dialogue was not only due to the lack of political will but also to the lack of a central institution representing the interests of civil society, which could serve as an interlocutor for the government. Some NGOs therefore stressed the need for an umbrella organisation for Moroccan civil society, a National Civil Society Council that would be fully independent of the state and elected by and composed of civil society members that could play a consultative role for negotiations with the state (propose laws, amendments etc). It was suggested that following the positive example of Mali, such a council should be an "organ of awakening and pacification". It was stressed that the vast number of regional and local organisations particularly need an entity that defended their interests at the national level and before the state. While the bigger, well-known and well-funded associations in Rabat and Casablanca were less affected, these regional and local NGOs lacked outreach, knowledge and capacities.

Other activists feared that such a council might monopolise the "opinion of civil society", rather than channelling it, and therefore its creation was not in the interest of Moroccan civil society, "whose diversity is its strength". Instead, they suggested, such a Council could be assembled on an ad-hoc basis to tackle issues and defend interests of specific importance and pertinence. In sum, there was broad agreement that some sort of institutional framework for the collective defense of civil society interests was needed.

With the objective of creating a single civil society interlocutor for partnerships under the INDH, the Ministry of Social Development is currently engaged in an effort to partially structure relations with civil society by founding a National Council of Development Associations. NGO representatives expressed concern that such a Council could be instrumentalised by the government, and thus, from a civil society point of view, presented more risks than opportunities for freedom of association. Moreover, the additionally stated purpose of such a Council, of eliminating "bad practices of associations", appeared to confirm such fears, as no reciprocity was applied in order to tackle such bad practices in public administration. Taken as a whole, the proposal was therefore unconvincing to many NGOs.

Approaches & potential for dialogue: According to NGO activists, the *Pouvoir* has embarked on a strategy of trying to co-opt the main players and potential opponents in order to minimise the risk of civil disobedience, while simultaneously avoiding the harmful image of an oppressor of dissent and public liberties. By doing so, interviewees said, the executive maintains control over the political landscape, contributes to emptying the partisan space of its meaning, and reduces parliamentary efficiency. In a process that started with the appointment of opposition leader Youssoufi as prime minister in 1998, many of the former critics and dissidents of the Hassan II regime have been integrated into government institutions and processes. Those who prove intractable, by contrast, are ignored and/or boycotted.

Advocates of reform adopt different approaches to deal with this reality. To some, closeness to the regime necessarily entails being absorbed by it, thus turning former dissidents into lazy, regime-faithful followers that back away from making real criticisms. To others, cooperation with the regime, or at least refraining from confronting it, is a crucial precondition for any dialogue on reform. Among civil society associations that try to lobby for reform, different approaches are being pursued. Some rely on a more partnership-based approach with the government, trying to avoid direct confrontation. Others see themselves as a watchdog taking more confrontational positions vis-à-vis the government, in order to advocate special positions and raise public awareness.

According to the former, an approach based on dialogue and cautious negotiation is more promising and pragmatic. Human rights organisations pursuing this approach (eg: OMDH) praise positive government measures, but always combine them with criticism of remaining shortcomings and challenges. Advocates of the more confrontational approach (eg: AMDH) say the soft partnership-based approach leads to co-opting, absorption and

at times even instrumentalisation by the *Makhzen* (similar to the creeping co-opting that absorbed the former opposition parties, which first entered government in *alternance* with the objective of achieving change through cautious negotiations under the *Makhzen*'s umbrella). Observers say OMDH and AMDH approaches are more efficient when seen as complementary forces: one applies the necessary pressure, the other talks to the government.

Among Moroccan civil society, there is broad agreement that the dynamics of reform in Morocco work according to certain informal rules. The king picks up a topic of great interest in society and turns it into a policy initiative (as happened in case of the reform of the personal status law, *mudawanna*). Instead of consulting civil society or waiting for them to come forward with concrete proposals, the state avoids far-reaching reform demands by pre-empting them with its own tailor-made reform initiatives. In other words, state initiatives define the space of civil society. NGOs, however, can use this mechanism by exerting constant pressure without openly confronting the *Pouvoir*, eventually making the king pick up their initiative as his own. Sticking to the basic principle of not questioning the monarchy or the king's primacy is essential. The main question for civil society pro-reformists must be: how do we get the king to appropriate the topic as his own?

Representing the *Makhzen*'s point of view, a royal counsellor stated that Morocco had reached a state of general consensus on the essence of necessary reforms, where disagreement remained only on certain details. He emphasised that it was the role of the state to "impose the framework of negotiations" on these issues, and blamed civil society for "invading" this space in order to "avoid positive confrontation", and called this behaviour a "perversion" of the role of civil society. He also lamented that, from the government's point of view, any time the state took an initiative that rested upon civil society, the move was interpreted as an act of manipulation or control. Therefore, dialogue between state and civil society must first and foremost be held over the role of NGOs in society, or about the respective roles of each of these institutions/actors in general. At the same time, he suggested that a more frequent consultation of civil society on behalf of the elected could be useful, as civil society could play a "warning role" indicating society's satisfaction with the state's record.

A human rights activist mentioned that the lack of institutionalised dialogue on reform was linked to the lack of an overall systematic framework for democratic reform, and to the absence of systematic and independent political evaluation of the process of democratic reform. At the same time, he warned that a significant level of corruption in the system and the resulting conflicts of interests meant that certain members of the *Makhzen*, political leaders and the business community had no interest in allowing institutionalisation of dialogue or any kind of monitoring or accountability mechanisms.

In sum, while dialogue and consultation have taken place on a relatively broad scale, civil society agreed that it must be institutionalised in order to guarantee broad participation on all important societal issues. Government representatives signalled interest in cooperation with civil society and agreed that more regular dialogue could be useful for the government, too, with NGOs providing a social barometer reflecting the people's mood regarding governmental action. Remaining challenges lay in creating consensus on the modalities of institutionalisation of such a dialogue, as well as the creation of suitable intermediary institutions, whose credibility would stem from their role as independent, neutral mediators facilitating dialogue and public debate on free association and the larger process of democratic reform.

LOCAL CALLS FOR REFORM

Numerous initiatives and proposals have been made by Moroccan civil society proposing reforms and recommending means of implementation in order to tackle the problems described above.³¹ Calls for reform to ensure free association and broad participation

can be summarised in four categories: firstly, a constitutional reform that guarantees an effective balance of powers; secondly, a judicial reform that ensures the independence and accountability of the judiciary; thirdly, legal reforms that put an end to legal loopholes in the code of public liberties (and other laws relevant to free association) and include safeguards for effective law enforcement; and fourthly, the establishment of institutionalised dialogue between government and civil society on these and all other relevant societal issues and/or matters of democratic reform.

With regard to the four areas identified above, which represent the main obstacles to free association, Moroccan civil society representatives suggested a number of (not exhaustive) measures.

1. Legal reforms: eliminate, in dialogue with civil society, all legal loopholes permitting arbitrary behaviour and provisions curbing public liberties and fundamental freedoms in the Association Law, the Law on Public Assembly, the Press Code, the Penal Code, and the Anti-terrorism Law, inter alia by:

- Establishing effective legal safeguards, such as the introduction of penalties and appropriate legal resources for those refused an on-the-spot receipt by local authorities, and for any other act that impedes the correct application of the law, to ensure a de-facto establishment of the regime of declaration;
- Affording validity to the postal dispatch note, given upon dispatch of the dossier to the authorities, as proof of receipt;
- Simplifying the requirements for declaration to the greatest possible extent;
- Modifying the requirement to submit criminal records;
- Redefining the provisions of eligibility for public utility in dialogue with civil society;
- Establishing effective safeguards for full transparency on the reasons for unfavourable administrative decisions (declaration, public utility, etc)
- Reducing funding restrictions for associations, especially those from foreign sources;
- Introducing a special tax regime for all non-profit associations, including enhanced tax exemptions;
- Abolishing legal taboos on free expression in constitutional and legal provisions;
- Establishing effective safeguards (including legal resources and penalties) to guarantee a de-facto regime of declaration for public assembly;
- Restricting the authorities' competences to control and dissolve public meetings;
- Reducing restrictions of public assembly with reference to "public order";
- Lifting all charges on associations for the use of public venue facilities;
- Adopting a press code which regulates the relationship between the press and society (instead of the relationship between the press and the state);
- Guaranteeing journalists' free access to sources of information, and obliging authorities to provide information to the press;
- Prohibiting any governmental or administrative decision implying a penalty to journalists, restricting such decisions to an impartial and independent judiciary;
- Abolishing all prison sanctions, and abolishing or substantially reducing fines and other sanctions, against journalists for crimes of opinion;
- Establishing that crimes of defamation will be dealt with through civil procedures only;
- Abolishing all provisions which punish declarations considered an offence to Moroccan or foreign officials;
- Abolishing or substantially reducing the scope of provisions that punish declarations considered as "harming" the monarchy, Islam or the territorial integrity of the country;
- Clearly defining, in dialogue with the press and civil society, the crime of "defamation";
- Guaranteeing freedom of the press and broadening the scope of exercise of this

profession in the framework of a code of professional deontology among journalists, human rights defenders and civil society activists, freely and undisturbed by paternalism or interdiction;

- Securing safeguards for the protection of freedom of opinion and expression, and the transformation of the press into an organ of control, defense of the values of democracy, and of the preservation of pluralism and a culture of tolerance and diversity;
- Preserving the moral role of journalists and the protection of their rights;
- Allowing international investment in Moroccan media;
- Amend anti-terrorism legislation so as to establish effective safeguards against arbitrary application of the law and disproportionate restrictions of human rights and fundamental freedoms.
- Guaranteeing accordance of Moroccan legislation with international pacts and conventions, in particular those ratified by Morocco.

2. Rule of law: ensure rigorous application of the law by establishing effective safeguards in laws and legal procedures, including penalties and adequate legal resources in cases of disrespect of the law.

3. Accountability: establish full transparency, accountability and objectivity regarding criteria and procedures in all interactions between government and NGOs or the media (including issuing of receipts, denial of public assemblies, granting of public funding, issuing broadcasting licenses, etc).

4. Awareness: raise awareness and promote a culture of accountability, transparency and rule of law among civil servants, judges, and government authorities.

5. Judicial and constitutional reform: Strengthen the Judiciary via a full separation of powers in law and practice, including checks and balances, a comprehensive judicial reform, a national plan to combat corruption, and a traceable, systematic implementation of all the recommendations made by the IER.

6. Institutionalised consultation: establish institutionalised mechanisms of regular consultation between government, parliament and civil society regarding all matters of public interest, via newly created intermediary bodies in full accordance with the Paris Principles, inter alia by:

- Creating a body of civil society representation (either permanent or ad-hoc) as an independent interlocutor for the government;
- Creating a social and economic council, as envisaged in the constitution;
- Creating other independent consultative intermediary bodies that can serve as fora for specific areas of concern (such as a consultative council of the press);
- Enhancing transparency through the creation of a publicly available official database including all legally registered associations;
- Redefining, in a joint effort between government and civil society, the nature of partnership between both;
- Fostering a national debate on the role of civil society and public participation in the process of democratic reform, including all constituencies without exception.

CONCLUSION

In regional comparison, Morocco is clearly a leader in terms of progressive political liberalisation. Civil society is vibrant and able to develop its activities without large-scale repressive measures. However, the predominance of informal rules, as well as a range of unnecessary administrative hindrances, demonstrate a still considerably flawed reality under the shining surface of the Moroccan success story. Key obstacles are often rooted not only in deficient laws regulating free association, but in broader structural democratic deficits such

as the lack of the rule of law, corruption, the weakness of parliament and the concentration of state powers in the palace, all of which require a more courageous, overarching reform process than the valuable but selective measures Moroccan authorities have so far dared to undertake. As expressed by one Moroccan human rights activist, Morocco finds itself today at a crossroads where it must decide who it wants to be compared to: its autocratic neighbours in the southern Mediterranean, or the consolidated democracies to the north. It is to be hoped that Morocco's potential as a regional leader of democratic reform will give it the courage to raise the bar, move from relative to absolute criteria of assessment, and strive to become a fully-fledged democracy. International donors, for their part, should adapt their policies to accompany Morocco in this process.

Notes

¹ The Club de Madrid project "Strengthening dialogue and democratic discourse through freedom of association in the Mediterranean and Middle East region", of which this report forms part, is supported by the European Commission's European Initiative for Democracy and Human Rights (EIDHR) and the UN Democracy Fund. More information on the project is available at <http://www.clubmadrid.org>

² Some human rights activists expressed indignation over the way Morocco is being held up as the regional model democracy by some international actors, and similarly, how Morocco's relative position vis-à-vis other southern Mediterranean neighbour states is being held up domestically as measure of Morocco's democratic advances, thus providing a good argument for not rushing further reforms. Instead of being compared with neighbouring autocracies in the southern Mediterranean, rights activists say, they want to see the northern Mediterranean states used as a measure to compare Morocco's progress: "We are not satisfied with semi-autocratic, purely formal democracy, just because we happen to be neighboured by autocracies. Just like European citizens, we want a full democracy, and we would like Morocco's international partners not to discriminate against us and raise the bar."

³ The Moroccan site www.tanmia.ma, dedicated to associative life, provides an interactive database of NGOs by theme and region, to which associations can subscribe online.

⁴ In contrast to the principle of declaration, which requires NGOs only to inform the authorities of their foundation in order to become legally registered, the principle of authorisation ties the official registration of the association and the acquisition of the status of a legal entity to the granting of permission from an administrative body or a judge, on the basis of criteria other than just transparency.

Dahir n° 1-58-376 du 3 jourmada I 1378 (15 novembre 1958) relatif au droit d'association (1958), tel qu'il a été modifié et complété par les lois n° 75.00 et n° 36.04 (2002).

⁵ Dahir n° 1-58-377 relatif aux rassemblements publics.

⁶ Dahir n° 1-58-378 formant code de la presse.

⁷ Dahir n° 1-58-378 formant code de la presse

⁸ Other legal provisions that regulate the particular statutes of certain associations: Dahir du 10 novembre 1917 sur les associations syndicales de propriétaires urbains ; loi n° 6-87 relative à l'éducation et aux sports, promulguée par le dahir du 19 mai 1989 ; loi n° 2-84 sur les associations des usagers des eaux d'irrigation promulguée par le dahir du 21 décembre 1990; loi bancaire du 6 juillet 1993 instituant les associations professionnelles des établissements bancaires et de crédit; loi n° 18-97 qui prévoit une réglementation propre aux associations micro-crédit promulguée par dahir n°1-99-16 du 5 février 1999.

⁹ The Jam'a, an assembly in the Douars, is composed of heads of families/clans. It is an organisation of customary law that is not legally recognised but is nonetheless free in the exercise of its activities. In those cases where public authorities have little presence or are geographically distant (in rural environments), the Jam'a tends to substitute them. However, lacking legal recognition, the Jam'a does not have any patrimonial capacity.

¹⁰ Loi n° 03-01 relative à l'obligation de la motivation des décisions administratives émanant des administrations publiques, des collectivités locales et des établissements publics, promulguée par dahir n° 1-02-202 du 23 juillet 2002 (*Bulletin officiel* n° 5030 du 15 août 2002, p. 882).

¹¹ Legal action can be taken according to: loi n° 41-90 instituant des tribunaux administratifs, promulguée par dahir n° 1-91-225 du 10 septembre 1993, complétée par la loi 54-99 promulguée par

dahir n° 1-99-199 du 25 août 1999. Décret n° 2-92-59 pris en application de la loi n° 41-90 instituant les tribunaux administratifs (*Bulletin officiel* du 17 novembre 1993, p. 644).

¹² Loi n° 004-71 du 12 octobre 1971 relative aux appels à la générosité publique.

¹³ For a full list of criteria for public utility see: décret n° 2-04-969 du 28 kaada 1425 (10 janvier 2005) pris pour l'application du dahir n° 1-58-376 du 3 jourmada I 1378 (15 novembre 1958) réglementant le droit d'association (*Bulletin officiel* du 4 août 2005, p. 583).

¹⁴ Dahir n° 1-06-18 du 15 moharrem (14 février 2006) portant promulgation de la loi n° 36.04 relative aux partis politiques (2006).

¹⁵ Dahir n° 1-58-377 du 3 jourmada I 1378 (15 novembre 1958) relatif aux rassemblements publics, tel qu'il a été modifié et complété par la nouvelle loi n° 76.00 (2002).

¹⁶ Dahir n° 1-58-378 du 3 jourmada I 1378 (15 novembre 1958) formant Code de la presse et de l'édition, tel qu'il a été modifié et complété par la nouvelle loi n° 77.00 (2003).

¹⁷ Defamation is defined as follows: «Toute allégation ou imputation d'un fait qui porte atteinte à l'honneur ou à la considération des personnes ou du corps auquel le fait est imputé est une diffamation. Toute expression outrageante, terme de mépris portant atteinte à la dignité ou invective qui ne referme l'imputation d'aucun fait est une injure.»

¹⁸ A civil society activist from Rabat-Salé reported that since the revision of the association law in 2002, only one association in the district had been issued the provisional receipt by the authorities.

¹⁹ Loi n° 03-03 relative à la lutte contre le terrorisme, promulguée par dahir n° 1-03-140 du 21 mai 2003 (*Bulletin officiel* n° 5114 du 5 juin 2003, p. 416).

²⁰ The Observatoire des Libertés Publiques therefore works on the creation of a legal council that will provide legal advice to individuals and associations "who are having problems with the non-application of the law" (legal enforcement measures and loopholes).

²¹ The de-facto regime of authorisation is also reflected on the website of the General Secretariat of the Government (<http://www.sgg.gov.ma/sgg.aspx>), that offers an email service to follow up on the individual "dossier d'autorisation".

²² Transparency Maroc was founded in 1996 as a private, independent entity. Initially, the NGO met with huge opposition from the authorities. It later collaborated with a network of NGOs, above all human rights organisations, which supported it, leading finally to its recognition. The association's demand for recognition as a public utility, however, has not been granted.

²³ Government funding for associations is mostly channelled through the Ministry of Solidarity, which has a subsidy fund of approximately 480 million Dirham (43 million Euro), and the INDH (Initiative Nationale pour le Développement Humain), which has a total budget of 2 billion Dirham (178 million Euro), part of which goes to NGO support.

²⁴ Dahir n° 1-03-140- du 26 rabii I 1424 (28 mai 2003) portant promulgation de la loi n° 03-03 relative à la lutte contre le terrorisme.

²⁵ Transparency International: Corruption Perceptions Index 2006 and Global Corruption Barometer 2006, available at <http://www.transparency.org>

²⁶ For example, the Administrative Court and the First Instance Court of Casablanca-Anfa both refused to follow-up on a case brought before them by Transparency Maroc (submitted by huissier), which reported the refusal of a local authority to receive a declaratory dossier and to issue the relevant receipt. Transparency Maroc had first attempted to submit its dossier in 1996 but did not get the receipt until 2004. The association had to operate illegally for eight years.

²⁷ Article 19: "The King, "Amir Al-Muminin"(Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organisations. The king shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries."

²⁸ *Partenariat entre l'Etat et les Associations*, Circulaire N° 7/2003 (27 Juin 2003).

²⁹ Michel Doucin (ed.): *Guide de la liberté associative dans le monde*. La Documentation française, Paris, 2007.

³⁰ The Paris Principles adopted by the UN General Assembly in 1993 specify that National Human Rights Institutions, in order to be able to effectively promote and protect human rights, must be characterised by: Independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate based on universal human rights standards; adequate powers of investigation; and adequate resources.

³¹ For example, the Moroccan Observatory for Public Liberties, by initiative of the Forum des Alternatives, in April 2007 implemented a national campaign for the revision of laws regulating association and public assembly, and the application of all legislation in force. The campaign involved representatives of the ministries of justice, the interior, and the former ministry for human rights, along with 617 civil society organisations in 17 regions. The Observatory noted the unanimity among civil society regarding the need to reinforce efforts to bring associations together with the relevant political actors to discuss public liberties in Morocco. Another national campaign has been initiated targetting political parties concerned with the rule of law. The campaign is advocating for genuine information on and application of the law, and has been supported by over 500 associative landscape.

'STRONG FOUNDATIONS'? THE IMPERATIVE FOR REFORM IN SAUDI ARABIA

POLITICAL CONTEXT: THE POLITICAL REFORM PROCESS TO DATE

The Kingdom of Saudi Arabia was founded by Abdul-Aziz bin Saud in 1932 after a 30 year campaign to unify much of the Arabian Peninsula, thereby placing the al-Saud family in a pre-eminent position to rule from their traditional base of Najd province in the centre of the country. The first Saudi state was established in 1744 when Muhammad ibn Saud and Muhammad ibn Abd-al-Wahhab joined forces to forge a new political entity, an alliance between the temporal power of the al-Saud family and the conservative Salafi trend of Ibn Abd-al-Wahhab (later referred to as Wahhabism) that has conditioned the running of the state to this day. A strict interpretation of Islam with a strong reliance upon conservative Salafi doctrine underpinned such expansionism, which stressed the religious mission of the al-Saud conquests.

The al-Saud family's legitimacy has historically been based on its provision of political and economic security and its sheltering of the strict form of Islam decreed by the religious clergy (ulama) of the state, a *defender of the faith* role that is reflected in the king's official title of Custodian of the Two Holy Mosques. The official religious establishment in turn plays an important political role by bestowing Islamic legitimacy on the ruling family. The balance of power in this relationship has shifted towards the king in recent years as the al-Saud family has increasingly exercised its will over the religious establishment on matters that are seen as vital to its interests. However, the influence of the official ulama could be said to have diminished largely due to the emergence of unofficial Islamist currents rather than the assertiveness of the al-Saud family. Nevertheless, the official ulama continue to predominate in the day-to-day running of judicial and educational affairs, exercising an ideological control over society according to a strict observance of the Hanbali School of Islamic jurisprudence (fiqh). Although the junior partner, the ulama remain the only other constituency of influence in government.²

An important part of the reform dynamics of the Saudi state concerns its condition as an oil-based rentier state. The kingdom was forged through conquest during the first part of the 20th century and to some degree has since been kept together by the distribution of oil largesse. The implications for political reform of the oil rentier states are well known. The distribution of rents is part of an implicit pact whereby the concept of 'no taxation without representation' is reversed and the populace accepts the right of the ruling elite to govern in exchange for economic security derived from oil revenue. Government thus co-opts the population with cradle to grave benefits and the distinction between public service and private interest becomes increasingly blurred. Historically, the al-Saud family has cemented its legitimacy by providing public sector employment. This economic dynamic reinforces the predominant trend of change initiated and imposed from above. In times of high oil revenues the government can use this largesse to soothe grievances through hand-outs and crack down on any unyielding dissidents: 'As the fruits of high oil prices flooded the country's coffers and allowed the government to reassert its position [...] as patron of its people, the sense of crisis has ebbed and the impetus for many changes has subsided.'³ However, tying the kingdom's fortunes to fluctuating oil prices is both unpredictable and highly precarious.

In the 21st century King Abdullah recognises the limitations of the rentier state and the need for Saudi Arabia to reduce its oil dependency. He is aware of the need to find a new equilibrium, reducing dependence on the state in favour of private enterprise. For this purpose, in recent years he has directed almost 500 billion dollars towards projects aimed at diversifying the economy, not least in terms of improving education but also to ease regulations to stimulate foreign direct investment (FDI) that is vital to the success of the country's massive infrastructure projects, such as the six new economic cities being constructed. Such steps are encouraging, but it is far more difficult to break up the clientelist networks that have

dominated the public sector and extend to the nascent private economy. Yet the dangers of maintaining the status quo are apparent. It is unlikely that the current living standards can be maintained in the future on oil revenues alone given that Saudi Arabia's population is expected to double by 2030. Even today, the remarkable wealth of the Saudi elite disguises the reality that even during a period where the global oil price approached 150 dollars a barrel, Saudi Arabia's GDP per capita was the second lowest of the six Gulf Cooperation Council countries, surpassing only Oman.⁴

Working from a base of entrenched rentierism, government policies to encourage diversification have seen some signs of bearing fruit –non-oil exports increased by 20 percent and inward investment of Gross Fixed Capital Formation (GFCF) has increased from 1 percent to 32.1 percent in 2006.⁵ Nevertheless, it is unclear how much of this progress has been derived from assistance from oil-based subsidies and to what degree such investment is generated from wealth from oil revenues –in other words, impressive figures may be an example of 'forced growth' through massive and ultimately unsustainable government spending, indicating that the emerging private sector is largely (although by no means entirely) dependent on government favour, including through the granting of contracts. For all the billions of dollars invested in economic diversification, almost 90 percent of revenues and of export earnings still derive from oil.⁶

Despite its entrenched political and religious power structure, Saudi Arabia has undertaken some steps towards reform in recent years, largely at the initiative of King Abdullah in response to demographic pressures and the rise of Islamist violence during 2003 and 2004. Where possible, King Abdullah has courted the support of unofficial Islamist leaders for his reform policies, a useful means of countering the official ulama's opposition to such measures. King Abdullah has shown a willingness to adopt a more inclusive approach to religious minorities and women who have been invited to partake in official state sponsored dialogues on the future of the country, which has outraged some conservative leaders in the country. To some degree, Abdullah has even gone so far as to challenge the founding ideology of al-Saud rule, namely the promotion of a strict Hanbali code of jurisprudence, by appointing religious scholars from the more moderate Hanafi, Shafi'i and Maliki schools to the Council of the Ulama in 2009. The king has also moved to reform the education system, which is still dominated by the conservative religious hierarchy, and appointed his son-in-law, Prince Faisal bin Abdullah bin Mohammad, as Minister for Education.

The diminishing powers of the religious police, the Commission for the Promotion of Virtue and the Prevention of Vice, also became clear when the king removed the former head of the Commission, replacing him with Abdulaziz al-Humain, who declared that his duty was to 'achieve the aspirations of the rulers'. 'Moral offences' are now dealt with by public prosecutors and the religious police have also been stripped of the right to detain suspects, who must be handed over to the regular police force.⁷ To oversee this reform of Saudi Arabia's legal system, the king appointed a new Head of the Judicial Council, Saleh bin-Humaid, replacing his more conservative predecessor. The appointment of a woman deputy minister, Nora bint Abdullah al-Fayez, was also a first, reflecting King Abdullah's still-cautious moves to broaden women's role in society.⁸

Recent reform measures undertaken by King Abdullah remain fragile and easily reversible.⁹ Consensus on the future direction of the country is by no means universal within the al-Saud family. The recent appointment of Prince Nayef bin Abdulaziz, the current Minister of the Interior, as second deputy prime minister - traditionally the post of the third in line to the throne - was greeted with dismay by many reformists within the country who view Nayef as a conservative force within the kingdom who may bring a halt to Abdullah's tentative reforms. Nayef views the potential erosion of the official Wahhabi-Salafi doctrine as a diminishing of the core legitimacy of the state itself and has resisted such moves, not from a pronounced sense of religious devotion, but rather a desire to maintain a firm grip on the levers of state power.

Until this most recent reshuffle of key government and judicial posts, many Saudi reformists had concluded that the initial reforms begun by King Abdullah –the convening of National

Dialogues that recognised Saudi Arabia's regional and religious diversity, the establishment of a National Human Rights Society, the drafting of a law regulating civil society and the holding of municipal elections— had effectively ground to a halt. Yet the need for reform is generally accepted by many Saudis, though they disagree as to what form this should take. The most popular movement for change is the Sahwa (Awakening) movement, which emerged in opposition to the perceived supine nature of the country's official ulama in shifting their religious judgements to reflect the political interests of the al-Saud family.

Sahwa leaders such as Safar al-Hawali and Salman al-Audha enjoy a significant following in Saudi Arabia today among the religiously devout through the dissemination of audio-recordings of their teachings. The Sahwa movement has precipitated a major shift away from the official state clergy and the sheer popularity of its leading clerics prompted a move from a policy of repressing the movement to one of accommodation. However, the movement is by no means monolithic—it ranges from a rigid Salafi interpretation of Islam to a more accommodating stance that seeks to co-habit with other Saudi Islamic sects such as the Shia Twelvers who reside mostly in the Eastern Province, or the Ismailis in the southern Najran province.¹⁰ The disunity of the Sahwa, the entrenched conservatism of much of its leadership and the limited scope of its original objective—a rebalancing of power in favour of an independent ulama—has led some to question whether such a movement can possibly be regarded as 'reformist'.

Dissent in Saudi Arabia has commonly taken the form of petitions to the king. The original of these is the Memorandum of Advice drafted in 1991, many of whose signatories were arrested and some imprisoned. The regime did attempt to dissipate the tense atmosphere of the 1990s, however, by promulgating a Basic Law (al-Asasi), essentially a proto-Constitution outlining the rights of the country's citizens. After years of procrastination, an appointed assembly, the Shura Council, was also established in 1992. In recent years, by far the most influential petition has been that of January 2003, the 'Vision for the Present and Future of the Nation', which was signed by 104 academics, business leaders and religious scholars—a remarkable moment of pragmatism in a country where dissenting voices rarely manage to coalesce. Then Crown Prince Abdullah met with the signatories of the 'Vision' and thanked them for expressing their views on the future direction of the country. Indeed, the 'Vision' may have even offered a platform for the king to slowly begin a process of reform, despite opposition among other senior members of the royal family.

2003 would later become known as 'the year of petitions' and the success of the 'Vision' in stirring a national debate on the country's future prompted a second petition in September 2003 entitled 'In Defense of the Nation', a much more assertive document which explicitly criticised the slow pace of reform, the absence of popular participation in decision-making and the lack of elections for the Shura Council—a royal advisory body of 150 members that can propose legislative changes to the king. It was signed by 306 academics, writers and businesspeople, including fifty women, although not by many Islamists, who viewed it as too liberal. This was followed by another petition in December 2003 that was signed by Islamists, including several Sahwa leaders, liberals and Shia calling for the implementation of the reforms outlined in 'the Vision' and for the opening of a constitutional process. The sense of crisis as a consequence of the violence being perpetrated by Islamist insurgents throughout the country, many of whom were affiliated to or influenced by al-Qaeda, may have also influenced then Crown Prince Abdullah's decision to establish the National Dialogue Centre in an apparent effort to institutionalise dialogue across society on a series of issues relevant to the country.

In December 2003, a decree in the name of the incapacitated King Fahd, but driven by Crown Prince Abdullah, expanded the powers of the Shura Council. However, it was not until 2005 that the amendments were enacted and the council granted powers to initiate legislation. According to its new powers the council could send its recommendations directly to the king, by-passing the cabinet and thereby ensuring a more direct line to the executive and more autonomy in proposing, discussing and enacting new internal regulations. In the

event of a disagreement with the cabinet, the council could respond to the government's arguments, leaving the king as final arbiter. But any expectations that the amendments might provide for partial elections of the council's members and endow it with some binding legislative and oversight powers did not materialise. In essence the Shura Council remains true to the Arabic term 'shura' in that it offers advice to the king without actually having a stake in enacting legislation. That power remains the king's alone.¹¹

Upon his accession to the throne in 2005 King Abdullah pardoned three activists who had received prison sentences for refusing to recant a petition they signed in January 2004 calling for the establishment of a constitutional monarchy. 2005 also saw the holding of elections for the first time since some local government posts were elected in the 1960s. In this case the government permitted the holding of elections for half the seats on municipal councils, some claim as a consequence of US pressure.¹² However, voter turn-out was disappointingly low, with some areas barely registering 20-30 percent of eligible voters. The low turn-out and voting patterns may be partly explained however by the fact that the elected members of the municipal councils in reality wielded very little tangible power. In addition, the voting system within the councils was unclear and the president of each municipality was directly appointed by the government. Despite the semblance of electoral accountability, control of the municipalities remained very much with the Ministry of Municipal and Rural Affairs.

Scepticism among Saudis regarding the relevance of the councils was compounded by the government's prolonged delay in nominating appointed members to the councils - in some cases the process took over a year. Today, the commitment of many appointees is questionable, with most councils meeting only once a month.¹³ Liberals tend to express dismay at the election of Islamist candidates, who were the resounding victors of the elections in 2005, yet this disregards the broad spectrum of Islamists elected, including many moderate candidates. The government, although sluggish in drafting regulations and appointing members to the councils in 2005, has recently moved to grant the municipal council some oversight powers over the performance of municipal employees and their administration of local finances. This is an important step towards empowering the councils, although it remains to be seen how if such powers can be implemented in practice.¹⁴

The municipal council experiment, while not to be over-estimated in terms of transferring power to a democratically elected legislature, marks an important first step in introducing the concept of democratic transparency to Saudi Arabia. However, a lack of enthusiasm for elections in 2005 should not be interpreted as a rejection of the democratic process. Indeed, in some areas such as the predominantly Shia Eastern Province, municipal councils have proved an effective channel for citizens to express their frustrations with the working of local government to their representatives. It is an important first step and, if the government fulfils its promises to grant municipal councils tangible powers, Saudi citizens may yet come to value the accountability granted by such democratically elected councils. For the 2009 municipal elections, the government had reiterated its commitment to study recommendations that women be allowed to vote.¹⁵ However, in May 2009 the government announced that it had extended the mandate of municipal councils for two years, effectively postponing elections that were due that year. Anticipated reforms with regard to women's rights have frequently been frustrated. The kingdom's eighth five-year development plan (2005-2009) aimed at increasing the percentage of women in the Saudi work force from 5.4 percent to 14.2 percent,¹⁶ but in practice the government has been slow to put in place conditions that would allow such a target to be realised. Pronouncements by officials, such as that of allowing women to drive in the special economic zones, are therefore taken with a very large pinch of salt.¹⁷

At the national level, although the Shura Council is not elected, it is widely believed that King Abdullah has used it as a sounding board for reform. Its membership is drawn from throughout the country and includes many prominent representatives of the emerging private sector, who offer the king advice on key issues such as the diversification of the economy. However, their success in 'flying kites' on possible avenues for reform should not

disguise the disappointment of many reformers that partial elections mooted for the Shura Council in 2003 never came to fruition.

Beyond the still largely unfulfilled promise of the municipal and Shura councils, King Abdullah's most important reform initiatives have concerned the practical workings of the judiciary and the educational system. In October 2007 King Abdullah announced a comprehensive overhaul of the kingdom's judicial system, issuing new laws regulating the judiciary and the Board of Grievances with a budget of seven billion Saudi riyals being allocated for the reforms. A supreme court was created to oversee the implementation of sharia as well as laws issued by the king, commercial courts, labour courts, personal status courts, and a fund for training judges. The Supreme Court was to take over the functions of the Supreme Judicial Council, until then the kingdom's highest tribunal, while the council was to continue to oversee the judiciary, focusing on administrative issues such as the choice of judges and the setting up of tribunals. The Board of Grievances was to continue to handle administrative disputes involving government departments.¹⁸

The new laws replaced regulations in force for more than 30 years in the case of the judiciary and about 25 years for the Board of Grievances. At the beginning of 2009 the King Abdullah Project for Developing the Judiciary was launched with the aim of preparing a strategic plan for the following 20 years to develop the judiciary and an executive plan for the first 5 years. It was also to lay down mechanisms for periodic reviews. The new plan was expected to lead to the reorganisation and modernisation of the judicial system by unifying the different judicial departments under the Ministry of Justice, distributing specialisation and levels of litigation among the courts and providing an opportunity for all verdicts to be verified through the Supreme Court.¹⁹ While such moves send a powerful message to the judiciary, institutional changes to regulate the legal system will likely take years to implement due a lack of capacity and the pronounced tendency of the Saudi bureaucracy to resist change.

Under the leadership of King Abdullah, the country also began an overhaul of its higher education system, although efforts seemed to be concentrated on quantity rather than quality. By 2007 the Ministry of Higher Education had opened more than 100 new universities and colleges in four years, funded by a 15 billion dollar budget, which had tripled since 2004. Education reform was also part of the efforts to diversify the Saudi economy and 'Saudiise' the kingdom's companies, a strategy to address a youth unemployment rate of 30 percent.²⁰ The King Abdullah Project for General Education Development (Tatwir) announced in 2008 allocated nine billion Saudi riyals over six years to guarantee the availability of a highly skilled work force in the future.²¹

Nonetheless, much progress remains to be made in reforming the curriculum of the country's secondary education system, where the training of teachers and school curriculum is to a large degree still controlled by the official ulama. Building universities, while alluring in the short term, will not be sufficient to reduce Saudi Arabia's alarming levels of unemployment, particularly as the country's population growth rate will remain at 2.5-3 percent per annum for the foreseeable future and almost 40 percent of the population is under the age of 15.²² The majority of Saudi Arabia's new graduates lack qualifications to seek employment in the ambitious new economic cities being constructed by the government – in 2003, 64 percent graduated with sharia or arts-based qualifications.²³ This, combined with restrictive policies of 'Saudiisation', which hinder the hiring of expatriate skilled labour, risks discouraging the type of foreign investment needed to diversify the country's economy.

The welcome initiatives taken by King Abdullah should not disguise the fact that the reform process depends entirely upon enlightened royal favour, which can be withdrawn at any time. Indeed, it can be argued that, with the weakening of the power of the official ulama in recent years, more power has been consolidated by the al-Saud family. Reformers and conservatives both have their champions within the royal house and the initiatives can swing either way according to future successions to the throne, highlighting the almost complete inability of the Saudi populace to grant or withhold their consent to a programme

for government. Royal power remains absolute and the will of the Shura Council consistently reflects that of King Abdullah, to whom its members owe their appointment.

Criticism about the slow pace of the reform process is usually rebutted by the 'official' argument that Saudi society is too 'traditionally conservative' and that what is proposed is alien to Saudi culture, a mixture of western prejudices and unsuitable secular models. It is often pointed out that it has been the royal family that has led to the kingdom's reforms, introducing modern communications, cars, television and girls' education, all of which were rejected at the time by the broader population: 'We have lots of challenges here related to traditional structures, namely a hesitancy and mistrust for reform caused by purported ideological links to Western agendas and interference.'²⁴ Reform, as the official argument goes, has been implemented by the more enlightened al-Saud family despite resistance from society. There are limitations to how far King Abdullah can push against such recalcitrance.

Yet such an argument is disingenuous in that historically it is the deep conservatism of the state, especially during the reign of King Fahd during the 1980s and 1990s, that has brought about deficiencies in the educational system and the almost complete lack of a secular civil society. It is important to recall that in addition to positive reforms introduced by Kings Faisal and Abdullah, the state has also been the instigator and enforcer of policies that have segregated spheres for men and women and placed restrictions on freedom of expression and association, policies which have ultimately served to entrench conservatism within the country. In contrast to a frequently heard narrative, these policies have not just been designed and carried out by a few overzealous clergy but by the whole of the Saudi state polity. Indeed, surveys that have been carried out often suggest that Saudi Arabians favour further moves towards the liberalisation of society in many spheres, not least women's rights.²⁵ With regard to the holding of elections, it may be that the government fears the further devolving of religious leadership away from the official ulama towards the language of dissent as expressed by political Islamists, which they believe could ultimately destabilise the country.

Characterising reform in Saudi Arabia is not straightforward due to the pronounced opacity of Saudi policy making. Saudi Arabia is trying to disprove the widely held belief that 'a sound democratic system—which includes transparency, the rule of law and accountability—is essential for the success of a market economy.'²⁶ Essentially it is trying to decouple political from economic reform, or at least keep them on two separate tracks at highly variable speeds. Questions abound over the effectiveness of the limited political reforms undertaken to date, which seems to be tempered by the fact that they are established by decree under the prerogative of one person and the reality that 'there is only so much one person can do when you have a system that is dysfunctional.'²⁷ This dysfunctional system extends to a hugely bloated public sector system where millions of Saudis are employed but where initiative is choked by an opaque decision-making process. Furthermore, as Hassan al-Husseini, a former administrator at the King Fahd University of Petroleum and Minerals, has pointed out, 'when something is established by royal edict, then that same thing can be reversed by another royal edict. It's not like you have legal protection for such things in Saudi Arabia.'²⁸ In this sense many see reform tied only to King Abdullah and are unsure as to whether momentum will be continued after his death. However, it may be that King Abdullah's enduring legacy is to engender a situation whereby the momentum for reform is maintained from the pressure applied by a newly conscious Saudi society.

Any movement towards reform, however, has had no bearing on the underlying structures of power. Power is concentrated in the hands of the king and there are no formal institutional checks on his authority beyond the consultative role (shura) of senior princes from his own family. The king strives to be perceived as ruling according to Islamic law and attaining consensus among senior members of the royal family. Although the ministries are ostensibly appointed by the king, the effective partitioning of power since the reign of King Abdul-Aziz whereby ministries are granted perpetual zones of influence means that it is difficult for the king alone to effect meaningful change. For example, to implement changes to the Ministry of Defence requires the consent of the Crown Prince Sultan, who has been Minister for

Defence for almost 50 years. Nonetheless, the king remains the prime driver of government policy and the ultimate source of judicial power.

There is no clear division between the executive, legislative and judicial branches of the Saudi government. The pseudo-legislature, the Shura Council, was established by royal decree in 1992 but acts mainly in an advisory capacity. Since 2005 it can also initiate legislation, though ultimately legislation can be promulgated unilaterally by the government. Discussion about possible, at least partial, elections to the council resumed after the fourth expansion of the council membership to 150 in April 2005, but these have not materialised. The government has issued no official pronouncements on the subject and there is no elected body to provide oversight of government ministries or agencies. In 2003, the king approved the creation of consultative councils at the municipal level, with half of the officials to be elected by popular vote. Yet, as in the case of the Shura Council, the municipal councils were given little legislative power. Indeed, the victory of conservative Islamists in securing a large share of municipal council seats in elections held in 2005 served as a means for the government to remind the West that democratic reform would have profoundly destabilising consequences for the country. Despite the gender-neutral language of the law for municipal elections, women were not allowed to vote.

Saudi Arabia's legal system is based primarily on the principles of sharia law supplemented by laws legislated by the government. The king is responsible for the implementation of judicial rulings. In addition to the sharia courts, there are a number of judicial and quasi-judicial institutions with specialised jurisdictions such as commercial or labour law.²⁹ There are very significant problems with Saudi Arabia's judicial system. In particular, judges continue to have wide discretion to issue rulings according to their own interpretation of Islamic sharia, a problem aggravated by the fact that the Hanbali school of jurisprudence is a highly subjective form of jurisprudence drawing primarily upon centuries-old theoretical writings on the meaning of the Quran and Hadith.

Laws are either vague and open to wide interpretation by judges or simply not respected. For example, the Criminal Procedure Law of May 2002 protects a defendant's rights, defines regulations to be followed during the judicial process, prohibits torture and limits arbitrary detention to five days, but it is yet to be implemented.³⁰ Criminal defendants are still not informed of the possibility of appointing legal counsel, lawyers have difficulty obtaining official documents to prepare a defence, hearings are often held in camera, and there are summary court sessions in political cases and in cases of people charged with crimes punishable by death, amputation or flogging. In criminal cases detention is often extended in order to extract a confession and then proceed to trial. In the majority of political cases detainees are pressured to give information about their political beliefs and activities, and about other people working with them. They are usually made aware that their release is conditional on their repenting of their previous activities and on their signing an undertaking to cease these activities.³¹

Arbitrary arrest is facilitated by the wide powers of arrest enjoyed by numerous bodies acting without judicial authority and is often directed at suspected political and religious opponents of the government. These bodies include al-Amn al-Aam (the public security police), al-Mabahith al Amma (General Investigations) and religious police known as al-Mutawaeen or Hay'at al-amr bilmaruf wan nahi an al-munkar, (the Committee for the Propagation of Virtue and Prevention of Vice). The first two are accountable to the Minister of the Interior. Al-Mutawaeen, which is mandated to ensure adherence to established codes of conduct, is in theory a semi-autonomous agency, but in practice works closely with the police and the governors of the localities. It is required to hand suspects over to the public security police after questioning. The cases of those arrested for 'moral offences' are now dealt with by public prosecutors and not the religious police.

A vigorous counterterrorism campaign, which was launched in the wake of the terrorist attacks that began in 2003, has been highly praised abroad. Nevertheless, reformers have accused the government of using the campaign to silence any opposition. According to Matrouq al-Faleh, a liberal activist: 'The Interior Ministry considers all reformers as part of terrorism but that's the definition of a police state.' Reformers draw attention to the arrest of opposition

activists engaged in political activities under the conditions of the anti-terrorism law, including in 2007 for a group that were involved in trying to set up a political party. He also accuses the government of holding terrorist suspects for years without putting them on trial.³²

ASSOCIATIONS LANDSCAPE

Civil society in Saudi Arabia is overwhelmingly represented by charitable foundations with some link to the royal family. There are also a large number of religious organisations, with the remainder dedicated to cultural, social or professional issues, but none focus specifically on political or civil rights. The last few years have seen an uptick in the number of organisations and the incorporation of new fields of work such as family planning, drug awareness, youth leadership and business development. It is extremely difficult to establish an association without the support of a member of the royal family, especially in terms of navigating administrative issues and attracting donations. Associations are strictly controlled by the Ministry of Social Affairs or some other official authority, depending on their field of action.

Charitable foundations and associations

These account for the largest number of organisations and have the widest geographical representation. The difference between associations and foundations rests primarily on their financing. The first receive donations from various sources while the second from a single donor. The growth of charitable associations and foundations, especially those based in Riyadh, can best be understood in the context of the use of the charity sector by the royal family for political purposes. Royal donations have traditionally been used as a means of consolidating power by assuring the loyalty of subjects. While institutions have been modernised, underlying motivations remain unchanged. The distribution of rent feeds into the image of a magnanimous, generous and approachable royal family. The growth in the sector is also a reflection of the competition among princes for the title of the most generous or the most interested in the development of the country. State subsidies or princely donations are complemented by tapping the private sector, which willingly complies in part as a means to network with the royal family and thus ease the administrative burdens on conducting business in the kingdom. The encouragement by the state of private charity initiatives has been especially noticeable in the last few years.³³ This is driven by the fact that despite the increased budget, 'public' institutions cannot cope with the needs of the population, which are set to double within 20-30 years. The recent downturn in oil prices has highlighted the reality that the government can no longer sustain a policy of expanding an already bloated public sector as a means of distributing oil rents.

The - usually eponymous - charitable projects and foundations are often headed by members of the royal family. This personalisation of the distribution of rent to the poorest sectors of society serves as an exercise in control which encourages clientelism and confusion between the public and private domains. Such blurring of the line between welfare and royal donations acts as a means of legitimising the regime. Members of the royal family feed the ambiguity between the public and private sectors such that the statutes of charitable organisations and their type of aid (public or private, state or princely, entitled or allocated) remain ambiguous. In addition, the lines between welfare and charity are blurred by the lack of specific rights and entitlements. Even social security becomes associated with charity and both are treated as social development within official development plans.

The establishment of charitable foundations as a way of addressing poverty stands as an example of the approach to dealing with state problems. Rather than addressing the issue through the establishment or restructuring of public policies, it is addressed through an act of will, or a gesture on the part of the monarch.³⁴ Moves to regulate charitable organisation since 9/11, for example the requirement to fully disclose financial transfers, have been broadly welcomed as a means of restricting terrorist financing. Nonetheless, some civil

society activists have expressed concern that, in the absence of protective and enforceable legislation, this information could be used for political purposes by the government to restrict funding to groups that do not meet their approval.

Since the 1960s, women have been participating in charitable organisations, generally under the aegis of princesses. In the charitable sector a female space first emerged through the creation of the female association Nahda³⁵ (founded by Princess Sara al-Faysal in 1962), followed by the opening of female sections in the biggest charity foundations charged with taking care of poor women, handicapped children, orphans etc.

Religious organisations

Unofficial religious movements, like the state itself, tend to be orientated around individuals who espouse particular trends of Islam. However, not only has Saudi Arabia witnessed a diminishing of the power of the official clergy as a consequence of grievances against the perceived corruption of the regime and the death of prominent clerics such as the Grand Mufti, Sheikh bin Baz and Sheikh bin Uthaymin, but the influential Sahwa movement has also split into separate strands. Many popular Sahwa leaders, such as Salman al-Audha, have of late played a remarkably moderating role towards religious minorities and Islamic jurisprudence, while others, including Safar al-Hawali prior to his illness, have been reluctant to deviate from their own conservative interpretation of Islam. These clerics and the many other preachers formerly identified as belonging to the Sahwa movement enjoy a very significant following in Saudi Arabia.³⁶ The religious donations they have received have served to deepen their influence, and although the occasional misuse of these funds by conservative clerics to wage jihad outside Saudi Arabia has been well-documented, the emergence of unofficial religious committees inside the country whose purpose is to ease poverty in Saudi Arabia has to date received little attention. Jihadi organisations have been largely dismantled through a sophisticated counter-terrorism campaign led by Deputy Interior Minister Prince Mohamed bin Nayef, forcing many remaining jihadis to relocate to neighbouring countries such as Yemen, and although funding networks persist, the Saudi government has been widely praised for its increasing efficiency in tackling them.³⁷

Chambers of Commerce

The main private sector umbrella organisation is the Council of Saudi Chambers of Commerce and Industry, an influential organisation that helps mediate between Saudi companies and the state. Its members are business people who come together to defend their mutual interests and coordinate their efforts. Their activities are financed by the members' subscriptions. Partial elections take place for the board of directors, and women have recently been allowed to join the organisation. The regional Chambers of Commerce, although in existence for decades, have become markedly more assertive during the reign of King Abdullah and have played a key role in his diversification programme. Together with the Supreme Economic Council, the Chambers of Commerce are routinely consulted on the future economic direction of the country, which constitutes a significant improvement from the days when laws were 'made up by a bureaucrat and a consultant in the backroom of a ministry'. The Chambers of Commerce have also occasionally intervened to advocate more liberal social policies in the interests of economic efficiency.³⁸

Professional and vocational associations

Governmental permission is required to form professional groups and associations, which must be non-political. The government licenses professional associations such as the Saudi Chemists Association and the Saudi Pharmacists Society, which serve to coordinate members and issue professional licences. Regular elections are held to select

their respective boards of directors. The associations have recently grown to include most specialisations and professions and they come under the authority of different government institutions depending on their field of work. The king also announced the creation of an independent journalists' organisation in early 2003, namely the Saudi Journalists Association. Yet many reformists have dismissed this organisation as effectively wholly controlled by the government, since its founding documents were allegedly promulgated by the latter, and the Information Ministry must approve all candidates for the board.³⁹

Political parties

Political parties are prohibited. Long-standing parties such as the Communist Party and the Arab Socialist Action Party of Saudi Arabia were disbanded in the 1990s after their leaders were granted amnesty in a deal with the Saudi government. With the demise of Nasserite and Marxist parties in Saudi Arabia, the most active movement that may be classified as a political organisation is the Muslim Brotherhood. The government continues to actively restrict access to works by the two most important Muslim Brotherhood intellectuals, Hassan al-Banna and Sayyid al-Qutb.⁴⁰ The Interior Minister, Prince Nayef, has claimed that the Muslim Brotherhood is at the root of all Saudi Arabia's problems. However, the structure of the organisation in Saudi Arabia is by no means clear.⁴¹

Political salons (diwaniyas)

These discussion groups held in private homes have been growing in number and act as an outlet for collective expression, such as, for example, the liberal 'Constitutional and Civil Society circle'. The issues discussed can include women's rights, elections and civil society. Nevertheless, even these informal groups are subject to frequent interference from the government, with the Ministry of the Interior insisting that some groups be registered.⁴²

Labour unions

Trade unions, syndicates, collective bargaining and strikes are prohibited, with limited provisions for companies with over 100 workers. In April 2002 a new law was issued, permitting Saudi workers to establish labour committees in companies with 100 or more employees. The committee members are chosen by the workers and approved by the Ministry of Labour. The committee may make recommendations to company management to improve work conditions, increase productivity, improve health and safety and recommend training programs, while the Ministry of Labour and Social Affairs may send a representative to attend committee meetings. The ministry may dissolve a labour committee if it violates regulations or threatens public security. Foreign workers may not serve on the committee, though committee regulations provide that the committee should represent their views. Generally, however, due to the lack of enforceable legal protection for these committees and their inability to take legal industrial action, these measures have generally been met with scepticism and indifference by the Saudi population.

Human rights organisations

There are two legal human rights organisations in Saudi Arabia.

The **National Society for Human Rights** (NSHR) was created in March 2004. Although it is said to be financially and administratively independent, it was created with 100 million Saudi riyals donated by King Fahd. The NSHR works to guarantee fundamental rights recognised by Islam: the protection of human life, religion, thought, line of descent, honour and property. Since its formation, the NSHR has monitored municipal elections in 2005 and visited over 30 prisons in coordination with international and regional human rights organisations, while maintaining

good relations with government agencies. It receives citizens' complaints, intervenes on their behalf with the relevant authorities, and visits the prisons. It has also lobbied extensively for government agencies to receive human rights training, and is pushing for Saudi Arabia to abide by and ratify more international human rights-related treaties.

In its first report on human rights, published in 2007, NSHR highlighted the government's responsibility to protect human rights and requested that the legislative system adhere to the international agreements signed. It also stated that in response to a question regarding adherence to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Foreign Ministry stated that the kingdom was in the final stages of signing both agreements. In terms of freedom of association, it alluded to the 'many incomprehensible procedures and obstacles' and called for regulations legitimising the formation of organisations and the protection of the rights of the people who take part in them. The second report on human rights was published in 2009 and echoed calls in the first report for an elected Shura Council with broader authority. It also criticised the slow pace of implementation of judicial reforms, the abuse of power by the Commission for the Promotion of Virtue and Prevention of Vice and other security forces, and urged for an investigation into cases of prolonged detention of suspects and torture.⁴³

King Abdullah decreed the establishment of a government human rights agency, the **Human Rights Commission**, on 12 September 2005 to 'protect human rights and spread awareness about them [...] in keeping with the provisions of Islamic law.' The organisation was chaired by former government official Turki al-Sudairi until February 2009, when he was replaced by Bandar Al-Aiban. The 18 board members are appointed by the king for a period of four years. The Commission functions as a government agency, and sees its role as similar to that of an Ombudsman. In this capacity, the Human Rights Commission acts on over 4000 complaints on average per year. By June 2008 it had received 17,000 complaints in total. The Commission has branches throughout Saudi Arabia, with two established specifically for women, and it seeks to enshrine Arab and Islamic concepts of human rights.⁴⁴ It appears to have been instrumental in the government reporting to the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in January 2008.

The working group on the Universal Periodic Review of the Human Rights Council held its review of Saudi Arabia in February 2009, for which the Human Rights Commission had submitted a national report. In response to the review, the new head of the Human Rights Commission stated that the 'glass is 70 percent full of positives, remaining problems are small particles.'⁴⁵ Among the recommendations included that did not enjoy the support of Saudi Arabia, ostensibly 'because they do not confirm to its existing laws, pledges, commitments or do not refer to the existing practices in Saudi Arabia', were two calling for the end of practices of incarceration, mistreatment and the application of travel bans against individuals on the basis of their religious or political beliefs.⁴⁶ Despite such reservations Saudi Arabia was successfully re-elected to serve on the UN Human Rights Council in May 2009.

A third human rights organisation, albeit not legally recognised, is Human Rights First. Despite applying for a licence in 2002, a response was never forthcoming. The organisation was established without official approval in 2003. Its mission is to fight for the application of the rule of law, for freedom of association and for freedom of expression.

Institutions for public support and research centres

There is a dearth of independent research centres in Saudi Arabia. The few that exist, such as the King Faisal Center for Islamic Studies and Research in Riyadh, tend to have senior royal patronage. Informal religious studies groups are by far the largest study groups in Saudi Arabia, constituting an informal but increasingly powerful network.

In 2003 the National Dialogue Center (NDC) was established by then Crown Prince Abdullah in order to institutionalise dialogue among broad sectors of society on a set of key issues for the development of the state. To date, the centre has held seven dialogue sessions

on topics such as employment, youth, women, education and national unity. The centre is also involved in training youth in effective communication and dialoguing methods, with over 40,000 people trained to date. The centre has formal partnership agreements with the Ministries of Education and Youth and also engages in training sessions within religious institutions. Its recommendations and dialogue conclusions are delivered to the king at the completion of each National Dialogue process. The first dialogue started with thirty male participants in 2003. The second then doubled the number of participants and had a gender balanced representation. The centre selects participants on the basis of including a wide variety of representatives from all segments of society. The dialogues are transmitted live and uncensored by Saudi television.⁴⁷ The NDC is widely criticised most notably for the lack of implementation of the dialogue conclusions. Critics also point to its ambiguous status as an organisation that is neither governmental nor fully independent. Arguably, although the dialogues have not achieved any concrete results, the establishment of the NDC did play an important signalling role, pointing to the need for reform and the possibility of openly discussing the subject, including with previously marginalised sectors of society.

LEGAL FRAMEWORK

a) Constitution and international treaties

The Basic Law does not explicitly provide for freedom of association. Neither does it include explicit guarantees of basic rights such as freedoms of belief, expression, assembly or political participation.

Saudi Arabia has signed four out of seven of the United Nations' conventions including the Convention on the Rights of Children (1996), the Convention on the Elimination of Racial Discrimination (1997), the Convention Against Torture (1997) and the Convention on the Elimination of Discrimination Against Women (2000), but none that are relevant to Freedom of Association. Saudi Arabia has also signed five agreements of the eight ILO agreements related to human rights in the work domain.

The fundamental rights and freedoms protected by the Universal Declaration of Human Rights and the treaties to which Saudi Arabia is a state party remain largely unprotected by domestic legislation. The provisions of the human rights conventions to which it is a state party are undermined by significant reservations. The language used in its reservations stating that it will implement provisions of international treaties in as much as they do not conflict with sharia does not clearly define the extent to which Saudi Arabia accepts its obligations according to these treaties. The reservations are too general and vague.⁴⁸

b) National legislation

Associations are governed by the memorandum on associations and charitable foundations enacted in 1990, which demands their conformity with sharia. An association is defined as a group of persons working towards a non profit goal. According to the memorandum the Ministry of Social Affairs is responsible for receiving and analysing applications for the creation of private (generalist) associations. Associations must justify that there is a social need for their creation in a particular domain or place. The associations which are authorised to operate in a certain area must put together a group of at least 20 qualified people 'of perfect morality'. All other associations, medical, scientific, medical or professional, must obtain authorisation from the ministry responsible for the activities in which they operate. Under the memorandum, foundations can be established by a single person (notably members of the royal family) but may not receive subsidies. Religious foundations are not legally distinct from charitable associations.⁴⁹

A draft civil society law to replace the memorandum and regulate civil society organisations in the country was put forth by the Ministry of Social Affairs in 2006. The draft

was revised, amended and approved by the Shura Council on 31 December 2007. The draft law is currently under discussion in the cabinet. The law calls for the establishment of a 'National Authority for Civil Society Organisations' to regulate the activities of NGOs. Its administrative council would be made up of representatives of the Ministries of Social Affairs, Islamic Affairs, Labour and Finance as well as chambers of commerce, other charitable associations and universities. It would be responsible for approving the registration of associations and supervising their activities and financial accounts. It would also manage an endowment fund with funds from budgetary subsidies, the Zakat, banking profits which pious individuals renounce, and income from investments. The Saudi local press discussed the shortcomings of the draft, pointing to the broad authority the commission would have (such as the power to dissolve an organisation without referring the case to a judicial authority) as well as the ambiguous registration process and the limits placed on collaboration with non-Saudi organisations. Despite the law's flaws, most activists would welcome any law that would provide a clearer regulatory framework.

c) Fiscal regime / taxation

There is no taxation in the kingdom. Charitable associations with non-profit goals are exempt from Zakat.

d) Foreign associations

Foreign associations are not allowed to operate in the kingdom. Foreigners, even Muslim foreigners, may not direct an association, in particular a charitable association, which must be directed by a Saudi national. This is a legacy of the long-standing fear of the Muslim Brotherhood and other non-state controlled Islamic doctrines taking root in Saudi Arabia.

KEY OBSTACLES

The legal and administrative environment is the biggest obstacle for civil society and militates against the independence, organisation and growth of associations. Despite an official discourse that emphasises the need for greater efficiency within the NGO sector, there is still no clear legislation governing the process of registration and administration. Licences are granted in very limited cases and often as special royal decrees. Applications for registration, especially for organisations focusing on public issues, are delayed for years, often with the excuse of the lack of specific law or authority.

State control over the associative fabric is quite strict. Different official authorities control the activities of organisations, depending on their field of action, and there is no unified and clear law regarding such supervision. Representatives of the Ministry of Social Affairs can attend general assemblies and the ministry must be notified at least 15 days in advance of the assembly taking place. Official authorities interfere in the arrangement of elections to the boards of directors by screening candidates beforehand, verifying the regularity of elections to the management board and even cancelling elections. Official representatives observe the associations' commitment to their by laws and regulations. The ministry also controls the finance of the organisations through an intranet that links all associations to the ministry. Accounts are controlled by administrators appointed by the ministry. These accountants audit each organisation and must visit them at least four times a year. The ministry receives the annual reports and has 20 days to raise any objections. It can also name a temporary management board. Associations which submit to such controls may receive government subsidies.⁵⁰ The memorandum on associations and charitable foundations grants the government the power to dissolve associations. In October 2004, Al-Haramain, the most important Saudi charitable foundation, was dissolved.

Peaceful political activities such as demonstrations, protests or strikes are prohibited. This lack of freedom of assembly also means that public activities require prior permission from

the relevant authorities and this can take a long time. Activities are strictly limited to those related to the nature of the organisation and often speakers and lecturers undergo prior screening.

Funding is also problematic as it is usually linked to royal patronage. Private associations may receive donations and bequests. Associations with accounts under the supervision of the Ministry of Social Affairs may receive government subsidies. NGOs may not receive any financial support from foreign donors and fundraising activities are under strict control after 9/11.

STATE – CIVIL SOCIETY RELATIONS

King Abdullah, through the establishment of the National Dialogue Center and the Inter-faith dialogues, has signalled the opening of a limited but vital space for discussion on the future direction of the country. Importantly, this includes representatives who have not been consulted by the state in the past on matters of government. Such an exchange, however, has yet to produce major shifts in political accountability and human rights. 'While the political atmosphere is not as circumscribed as it was in past decades, the promise of continued political liberalisation which seemed to be in the air in the first half of this decade has not been borne out.'⁵¹ The municipal councils are powerless, the Shura continues to lack legislative and oversight powers, judges continue to employ wide discretion and arbitrary rulings, teachers have not been replaced and petitioners continue to be jailed. Saudi reformers have faced increased repression in recent years.⁵² Sometimes it even seems like there is some backtracking, as reflected in the measure announced in 2005 whereby public employees cannot criticise the government –which, considering the dominance of public sector employment, greatly hinders constructive dialogue.

Relations between state and society are hampered by the fact that Saudi Arabia lacks an independent and vibrant civil society. Although there are close to 400 charitable organisations, non-governmental organisations require the patronage of a member of the royal family and organisations dealing with political and civil rights are explicitly prohibited. The nature of the state, in which government - or the royal family - provides and the population accepts, has severely constrained avenues for a two way dialogue. Freedom of expression is restricted by prohibitions of criticism of the government, Islam and the ruling family. Government critics and security suspects are commonly subjected to arbitrary arrest and detention for indefinite periods of time by the security forces under the direction of the Ministry of the Interior. Editors in Chief frequently receive letters from the Ministry of Information asking them not to write about certain matters, and self-censorship is so widespread that obvious media crackdowns on the printed press are not particularly evident or necessary. It is common knowledge that the Ministry of Information frequently violates the Basic Law and the Press Law, and that there is little if any recourse for journalists. International and regional human rights organisations' websites are also regularly blocked, including Freedom House and Reporters without Borders.⁵³ Academic freedom suffers in the same way, and as there are no independent research centres and no reliable data or statistics on which to base a dialogue between state and society. Even questionnaires for polls require government approval. Petitions originating from the people are discouraged and the National Dialogues are presented as the only proper channel for some sort of structured dialogue.

Saudi reformers are a loose network from which core groups come together to initiate petitions and seek supporters. In the 1990s the Islamist Petition writers made more strident demands for accountability from the royal family, but petition-writers nowadays generally call for gradual political transformation within the framework of the monarchy and the state's Islamic character. Their proposals are for a common project to be led from above.⁵⁴ It remains unclear how representative they are of society but clearly Islamist reformers enjoy a wider appeal than their liberal counterparts.

As official channels of communication are ineffective or non-existent, tribal affiliation plays an important role in relations between citizens and the central government. Since

the mid-1980s, older tribal sheikhs have been replaced by officially designated leaders loyal to the government that act as representatives on behalf of tribal members' interests. These leaders work through the regional councils and governors and deal with such issues as education, agricultural development, assistance in legal matters, transportation and communication improvement, welfare and social assistance, and helping to attain citizenship privileges.

As already outlined, although frequently misrepresented in the West as a monolithic state of Wahhabi conservatism, many Saudi citizens follow diverse schools of Sunni jurisprudence. King Abdullah has now begun to move to accept the legitimacy of such individual legal codes within state institutions. The government has also eased restrictions upon the practice of Sufism within the kingdom. The destruction of Sufi shrines and the brutal crackdown upon Sufi leaders after the conquest of the Hejaz in 1926 created a bitterness among many Saudi Sufis that remains to this day. Important gestures such as the attendance by King Abdullah of the funeral of prominent Sufi leader, Muhammed Alawi al-Maliki, in 2004, who had been condemned as an unbeliever by leading members of the official ulama, and the support for tolerance of Sufi practices by the popular Sahwa leader, Salman al-Audha, has helped reverse a trend of oppression against the country's Sufi minority.⁵⁵

While the practice of Sufism is not seen to constitute a potential threat to the integrity of the kingdom, relations between the Shia population and the government remained strained due to religious prejudice among certain senior officials and a fear of secessionism by the predominantly Shia, oil-rich Eastern Province. 10-15 percent of Saudi Arabia's citizens are Shia, of whom the majority belong the Shia Twelver school and reside in the Eastern Province, with a 400,000 strong Shia 'Isma'ili' residing in Najran, a province in the south-west of the country lying along the border with Yemen.⁵⁶ In the case of the Shia Twelvers in the Eastern province, the government has done little to allay fears of foreign Shia clerics from Iran, Lebanon or Iraq wielding undue influence over Saudi Shia citizens by harassing Saudi clerics, including closing down religious schools in Qatif, thereby forcing many scholars to look towards more qualified Shia religious leaders from abroad rather than at home.

During the 1970s the Eastern Province witnessed serious unrest as the Shia populace rebelled against state harassment and the banning of Shia festivals such as Ashura. Violent opposition to the regime peaked in 1979 when a series of violent riots broke out in the wake of the Iranian revolution. Grievances fed the politicisation of Shiism in Saudi Arabia away from the quietism conventionally adhered to by Shia clerics towards the activism of leaders such as Sheikh Hassan al-Saffar. Although al-Saffar was a key spiritual leader during the often violent protests of the 1970s, he soon began to view open confrontation as a futile path given the strength of the regime. Instead, after a negotiated agreement with King Fahd in 1993, the mainstream Shia leaders adopted a policy of engagement with the regime. This pragmatism and the caution with which Saudi Shia leaders approach their religious ties with Iranian-based clerics, preferring for the most part the spiritual guidance of Grand Ayatollah Ali al-Sistani in Najaf, Iraq, finally began to bear fruit during the reign of King Abdullah when Shia members were nominated to the Shura Council and played a prominent role in the royally-convened National Dialogues. The inclusion of the Shia was helped by the support offered not only by senior royals but by moderate members of the Sahwa movement.

While such moves have by no means satisfied Shia demands as laid out in the April 2003 petition, 'Partners in the Nation', King Abdullah has demonstrably broken with the orthodox Salafi campaign against Shiism. This is not uncomplicated in that many conservative clerics believe that among the founding principles of the teachings of Muhammad ibn Abd al-Wahhab is a rejection of Shiism as a legitimate form of Islam. However, King Abdullah's symbolic gestures have yet to translate into fundamental action to guarantee equal treatment for Shia citizens, who remain largely absent from senior government positions and are disproportionately absent from the appointed regional council of the Eastern Province.⁵⁷ A Saudi human rights activist summoned to the Foreign Ministry to explain himself following a speech drawing attention to religious discrimination in Saudi Arabia was informed

that 'no such discrimination takes place in the kingdom' and that it was disingenuous to mislead the world to the contrary, to which he responded that it would be helpful if a Shia Ambassador could therefore explain this to the world but, alas, there was no such thing as a Shia Ambassador. This anecdote emphasises the need for words regarding religious equality to be put into action.

An obvious example of government foot-dragging in implementing reforms is apparent with regard to the educational sector where, although the government has frequently promised to remove all anti-Shia rhetoric from school textbooks, Shia citizens complain that teachers frequently demonise the Shia as unbelievers. This is hardly surprising given that the education system in the Eastern Province and Najran, as elsewhere, remains dominated by conservative Sunni teachers. Meanwhile, as one community leader outlined, many Shia feel that that they cannot turn to the judicial system for recourse against such 'hate-crimes'; 'Who am I going to complain to, a judge who is a Wahhabi Sheikh?'⁵⁸

Although moderate religious leaders such as Hassan al-Saffar and community activists like Jaffar al-Shayeb, Tawfiq al-Sayif and Mohammed Mahfoodh have succeeded in convincing many of their co-religionists to pursue a policy of engagement with the government, recent events demonstrate that patience among the Shia populace may be finite and that a stagnation in reforms could lead to the empowering of a more extreme fringe within the community. During 2009 Shia Twelver pilgrims in Medina rioted after what they considered to be inappropriate monitoring by the religious police.⁵⁹ The subsequent killings of 3 pilgrims and beating and incarceration of many more led to unprecedented calls for secession for the Eastern Province and the founding of a new political movement, Khalas.⁶⁰ The government would do well to press on with the stated aim of ensuring that Saudi Shia feel a fully empowered part of the country's citizenry. A good next step would be the appointment of more Shia citizens to prominent government positions and the increased legitimisation of Shia codes of jurisprudence, such as the ja'afari school, as part of the Saudi legal system.⁶¹

In the south of Saudi Arabia, the small Saudi Ismaili minority (population approx. 400,000) suffered systematic discrimination in the aftermath of the appointment of the highly conservative Prince Mishal bin Saud bin Abdulaziz al-Saud in 1996. Religious freedoms became so curtailed, including the closure of mosques, the arrest of clerics and restrictions on religious schooling for young Ismailis, that the Ismaili community literally felt that it was under siege and began to arm itself in case of an attack upon its religious leader, Da'i al-Mutlaq (the Absolute Guide), at his home in Najran. Despite the fact that the Ismailis constitute an overwhelming majority of the population of Najran, they hold only a tiny minority of all senior government posts. More worryingly, the Saudi government in recent years has pursued a policy of naturalising Yemeni Sunnis from the Hadramawt region of Yemen, granting land plots, permitting the carrying of weapons and allegedly turning a blind eye to attacks upon Ismailis. This policy would appear to be remarkably short-sighted in that many of the tribes invited to live in Najran have been the most fertile recruiting ground for al-Qaeda in Yemen.⁶²

Following a growing outcry domestically and internationally, King Abdullah removed Prince Mishal bin Saud bin Abdulaziz al-Saud as governor of Najran in late 2008 and appointed his son, Prince Mishal bin Abdullah bin Abdulaziz al-Saud, in his place. Encouragingly, the new governor, who has acquired a reputation for his intellect and diligence in working to reduce poverty in Saudi Arabia, has recently begun a programme to address the social and economic grievances of the Ismaili community, including the distribution of land to previously dispossessed Ismailis. However, it is too early to speculate to what degree this programme will succeed in easing tensions in Najran.⁶³

Migrant workers in Saudi Arabia easily constitute the majority of the working population in Saudi Arabia. However, due to a lack of legal protection of individual rights in Saudi Arabia, not least labour laws and discrimination against low-paid immigrant labour, abuses perpetrated against migrant workers are rife and often go unpunished. For example, Saudi Arabia's *kafala* sponsorship system heavily restricts the ability of a migrant worker to change employment or even leave the country. Abuses perpetrated by Saudi citizens against migrant workers

are routinely not investigated. However, the arbitrary incarceration of migrants by the police is commonplace and many foreign nationals are frequently denied access to consular assistance.⁶⁴ In a positive move, the Ministry of Labour announced in May 2009 that, after a five year study of the current sponsorship system, it will recommend that the government move to embrace a new system where private recruitment companies will sponsor migrant workers. Although enforcing the rights of migrant workers through new legislation is unlikely to succeed without a simultaneous reform of the judicial system, such a proposal at least would make it easier to monitor the sponsorship of foreign nationals.⁶⁵

The discrimination of women in Saudi Arabia has been institutionalised by the state. Despite the signing of the Convention on the Elimination of All Forms of Discrimination against Women, with reservations concerning clauses that conflict with Islamic law, in 2000, Saudi laws systematically discriminate against women. Government policy often explicitly requires male consent for a range of everyday activities. This system of male guardianship, justified as a form of protection for women, curtails some of women's most basic rights. The Saudi state has institutionalised a strictly segregated principle of organisation disregarding customs and social conventions which were historically much more varied and flexible than is now acknowledged. Oil rent has been an important precondition for the development of a segregated female sphere as it has allowed for the creation of parallel female institutions. Thus reforms to address discrimination tend not to question spatial segregation but rather propose the creation of additional specific institutions for women, such as the Princess Noura Bint Abdelrahman University for Girls, which is currently under construction. While the normalisation of women's role in the workplace creates new opportunities for improving literacy levels and skills, it is not a move towards de-segregation. Rather, it requires the feminisation of mixed places or the creation of women's sections within men's institutions, thus reinforcing sex segregation.⁶⁶ Nevertheless, the economic burden which such segregation entails has prompted senior government advisers to recommend the easing of such restrictions –some Saudi business leaders have urged that women be allowed to drive in the new economic cities. Meanwhile, the recently opened King Abdullah University for Science and Technology (KAUST) has broken taboos by introducing a co-educational curriculum.⁶⁷

WHAT POLITICAL REFORMS ARE REQUIRED? (LOCAL CALLS FOR REFORM)

Local calls for reform have become significantly less strident than in the 1990s in the aftermath of the Gulf war. Calls for change now propose a cautious and gradual approach that respects the monarchy and the Islamic character of the state, but they continue to represent individual appeals responding to different agendas rather than a cohesive movement with a well articulated and common vision. Liberal petitioners coalesce at times with Islamic reformers for pragmatic purposes, but there is no consensus on what a practical reform agenda for the future should look like. Furthermore, the population is cautious regarding change and suspicious of any potential impositions from abroad.

One of the first steps to address this lack of consensus on the way forward would be to open up the space for association and for freedom of expression. Such measures would provide the necessary space to discuss and reach consensus on reform and thus address the government's claim that society is not ready for reform. For this purpose, the first step would be the approval of an acceptable and clear law governing NGOs, which would improve their legal environment and provide some form of protection from the arbitrary treatment of activists. The importance of this measure is reflected in the fact that civil society representatives are calling for the approval of the current civil society draft law which is stuck in the cabinet, despite its apparent shortcomings and overly intrusive prerogatives for government. The law should limit government interference, allow greater freedom of action for NGOs and put an end to the curtailment of their activities and areas of action. There should be judicial recourse for denial of registration, interference or dissolution. For

now, the only acceptable space for a discussion of issues relevant to the development of the country is provided by the National Dialogues. As the latter initiative is the prerogative of the regime, there should be a government response to the recommendations issued at the conclusion of each Dialogues session, be it some form of acceptance and delivery of the changes recommended or their rejection. There should at least be room for an open two-way dialogue.

An open space for debate would help define a more cohesive approach to reform that would undoubtedly have an Islamist frame of reference and, in this sense, perhaps fall short of western liberal expectations. In any case, most local calls for reform are not clamouring for western liberal democracy; in fact, there is widespread suspicion of democratisation and the imposition from abroad of foreign concepts. Calls for reform emphasise the need for a fair society which respects equality, personal freedoms, accountability and a fair distribution of wealth. Reformers speak of change from within and in accordance with Saudi Arabia's circumstances.

Nevertheless, global initiatives and international conventions are important. Saudi Arabia wants to comply with international practices and so internationally recognised standards act as important anchors for reform. For example, the UN initiative on anti-corruption served as an example taken up by the Shura Council in order to suggest a domestic anti-corruption strategy. Similarly, Saudi Arabia's accession to the World Trade Organisation was an important driver of legal reforms. In addition, reformers fighting for change can refer back to signed international agreements in an effort to defend their case. For this reason, it is important for Saudi Arabia to sign the international conventions on political, civil, social and economic rights, something which, according to their own accounts, they are close to doing. But signing up is not enough, as many problems within Saudi Arabia stem from patchy implementation or outright non-compliance.

In this sense, the lack of **codification** of much of Saudi law is a problem. Codification of existing law is crucial as it would allow comparison to international standards and put an end to the varied and idiosyncratic interpretations of the law made by judges and clerics.⁶⁸ In particular, there is a need to draft and adopt a penal code that specifies clearly which acts constitute criminal offences. Saudi Arabia also has a problem with **implementation**. Most notably, there is a need for implementation of the criminal procedure code introduced in 2002 which guarantees the protection of human rights by prohibiting torture, ensuring the defendants' right to a fair trial and their right to counsel. It also states that trials must be public. Judges, police investigators and other concerned agencies have yet to fully implement the code, in part due to the lack of executive regulations. The absence of such regulations has opened the door to personal interpretation and led to abuses and violations. There are also important provisions in the Saudi Basic Law that lack implementation and monitoring. For example, defendants must be afforded the right to a speedy trial, and Article 114 of the Basic Law, which permits the detention of suspects for up to six months, must not be interpreted freely. The Supreme Court should have the authority to overrule laws that contradict the Basic Law.⁶⁹ These reforms would represent a move towards ensuring the independence and efficacy of the judiciary, which coincides with the stated goals of the current judicial reform prompted by King Abdullah.

In terms of the legislative branch, although there are some calls for elections for the Shura Council, a greater priority seems to be endowing it with actual legislative and oversight powers. A first step towards elections would be to have fully elected municipal councils with genuine power on municipal issues and a real budget. Such a measure could then be followed by holding elections for the more powerful regional councils.

There is still considerable opacity surrounding budgetary issues. Although there is a widespread perception that King Abdullah himself is not corrupt and an appreciation of his curbing of personal expenditure by individual members of the royal family, there is a widespread concern that mechanisms for accountability with regard to state expenditure are extremely limited and should be extended. One of the most salient points of consensus

in calls for reform is an end to corruption and the lack of transparency in government spending. There is a sense that resources are squandered with impunity by members of the ruling family.

There is a need for a clear legal definition of foreign nationals' rights, given that they represent close to fifty percent of the workforce. The establishment of a legal framework to protect their rights should be accompanied by an awareness campaign. The reversal of the current abusive sponsorship system would constitute a good first step to ending the widespread abuse of migrants' rights.

CONCLUSION

King Abdullah enjoys a level of popularity in Saudi Arabia that is seldom acquired by a ruler with such extensive powers. He is viewed by many as a reforming and capable monarch who has taken bold measures to try and lever his country out of its natural resource dependency and severe demographic challenges. Importantly, King Abdullah has sought to redefine the country in terms of how it views itself, for example through reaching out to the Shia population and stressing the importance of providing opportunities for women in the workplace. Externally this has manifested itself in his embrace of a dialogue among the main religions of the world, reflecting his programme at home to build acceptance for a more diverse society. These symbolic gestures are very important and should not be underestimated. Yet the delicate balance of power within the al-Saud family has meant that King Abdullah has struggled in practice to implement many of the reforms aimed at curbing corruption and discrimination within the government. The weakness of the reform process is essentially that it is still utterly dependent on the grace of the king and has not acquired a strength or momentum of its own among the Saudi citizenry. This is not due to a lack of interest in public affairs - on the contrary, the relatively powerless National Dialogues attracted millions of viewers who were intrigued at the prospect of an uncensored discussion on the future direction of the country. Rather, the real cause lies in the restrictions preventing the emergence of an independent civil society and freedom of expression. Similarly, the low-turn out and election of predominantly conservative religious figures to the municipal council elections in 2005 may well have reflected the fact that Saudis were savvy enough to know that such councils had very little tangible power to secure practical benefits for their communities.

The future path of reform in Saudi Arabia remains uncertain and the progress made is easily reversible. The commitment of the Interior Minister, Prince Nayef, to following the path set by King Abdullah is uncertain. He has been decidedly reticent in endorsing a programme for reform, especially with regard to empowering a national parliament chosen by the wider populace: 'When I go to the Shura assembly I meet members who are of the finest calibre in the country and that's what's important -the people and the quality. It's not important how they got there, it's important how they are.'⁷⁰ If he were eventually to accede to the throne, he might well prefer to revert back to the more conventional, less consultative rule of King Fahd. However, this entails its own risks: King Abdullah has astutely stressed the need for increased collective responsibility for the fate of the nation, taken pains to be seen to consult widely among the populace and introduced democratic elections for the first time. This is a recognition that the al-Saud dynasty's future legitimacy cannot primarily rest on providing 'cradle to grave' benefits to the populace and must empower the potential of the country's youth to create their own opportunities. If Prince Nayef were to abandon this course, he would be perceived to be assuming complete control of the country's destiny again and would therefore also be held solely responsible for its ills. There is an obvious capacity in Saudi Arabian society to provide solutions to many of the country's future challenges, should an enabling framework be put in place to encourage educational innovation, develop a diverse civil society and advance freedom of expression. The government would be unwise to waste a resource of such infinite potential.

Notes

¹ 'Strong foundations' refers to a speech by the late King Faisal (d. 1975), in which he pointed to the Saudi state being founded upon 'the principle of spreading justice among citizens, where king and citizen stand on an equal footing...' Quoted in Mohammed al-Osaimi, 'The politics of Persuasion: The Islamic Oratory of King Faisal Ibn Abdul Aziz', Riyadh: King Faisal Center for Research and Islamic Studies, 2008, p. 46

² See for example, G. Steinberg, 'The Wahhabi Ulama and the Saudi State: 1745 to the Present', pp.11-35, in P. Aarts and G. Nonneman (eds.), *Saudi Arabia in the balance: Political economy, society, foreign affairs*, London: Hurst, 2005.

³ Hassan M. Fattah, 'After Saudis' First Steps, Efforts for Reform Stall', *The New York Times*, 26 April 2007.

⁴ Emirates Business, 'Advantages of GCC common market are still to be fully felt', 27 October 2008.

⁵ N. Janardhan, 'Economic Diversification and Knowledge Economy in the Gulf', paper delivered at the Gulf Studies Conference, Exeter University, 3 July 2008.

⁶ International Monetary Fund, *IMF Executive Board Concludes 2008 Article IV Consultation with Saudi Arabia*, Public Information Notice (PIN) No. 08/102 August 12, 2008, <http://www.imf.org/external/np/sec/pn/2008/pn08102.htm> (29 April 2009).

⁷ Aboud Al-Basha, 'Reform in Saudi Arabia – sincere policy change or token gesture?', *The Arab*, Issue 1, January/ February 2008.

⁸ The Arab News, 'Major government reshuffle', 15 February 2009.

⁹ Amr Hamzawy, 'Abdullah's Choice is Security or Reform', *The Daily Star*, 4 August 2005.

¹⁰ International Crisis Group, 'Saudi Arabia Backgrounder: Who are the Islamists?', Brussels: ICG Middle East Report No. 31, 21 September 2004.

¹¹ Amr Hamzawy, 'Promoting Democracy and Human Rights in the Middle East: The Case of Saudi Arabia', Testimony before the House Committee on Foreign Affairs Subcommittee on International Organisations, Human Rights and Oversight, 14 June 2007, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=19381&prog=zgp&proj=zdr1,zme> Accessed, 29 April 2009.

¹² Hassan M. Fattah, 'After Saudis' First Steps, Efforts for Reform Stall', *The New York Times*, 26 April 2007.

¹³ Al Wasat, 9 January 2009.

¹⁴ UNDP- POGAR,

<http://www.pogar.org/countries/theme.asp?th=6&cid=16>

¹⁵ Arab News, 'Women may be allowed to vote in municipal elections', 27 April 2009.

¹⁶ Arab News, 'One-Third of Government Jobs for Women: Sultan', 27 May 2007.

¹⁷ Reuters, 'Saudi's economic cities under pressure to deliver', 20 August 2008.

¹⁸ Arab Reform Bulletin, 'Saudi Arabia: Succession Law; Judicial Reform; Women Driving Campaign', Carnegie Endowment for International Peace, October 2007.

¹⁹ Adnan Al-Shabrawi, 'Judicial reforms set for launch today', *Saudi Gazette*, 21 April 2009.

²⁰ Zvika Krieger, 'Saudi Arabia: Reforms in Higher Education Raise Questions', Arab Reform Bulletin, Carnegie Endowment for International Peace, December 2007.

²¹ Ministry of Education, http://www.moe.gov.sa/openshare/englishcon/e13_09_2008_132008.html

²² The Economist, 'Country Profiles: Saudi Arabia', accessed 1 June 2009.

²³ T. Niblock and M. Malik, *The Political Economy of Saudi Arabia*, Oxford: Routledge, 2007, pp. 208-209.

²⁴ Interview in Riyadh, June 2008.

²⁵ Nawaf Obaid, 'Saudi women must get the vote in 2009', *Financial Times*, 12 October 2004.

²⁶ H. el-Beblawi, 'Political and National Governance Reforms', Presented at the IMF/AMF High-Level Seminar on Institutions and Economic Growth in the Arab Countries, Abu Dhabi, December 2006, p. 16.

²⁷ <http://saudijeans.org/> 22 February 2009.

²⁸ Zvika Krieger, 'Saudi Arabia: Reforms in Higher Education Raise Questions', Arab Reform Bulletin, Carnegie Endowment for International Peace, December 2007.

- ²⁹ Carnegie Endowment for International Peace and FRIDE, 'Arab Political Systems: Baseline Information and Reforms: Saudi Arabia', <http://www.fride.org/page/13/fride-carnegie-arab-political-systems—baseline-information-and-reforms> Accessed 6 May 2009.
- ³⁰ Human Rights Watch, 'Precarious Justice, Arbitrary Detention and Unfair Trials in the Deficient Criminal Justice System of Saudi Arabia', March 2008.
- ³¹ Carnegie Endowment for International Peace and FRIDE, 'Arab Political Systems: Baseline Information and Reforms: Saudi Arabia', <http://www.fride.org/page/13/fride-carnegie-arab-political-systems—baseline-information-and-reforms> Accessed, 6 May 2009
- ³² Financial Times Special Report: Saudi Arabia, December 4, 2007.
- ³³ Amélie Le Renard, 'Pauvreté et charité en Arabie Saoudite : la famille royale, le secteur privé et l'État providence', *Critique internationale* 2008/4, n° 41, pp.137-156.
- ³⁴ Ibid, pp.137-156.
- ³⁵ Recently won the first Chaillot prize for Human Rights Organisations in the Gulf.
- ³⁶ S. Lacroix, 'Fundamentalist Islam at a crossroads, 9/11, Iraq and the Saudi religious debate', CSIS: Gulf Roundtable, 29 May 2008.
- ³⁷ Christopher Boucek, 'Saudi Arabia's "soft" counterterrorism strategy: Prevention, rehabilitation and aftercare', Washington DC: Carnegie Paper, 2008.
- ³⁸ Steffen Hertog, 'The new corporatism in Saudi Arabia: Limits of Formal Politics', in Abdulhadi Khalaf and Giacomo Luciani, *Constitutional Reform and Political Participation in the Gulf*, Dubai: Gulf Research Council, pp. 256-257.
- ³⁹ Interviews with journalists in Riyadh, June 2008, and Hertog, p. 247.
- ⁴⁰ Menassat, 'Saudi Arabia bans "extremist" Muslim Brotherhood books', 28 November 2008.
- ⁴¹ Ain-alyaqeen, 29 November 2002.
- ⁴² Rasheed Abou-Alsamh, 'Saudis cling to outlet for free expression', *The Christian Science Monitor*, 11 April 2007.
- ⁴³ NSHR report criticises slow pace of reform, Arab News, 24 March 2009.
- ⁴⁴ Interviews in Riyadh, June 2008.
- ⁴⁵ Walaa Hawari, 'New Human Rights chief welcomes UN's review process', Arab News, 17 February 2009.
- ⁴⁶ United Nations General Assembly, Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, Saudi Arabia, 4 March 2009. The rest of rejected recommendations referred to reservations on CEDAW and capital or corporal punishment.
- ⁴⁷ Interviews in Riyadh, June 2008
- ⁴⁸ Amnesty International, 'Saudi Arabia Submission to the UN Universal Periodic Review, Fourth session of the UPR Working Group of the Human Rights Council February 2009', 8 September 2008.
- ⁴⁹ Michel Doucin (ed.), *Guide de la liberté associative dans le monde*, La Documentation Française, Paris, 2007.
- ⁵⁰ *Guide de la liberté associative dans le monde*.
- ⁵¹ F. Gregory Gause, III, 'Saudi Arabia and the Proposed Arms Sale', Testimony before House Committee on Foreign Affairs, 18 September 2007.
- ⁵² Muhammad Helmy, 'Saudi Arabia: Human Rights, Reform, and the Rule of Law', Arab Reform Bulletin, Carnegie Endowment for International Peace, October 2007.
- ⁵³ Interview in Riyadh, June 2008.
- ⁵⁴ Toby Jones, 'Seeking a "Social Contract" for Saudi Arabia', *Middle East Report* 228, Fall 2003.
- ⁵⁵ Washington Post, 'In Saudi Arabia, a resurgence of Sufism', 2 May 2006.
- ⁵⁶ International Crisis Group, 'The Shiite Question in Saudi Arabia', Brussels: ICG, Middle East Report No. 45, 19 September 2005.
- ⁵⁷ Ibid.
- ⁵⁸ New York Times, 'Saudi Shiites, Long Kept Down, Look to Iraq and assert rights', 2 March 2005.
- ⁵⁹ The Economist, 'Shia unhappiness is rattling regimes in Saudi Arabia and elsewhere in the Gulf', 26 February 2009.
- ⁶⁰ Reuters, 'Saudi King visits oil-producing region after unrest', 26 April 2009.

⁶¹ As of 2008, there were only seven Shia Twelver judges in Saudi Arabia, all of whom were based in the Eastern Province. Ismailis are completely absent from the judiciary. US State Department, 'International Religious Freedom Report 2008', accessed 3 July 2009.

⁶² Human Rights Watch, 'The Ismailis of Najran; Second-class Saudi Citizens', September 2008.

⁶³ Arab News, 'Mishaal appointed Najran governor', 27 March 2009 and al-Okaz 'King presents large housing area as gift to people of Najran', 1 June 2009.

⁶⁴ Human Rights Watch, 'As if I am not human', New York, July 2008.

⁶⁵ Arab News, 'New system to replace sponsorship', 13 May 2009.

⁶⁶ Amélie Le Renard, 'Only for Women: Women, the State, and Reform in Saudi Arabia', *The Middle East Journal*, vol. 62, no. 4, Autumn 2008, pp. 610-29.

⁶⁷ The National, 'Global crisis casts shadow over Saudi's futuristic cities', 1 February 2009.

⁶⁸ Tamara Cofman Wittes and Isobel Coleman, 'Economic and Political Development Trip Report, Towards a new US-Middle East Strategy', A Saban Center at Brookings-Council on Foreign Relations Project, February 2008.

⁶⁹ Muhammad Helmy, 'Saudi Arabia: Human Rights, Reform, and the Rule of Law', Arab Reform Bulletin, Carnegie Endowment for International Peace, October 2007.

⁷⁰ Gulf News, 'Nayef rules out Shura polls', 3 July 2007.

TUNISIA: THE LIFE OF OTHERS

BEN ALI'S TUNISIA: REPRESSION AND PROSPERITY

Tunisia is widely known for its beautiful beaches and sites of national heritage. Beyond this postcard image, the country, which has been ruled by President Zine el Abidine Ben Ali for over twenty years, is a special case among the countries in the Middle East and North Africa (MENA) owing to its combination of impressive socio-economic development on the one hand, and a high level of political repression on the other. Unlike most of its semi-authoritarian neighbours, which have –under increasing domestic and international pressures for democratisation– embarked on a path of political reform (however limited), Tunisia shows no signs of opening up politically. Indeed, the opposite is true. Whilst in countries like Morocco, Jordan and Egypt openly violent repression belongs largely in the past, behind its façade Tunisia remains an old-style dictatorship built around one man, whose rule is held up by an openly repressive police state with few aspirations to subtlety.

In his speeches, President Ben Ali has been pledging democratic reforms for years, promising a 'republic of tomorrow'. In practice, however, rather than describing a path towards political modernity, this term has come to represent the government's determination to postpone any genuine democratic reform until an evanescent 'tomorrow'. The remainder of the region has undertaken processes of 'authoritarian upgrading'¹ in reaction to the increasing pressure to democratise, adapting tools and strategies in order to create a smarter, more subtle form of authoritarianism that relies on the duality of democratic discourse and authoritarian control. But such processes have been very limited in Tunisia. While the government does have a pro-democracy discourse, it is applied less consistently than in other countries, and efforts to portray itself as democratic are largely ineffective due to the widespread measures of systematic and often open repression. The line that the ruling Democratic Constitutional Rally (RCD) takes on democratisation is that reform must advance 'gradually'. In today's Tunisia, however, not even gradualist reform is conceivable. Democracy in Tunisia, according to rights activists, is not progressing, but regressing.

On the one hand, Tunisia cares for its image abroad as it has no significant natural resources and its economy largely depends on tourism, hence it needs to maintain its façade of a peaceful tropical paradise. On the other hand, the limited willingness of the Tunisian government to portray itself as democratic may be rooted in its greater self-confidence, which stems from the country's levels of socio-economic development and its resulting stability, its lack of dependency on foreign aid and the increasing influence of non-democratic players in the region (namely the Gulf countries), which have successfully positioned themselves as alternative partners to the West.

Tunisia's socio-economic development is indeed outstanding when compared to the rest of the region. Achievements in the areas of health, education and women's rights have been impressive. The Tunisian social model is being skillfully applied and translated into budgetary processes. Over the last decade, positive socio-economic development, ethnic uniformity, the absence of serious poverty, progressive gender policies and high levels of education have all contributed to forming a maturing society with the necessary grounds for political liberalisation, and with comparatively little risk of uprisings or destabilisation along the way. As of today, however, Ben Ali's regime shows no inclination to take advantage of this favourable setting other than to secure its own continued rule and privileges.

The undeniable achievements in the social and economic sphere have so far not been matched by any meaningful progress in the political sphere. Rather, the progressive social and economic course of the government stands in striking contrast to the regressive and draconian political conditions it imposes, which concentrate all decision-making power in the presidency. For years the country has been stalled in a political stalemate, characterised by one-party rule and a total repression of dissent. In political terms, Tunisia is thus one of the

most backwards countries in the MENA by far, in spite of being one of the most economically and socially advanced –what is often described as the 'Tunisian paradox'. Some even go as far as describing Tunisia as the Arab version of the 'Chinese model'.

At a closer look, however, the socio-economic situation appears neither as uniformly positive nor as sustainable as it is usually portrayed. As the country has no significant natural resources, the economy relies largely on tourism and remittances, areas which currently happen to be flourishing, but which render the country fragile. Youth unemployment is on the rise and the government has not yet been able to draft policies to fight it effectively. Given the total absence of genuine political decision-making processes in the country - with all genuine decision-making power lying in the hands of Ben Ali - many pressing problems stay on the backburner. In addition, while the overall economic situation has improved, social and economic inequalities have risen. The families of the president and his wife, supported by the apparatus of the ruling party RCD, are in private frequently compared to a 'mafia' that controls the business sector and has a strong influence over public institutions and funds. Corruption and patronage are rampant. The RCD –reportedly the richest party in the Arab world– works like a distribution apparatus that serves pieces of the pie to the corrupt elites. Popular discontent is also growing stronger, leading young people increasingly to turn to radical ideologies, and raising the possibility of a popular uprising. The recent social unrest over unemployment, corruption and lack of equal opportunities in the southern mining region of Gafsa, for instance, has revealed the extent of rage within both the workers' movement and the wider population. This does not sit easily with the image of a stable and happy land of plenty that Ben Ali tries to convey. According to activists, the desperation in the south which led to the Gafsa uprising is present everywhere.

The oft-repeated argument that increasing socio-economic development fosters democratisation by creating an emerging middle class that will eventually demand not only economic but also political freedoms and liberties appears to fail in the case of Tunisia. Tunisian rights activists and opposition politicians complain that the huge middle class that has emerged over the last decade appears to be more keen on consumption and higher living standards than on civil and political rights. At a closer look, this is not quite so surprising: since economic success depends on effective integration in the state's clientelist structures, from a purely economic perspective the new middle class has only a limited incentive to demand a political opening, as this would likely dismantle the very patronage network that ensures its continuing prosperity. Moreover, as the World Bank has documented, the Tunisian middle class is continuously eroding, particularly due to increasing unemployment. Finally, rampant corruption erodes the sustainability of many policies, as well as creating an unfavourable investment climate. So far, activists say, the government has managed very well to cover up its lack of democratic substance with economic development, but insofar as socio-economic development is unsustainable and inequalities are on the rise, it is questionable how long this will last.

EU representatives are delighted by the 'impressive achievements' in health, education and women's rights. However, Ben Ali's European counterparts value Tunisia above all as an island of stability in the troubled waters of the Southern Mediterranean. To put the Tunisian status quo in danger is not in Europe's interest. By a similar token, Ben Ali's counter-terrorism policies - though so far mainly reliant on the blunt repression of all Islamist groups - make him a reliable partner for Western interests. The EU's level of financial cooperation with Tunisia is very limited and EU diplomats complain that the EU's usual soft power tools do not work there, as well as bemoaning their lack of leverage with the Tunisian government. The latter is keen to cooperate on education, social policy, energy and the environment, but provides few opportunities to discuss the domestic political situation, let alone improve it. Foreign diplomats often report that even in politically unthreatening areas, their steps are tightly controlled by the government. Many say that Tunisia has been the most difficult placement of their diplomatic careers. As a result of such difficulties, the EU is increasingly inactive when it comes to attempting to support Tunisian human rights and democracy activists, and limits

its cooperation to non-political policy areas, thus avoiding confrontation. In turn, human rights activists who risk their own and their families' security in order to defend human rights by tooth or by claw despair before the hypocrisy of the West, which fails to take advantage of its influence in the Tunisian government, instead merely pairing democratic rhetoric with strong support for the status quo.

Secretly-uttered rumours regarding Ben Ali's health and the possible build-up of an 'heir' have generated speculation that 'Ben à vie' may not be the only option for Tunisia after the 2014 elections. Discussing the successor to Ben Ali is taboo even inside the highest government circles, as it goes against the government's propaganda of continuity. Moreover, President Ben Ali's reported lack of trust in anyone apart from his family, and a number of recent incidents in which close confidants of the president have been demoted for merely alluding to the issue, have cemented the taboo. At present, not even the people closest to the president dare to mention the 2014 elections, as it is not clear whether Ben Ali will be able to run again. In any case, the idea that the end of Ben Ali's presidency is likely to provide a window of opportunity for a genuine democratic opening is controversial among Tunisians. While some say that the interweaving between the government and the ruling RCD will easily allow a prepared successor to take over smoothly and proceed with business as usual, others believe that the extreme concentration of decision-making power in the person of Ben Ali - reportedly designed by him with the very purpose of undermining the political potential of those around him - will lead to a vacuum when he finally steps down. Ben Ali's successor, they say, will not come to power through the institutions but informally, in order to secure the political and economic interests of Ben Ali's family and closest entourage.

Recently, signs seem to be increasing that Ben Ali's son-in-law Sakhr El Matri - a successful businessman with influential connections in the Gulf who has, for example, built up the country's most successful religious radio station - is systematically raising his political and public profile, possibly with a view to being a potential successor. An argument in favour of this theory is that Ben Ali reportedly does not trust anyone but his family (he even had a clause included in the Constitution that secures his family's interests after the end of his rule). It is far from clear, however, that El Matri's recent attempts to raise his profile are part of a succession policy designed by Ben Ali. In fact, many Tunisian observers point out that it is no coincidence that the government is made up of technocrats, that there are no influential figures in Ben Ali's entourage and that those who were becoming powerful were squashed, because the president is said to be 'terrified of the idea of an heir'.

In this overall environment, Tunisian civil society is fighting to defend the narrow space granted to it by the regime.

ASSOCIATIONS LANDSCAPE

According to official figures, there are 9,205 associations in Tunisia, which are legally categorised according to the field they work in. Most of them pursue social objectives. The biggest social associations exist at the regional and national level, and receive substantial public subsidies. In addition, a large percentage of associations are active in the domains of the environment, urbanism and preservation of the architectural and historical heritage. The rest of civil society is largely composed of sports, science or women's associations.²

As associations are barred by law from pursuing objectives or developing activities deemed to be 'political', there are hardly any legally-registered associations that are active in the field of human rights and civil liberties, or with goals that have similarly political implications. The few organisations that defend human rights in general or work on particular rights such as freedom of the press, freedom from torture and ill-treatment, or prison conditions are, with a few notable exceptions, denied legal registration and thus forced to work clandestinely. They are thus subject to even heavier state surveillance and harassment. The same applies to the majority of parties of the political opposition. A small number of legally registered associations do work independently, but mostly in very narrow

thematic niches, which can never be allowed to become too political. With the exception of the Tunisian League of Human Rights and a few others, all truly independent organisations that work on issues related to human rights and democracy are denied legal recognition, operate under serious financial, organisational and personal constraints, and are placed in constant confrontation with the regime.

Since only those groupings that pledge to play according to the regime's rules have a chance of obtaining legal registration, it can be assumed that most of the legally registered associations depend, in varying ways and to differing degrees, on the state's tutelage. Many of them are GONGOs (governmental non-governmental organisations) set up by the regime to give an image of pluralism whilst spreading government propaganda. Even the High Commission for Human Rights is a governmental organisation. Many of these GONGOs are totally unknown and inactive in Tunisia but are sent to represent 'Tunisian civil society' in international networks and fora, where they reaffirm the Tunisian government's supposed commitment to democratic reform and attempt to discredit the genuine NGOs.

LEGAL FRAMEWORK

The Tunisian Constitution of 1 June 1959 guarantees freedom of association and assembly, freedom of expression and opinion, and freedom of the press, under conditions that are defined by law (Art. 8).

Tunisian law distinguishes between the categories 'association' and 'non-governmental organisation' (NGO). While the former refers to regular Tunisian associations, the latter refers to associations active in Tunisia whose activities are international or regional and/or whose founders have multiple citizenship. A number of international organisations, for example, have had their Tunisian branches registered as NGOs. The formation of associations and the carrying out of their activities is codified in the organic law of 7 November 1959, amended in 1988 and 1992 (hereafter the 'Associations Law'). The Associations Law is complemented by the Organic Law of 26 July 1993, which covers the establishment of NGOs (hereafter the 'NGO Law').³

Apart from the Associations Law and the NGO Law, a number of other laws are relevant to free association, as well as to specific segments of civil society. These include the Political Parties Law (1988); the Labour Code (1966), which governs the conditions for the registration and activities of labour unions, professional associations and syndicates; the Press Code of 28 April 1975 (amended in 1988, 1993, 2001 and 2006); and the Anti-Terrorism Law of 10 December 2003, which provides the government with far-reaching powers to limit rights and liberties for the sake of a set of ill-defined criteria that are subject to arbitrary interpretation.⁴

The Associations Law

Registration

Formally, the registration of associations in Tunisia underlies a regime of declaration. This means that when a new association is established, the public authorities must merely be notified (as opposed to a regime of prior authorisation). The founders of a new association must thus deposit an application dossier with the relevant local governor. The requirement that the founders provide the Tunisian national identity card excludes foreign nationals from establishing an association under Tunisian law. Upon submission of the application dossier, the authorities must issue a receipt to the founders (Art 3). In practice, however, the authorities have undermined the legal regime of declaration and de facto condition the registration of associations to prior government consent.

According to the Associations Law, the Minister of the Interior has three months in which he may deny the registration of the association, stating the reasons for his decision in a written notification to the applicants, who may appeal the decision (Art. 5). If, after three months from the submission of the registration dossier to the authorities, the latter have not issued a

formal rejection, the association is considered legally registered and may start developing its activities following the publication of its registration in the official government bulletin (Art. 4). In practice, however, the receipt for the submission of the registration dossier is often not issued, thus leaving the founders without any proof of their application. The non-issuing of the receipt, or even the outright refusal to accept a dossier from a given group or individual, leads to the processing of applications being entirely arbitrary. Due to the absence of proof, unsuccessful applicants are thus stripped of the possibility of taking legal action, in the face of the authorities' passive denial.

Activities

The aims and objectives of the association must not 'be contrary to the law or morality' nor 'disturb public order or damage the integrity of the national territory and the republican order of the state' (Art. 2). Moreover, the activities and objectives of an association must not be political in nature (Art 24). Within this framework, the Associations Law establishes that each association must belong to one of the thematic categories given in the law: women; sports; science; culture and the arts; charity, aid and other social aims; development; friendship; and general (Art. 1). Founders of a new association must indicate the category of their association when registering with the authorities. The thematic scope of the activities of the association are limited to the category under which it is registered. Associations of a general character are freer in the range of their activities, but they must also allow anyone to join as a member. Moreover, the founders and leaders of a general association cannot have any important function within the central organs of a political party.

Funding

According to the law, all legally registered associations may receive public funding (Art. 8). Associations receiving public funding on a regular basis are subject to regular financial control and auditing (Art. 9). As regards foreign funding: since the adoption of the 2003 Anti-Terrorism Law, any funding from abroad needs the involvement of an intermediary resident in Tunisia (Art. 69 of the Anti-Terrorism Law) and –in the case that the intermediary is suspected of having links with a terrorist organisation– the prior authorisation of the Ministry of Finance (Art. 72 of the Anti-Terrorism Law). A copy of the final decision is then forwarded to the Tunisian Central Bank, which serves as a gatekeeper for all bank transfers from abroad and is thus able to block any foreign funding of which the government does not approve. In consequence, Tunisian associations are practically unable to receive any direct funding from abroad, unless it comes in the form of cash in a suitcase. International donors such as the EU, which used to fund NGOs and unions quite extensively, have therefore largely given up trying to support Tunisian rights groups financially, since the Tunisian government has substantially tightened its control over financial movements and is not hesitant in sentencing activists to jail.

Fiscal regime

Associations of a social nature that receive public grants or subsidies on a regular basis are subject to a special fiscal regime, the modalities of which are laid down in a decree of 30 March 1982. The provisions outlined in the decree include a number of control mechanisms but also substantial tax exonerations.

Public utility

The Associations Law foresees the possibility of associations being recognised as having national interest (Art.12-15 of the Associations Law). At the request of the association - and following a proposal by the Minister of the Interior - the relevant administrative authority must

issue a decree which includes the decision to grant or deny the status of having national interest (Art. 12). Associations that obtain this status do not enjoy any particular privileges, although some of their assets are considered public property and grants and donations must be previously authorised by the Ministry of the Interior (Art. 14). Currently there are 87 associations that have been granted this status, most of which are active in the social, cultural and research domains.⁵

Other legal forms

Legal forms under which civil society can be organised other than the form of an association include professional associations, syndicates and NGOs. The provisions for professional associations and syndicates are laid down in articles 242 to 257 of the Labour Code. In order to create a syndicate or union, a registration dossier must be submitted to the local governor. In contrast with the association, the law states that a syndicate is legally registered and obtains legal status from the moment the dossier is submitted to the authorities. The NGO was introduced as a new legal form with the passing of the NGO Law on 26 July 1993. According to Art. 3 of this Law, the detailed provisions to be followed in order to establish an NGO in Tunisia are specified in each case by a decree issued following consultation with the Ministers of the Interior and of Foreign Affairs.

Foreign associations

Foreign associations are defined in the Tunisian Associations Law as follows: 'Associations are considered foreign, no matter the form under which they may be concealed, when they have the characteristics of an association and have their seat abroad'; those which have their seat in Tunisia are also considered foreign if they are 'directed by an executive board of which at least half the members are foreigners' (Article 16). No foreign association may establish a branch in Tunisia, nor exercise its activities on Tunisian soil, without previously having had its statutes cleared by the Minister of the Interior, following consultation with the Minister of Foreign Affairs (Art. 17). The given permission may be temporary, subject to additional conditions, and may be withdrawn at any moment (Art. 19).

Foreign organisations that fall under Tunisian law's definition of an NGO can establish their headquarters or a branch in Tunisia only via a decree issued by the Tunisian authorities following consultation with the Ministers of the Interior and of Foreign Affairs. If permission is granted, the decree specifies the modalities of the establishment as well as of the rights and obligations of the NGO. Foreign associations that set up branches or carry out their activities on Tunisian soil without the permission of the Ministry of the Interior are considered null and void, and the authorities may deploy 'all the appropriate measures to assure the immediate implementation of this decision' (Art. 21). Unless indicated otherwise, foreign associations active in Tunisia must conform to the same provisions as Tunisian associations (Art 18).

Foreign organisations are indeed present in Tunisia, although there are not many of them. They have the legal status of a foreign association, an NGO or an association '*passerelle*' (directed by Tunisians residing abroad or with double nationality). Almost all registered foreign organisations belong to the social domain, a small number being active in the field of human rights.⁶ Many well-known international human rights advocacy organisations have been unable to establish a branch in Tunisia. Amnesty International's regional office is located in Tunis but is not able to work on Tunisia itself.

Dissolution

Any association that is founded in violation of the Associations Law can be declared null and void by court decision (Art.10). Prior to the final judgement, the Ministry of the Interior, stating its reasons, may within eight days close the premises of the association and prevent

its members from meeting, until the pronouncement of the final judgement by the relevant court (Art. 10). According to the Law, in cases of 'extreme urgency and in an attempt not to disturb public order', the Minister of the Interior may, stating the reasons for his decision, order the immediate closure of an association's premises and the suspension of all its activities and meetings. This provisional closure and suspension of activities may not continue for more than fifteen days, but in the absence of a definitive court decision it may be renewed for another fifteen days by order of the president of the competent Court of First Instance.

The Ministry of the Interior may also ask the Court of First Instance to dissolve an association 'when there is a grave violation of the provisions of the Associations Law, when the real objectives, activity or scheming of the association turn out to be against public order and morality, or when the association has an activity of which the objective is of a political nature' (Art. 24). During the dissolution procedure, the Minister of the Interior may at any moment demand the Court to proceed with a provisional closure of the association's premises and a suspension of its activities. The carrying out of these measures is immediate, notwithstanding appeal (Art. 25).

Penalties

Non-compliance with any of the provisions in the Associations Law is punishable with a prison sentence of one to six months or a fine of between 50 and 500 dinars. The same penalties apply to anybody who has helped an illegal association to hold meetings (Art. 29). Anybody who takes part in the direct or indirect reform or maintenance of an association that has been dissolved or declared null and void may be condemned to a prison sentence of one to five years and/or to a fine of between 100 and 1000 dinars (Art. 30). The 'provocation of a crime' caused by the discourse, publications, advertisements or meetings of an association can also lead the director of the association to be condemned to a fine of 10 to 100 dinars and/or a prison sentence of three months to two years (Art. 31).

In a country where the rule of law is as weak as in Tunisia, however, the legal framework can but provide a glimpse of what happens in practice. The legal framework contains important flaws and loopholes which urgently require reform. However, more important are the major obstacles to free association which lie in the way that provisions of the law aimed at safeguarding freedoms and liberties are implemented and enforced in practice, the degree to which legal loopholes are exploited by the state to undermine those rights, and the extent to which citizens are able to use legal resources effectively against such assaults on their rights. In this regard, the practice of Tunisian associations paints a very different picture to the one provided by the law or in Ben Ali's speeches.

KEY OBSTACLES TO FREE ASSOCIATION

In the everyday practice of Tunisian civil rights activism, key obstacles to free association include the extra-legal position of the majority of political civil society; the regime's policy of systematic surveillance and harassment of activists, the opposition and other critics; the tight governmental control over the media and telecommunication channels; and the regime's persistent policy of repression towards Islamists of any current, thus dividing society along the lines of Islamists and Secularists.

The extra-legal position of political civil society

The arbitrary way in which registration is denied to associations, putting constraints on them that seriously affect their ability to function, is rooted in both the legal provisions and their application in practice.

In practice, any grouping that is not in line with the ideas of the regime is excluded from legal registration. In most cases they do not receive a receipt upon submission of the registration dossier and never hear from the authorities again. Still, they cannot consider

themselves legally registered (after a period of three months' silence from the authorities, as is stated in the law) because they have no proof of having submitted their dossier in the first place and thus remain legally unfounded (e.g. the Association for the Defense of Secularism). In other cases, the civil servant or governor in charge not only fails to issue written proof of the submission but refuses to accept dossiers from certain groups or individuals from the outset. Activists have even mentioned cases of applicants being prevented from entering the Ministry of the Interior building when they come to submit their dossier, and of local governors turning around and going home when they see applicants from a politically controversial group waiting in front of their office. Contrary to the claims of officials, the non-issuing of a receipt is not the exception but the rule: the first time a Tunisian NGO ever received a receipt upon submission of its dossier was in 2004 (the International Association for the Support to Political Prisoners).

The advantage to the authorities of not issuing a formal rejection is above all that they effectively block the group's freedom to operate whilst at the same time avoiding leaving traces of repression. In some cases receipts were issued, but the group eventually received a letter of refusal of registration from the Ministry of the Interior. When operating in a system characterised by a separation of powers, the judiciary should be in charge of reviewing the application dossier to ensure its compliance with the law. According to Tunisian legislation, however, it is the Ministry of the Interior that is responsible for reviewing applications and it retains all decision-making power on matters concerning the registration and activities of associations. With an official rejection letter in their hands, applicants may attempt to appeal against the decision, but in practice the courts do not pursue such matters, and the process therefore stalls. The criteria for rejection in the law are so broad that any grouping that does not please the regime can be easily denied registration. In practice, all legal associations and NGOs need the blessing of the government and control over them is thus assured (for example, by placing an MP or another member of the ruling party on the board).

The main consequences of being denied legal registration (by inaction or explicit rejection) are that the association does not have the status of a legal person and thus cannot maintain premises, employ personnel, receive public funding, participate in certain international non-governmental platforms or networking mechanisms. Moreover, the activities of the association and its members will be systematically blocked, via permanent and systematic control, surveillance and various forms of harassment. The regime thus has a divide-and-rule approach; it tries to split up and therefore weaken civil society. The last truly independent association active in the fields of human rights and civil liberties to have obtained legal recognition was the Tunisian Association of Democratic Women in 1989. Those associations that are allowed to obtain legal registration, by contrast, are *de facto* forced to give up their independence, to submit to the will of the authorities - and even implement their policies in order to be left alone. Aside from providing legitimacy to the regime, the legal associative sector is assigned special tasks. Non-independent associations thus support the elections and laws, use the language of human rights as provided by the authorities, and confirm that equality, human rights and democracy exist in modern Tunisia. Indeed, the foundation of non-independent, i.e. non-threatening, associations is being encouraged by the authorities. The rising number of registered associations allows them to keep up the façade that there is a vivid civil society in the country.

Another deliberate legal obstacle is the requirement for associations to choose a thematic category for their activities upon registration. If the association or its members go on to engage in any activity that does not fit into the chosen category, they are therefore breaking the law and can be shut down. Tunisian legal experts affirm that this ranking of associations on the basis of their thematic focus not only violates the underlying principles of free association but is also against the Constitution, as well as being against the norms of International Law.

Practically all associations that work on issues with political implications are denied legal registration. A notable exception is the Tunisian League for Human Rights, a well-established

human rights institution that is based in Tunis and also has local branches all over the country. The oldest organisation of its kind in the Arab world, the League was founded in 1970 and thus existed before the current Tunisian regime. It is very well-known, well-connected internationally and is widely respected, both by the Tunisian people and abroad. Under the present government, however, the League has fallen from grace and in recent years has been subject to increasingly open confrontation and attempts by the regime to sabotage its ability to function and to suffocate the organisation as a whole. Whilst the League's domestic and international backing prevents the regime from shutting it down, the government is going a long way effectively to block the organisation's activities.

The League used to enjoy relatively fruitful relations with the authorities, but, according to some of the League's members, as Islamists came to be in the ascendant the regime became more closed, thereby prejudicing both the League and civil society as a whole. Members say the organisation has since resisted all attempts to co-opt it but that the government is now trying to 'suffocate the League little by little' and block all the League's funding. Due to such constraints, members say, the organisation urgently needs to hold its general congress in order to find solutions, but the government is preventing it from doing so. Since it is registered as a 'general' association, the League is obliged to accept members of the RCD and the government as members. In 2000, the League held its general congress and elected a new executive bureau, but the members who belong to the *pouvoir* (the ruling elite and its clientelist entourage) were not elected to it. Since then, members say, the government has successfully blocked the League's efforts to hold its congress, with the help of the judiciary, which issued a ruling that annulled the rental contract for the congress venue. The judgment stated that the landlady had not been in possession of her full mental capacities and her signature on the rental contract was therefore null and void. International observers have also come to support the organisation's right to hold its congress, but to no avail. When asked about the League, the RCD's Secretary General, Mohamed Gheriani, says that, just like anybody else, RCD members have the right to run for the board of an association, and that the current difficulties that the League faces with its congress and its operations are not due to government interference but rather to the League's own internal squabbles.

The situation as regards political parties is no better than with associations. The formation of new political parties is subject to similar constraints as the foundation of associations (applicants submit the dossier but never get a receipt and are thus devoid of legal resources). Apart from the ruling RCD, there are 8 legally registered opposition parties, 6 of which are represented in the parliament. The electoral code states that 80 percent of the seats in parliament go to directly-elected candidates, whilst the remaining 20 percent (25 percent, from the 2009 elections on) are to be distributed in proportion to their electoral results amongst parties that have been unsuccessful overall. In practice this means that 80 percent of the seats go to the ruling RCD and 20 percent to the opposition, since an opposition candidate has practically no chance of winning a local constituency. A side effect of this provision is that it encourages opposition candidates to present themselves in as many constituencies as possible, in order to have the slightest chance of getting into parliament. This again creates a sense of competition, which is not conducive to partnership between opposition parties and –by design, opposition politicians say– fosters domestic divisions.

The registration of a new political party is rare, and is usually the result of many years of informal negotiations. There are many de facto political parties that have long asked to be legalised but without success. Some observers in Tunisia say the regime only legalises elitist parties and parties with a niche programme. Islamist and leftist parties are the ones which the current politicians would be least inclined to legalise. International pressure, they say, helps parties to get legal recognition, as in the case of the Forum Party, which was legalised following pressure from the French government. The last party to have gained legal status was the Green Party (in 2006). Legal opposition parties are the leftist Attajdid, the Democratic Progressive Party (PDP), the Forum Party, the Social Liberal Party (PSL), the

Unionist Democratic Union (UDU), the Party of Popular Unity (PUP), the Movement of Socialist Democrats (MDS) and the Green Party.

Opposition party representatives are sure that it is Ben Ali himself who decides on the legalisation of political parties. Members of both legalised and non-legalised parties agree that the regime's aim of keeping the opposition legal is to project its democratic image, but the government's message to them upon registration is clear: 'you are being legalised so we can talk about pluralism, but the condition is that you stay on the margin and play by our rules'. Those parties who are not legally recognised face many limitations, including being denied their own premises or the use of public space, and having cases filed against people who ask to join them. But even after legalisation, all parties other than the ruling party have very limited space in which to operate and are subject to constant harassment and attempts to put obstacles in their way. Thus they end up facing similar pressures to those parties that are not legally recognised. For most non-registered parties legal recognition is an objective, although their extra-legal situation does not prevent them from being active ('we are gouging into the public space little by little').

The electoral framework is hardly conducive to the holding of free and fair elections. Citizens eligible to vote have to register in order to be able to do so, but in practice the authorities often deny them the registration card required to cast their vote. There is no electoral commission in Tunisia,⁷ in spite of the fact that the opposition has been demanding this for years. Polling station personnel are not chosen by the community but by the ruling party. Legally, the distribution of parliamentary quota seats among the opposition is based on a proportional distribution, in line with the election results attained by each party. In practice, opposition politicians say, it is a purely arbitrary decision of the *pouvoir*, led by nepotistic considerations. Accordingly, they choose not only the parties but even the individual MPs. In fact there are no real 'elections', since the results are decided in advance.

All this means that political parties have to make a strategic choice: either they must integrate with the system and play by the regime's rules, or choose the '*voie publique*'. Differences in strategic choices thus account for a great deal of disunity among opposition parties, with some accusing others of co-optation, or of assuming ambiguous stances in order to maintain their seat in parliament (which requires them to retain the sympathy not of the voters, but of the RCD), with all the advantages this entails (including public financing, official premises and well-distributed party journals). Extra-parliamentary opposition parties do not receive any public funding and must subsist on membership fees and private donations. Most legalised parties try to stay within the law, in spite of all its limitations, and stay clear of provocation. Some opposition politicians point out that the way opposition parties are being treated by the regime has developed over the last decades: once they were all treated like political dissidents and now they are at least treated like a political party. However, others note a deterioration even in the way elections have been handled by the current regime. In 1981, they say, the rulers burned the ballot papers in front of opposition politicians' eyes, now they do not even look at the ballots before distributing the seats. Most opposition parties say they know they cannot win the elections, but that they participate due to their belief in the Tunisian people's right to choose and the latter's demand for an alternation of power. They also claim that they hope their participation will encourage others to participate, and that they want to make a contribution to generating alternatives and 'providing ideas for the post-dictatorship era'.

For the upcoming 2009 presidential elections, four opposition parties have fielded candidates: Attajdid, the PDP, the Forum Party and the PUP. A recent amendment to the electoral code will, however, prevent Nejib Chebbi - chairman and presidential candidate of the PDP - from running. The amendment stipulated that only the elected secretaries generals of legal parties, who had held the office for a minimum of two years, could be designated as presidential candidates. The PDP believes the amendment was purposely designed to prevent Mr. Chebbi's candidature but decided to proclaim him candidate anyway, in order to create a symbol of the people's right to freely choose their representatives. There is broad

consensus among opposition parties that amendments to the electoral code during the last years have been tailor-made by the ruling party in order to block specific people or groups.

Unions and syndicates are increasingly attempting to regain their independence. The trade union sector is currently being dynamised. There are more and more strikes and an ever greater degree of political contestation, to an extent which is increasingly scaring the regime, according to activists. Likewise, many of the professional associations have been trying to recover their autonomy. Even the highly regime-dependent judiciary has tried to do so, by attempting to vote for independent representation for judges in free and fair elections (although the democratically-elected board of judges was eventually replaced by the government, and its members systematically harassed). There is a social movement emerging around the workers' unions, towards which public opinion is very favourable. The single Unions Federation, the Tunisian General Union of Labor (UGTT), is very strong. As a potential mass force, workers' strikes have a much greater weight than protests organised by NGOs. The UGTT tries to control the strikes and make sure everything keeps within certain margins.

Systematic harassment

In order to keep civil society at bay and to tear out dissent at the root, the government takes an approach of systematic harassment and constant surveillance, in which activists and their families are fully exposed to the arbitrary will of the authorities and the security services. Human rights activists are exposed to this just as routinely as opposition politicians, union leaders, journalists, lawyers, judges - indeed, anyone who gives the regime reason to assume that they do not back away from criticising it. Such broad surveillance over the whole population requires a large labour force and the Tunisian Ministry of the Interior accordingly maintains a police force of 130,000 people, who are responsible for 10 million inhabitants (France, for example, has 160,000 policemen for 90 million inhabitants). The police's mandate is not publicly available and thus appears to be a state secret. The Ministry of the Interior also maintains an informal network of plainclothes policemen (or *flics*), reportedly hired specifically for the purpose of political surveillance. These are commonly referred to by Tunisians as the 'political police'.

The main rationale behind the policy of systematic surveillance and harassment, Tunisian observers say, is to demonstrate the overwhelming power of the state and to intimidate people by making them feel that every step they take will be monitored and that any minor transgression will be punished. The regime thus relies for its own safety and survival on fear among the people, which it tries to instil and exploit on a daily basis. The personal price to pay for acts of rebellion must be kept so high that people are dissuaded from engaging in them. This logic works, too; activists complain of apathy among the population. Most people try to stay clear of politics because they are afraid and prefer to be left alone rather than to risk their neck in a fight they are sure to lose.

Every citizen is said to be documented in an unofficial personal record file, which Tunisians jestingly call 'Bulletin no.2' (in reference to 'Bulletin no.3', the official personal record that Tunisian citizens need to present in order to be employed, among other reasons). This secret personal file, activists say, is consulted whenever the government needs to verify someone's regime alignment (for example, when somebody wants to work for the government). The record is easily compiled.

The most obvious expression of the regime's policy of harassment is the constant surveillance by the plainclothes security agents that are omnipresent, and who follow key activists and opposition figures wherever they go. Surveillance and harassment have become such a common occurrence in Tunisia that civil society activists already know 'their' *flics* individually. The way in which these agents do not even attempt to hide, but rather act in a very obvious manner and even nod or talk to their targets, shows that the aim of this policy is

not primarily reconnaissance but intimidation. Civil society in Tunisia carries a heavy burden, in the knowledge that - with the exception of completely private conversations - nothing can remain a secret and that, potentially, "they" see and know everything'.

The rental and maintenance of premises always presents a lot of difficulties, and the shutting down and/or barricading of the premises of NGOs or political parties is a common way to prevent such groups from effectively functioning. In this regard, the police do not in principle differentiate between legal or illegal organisations. The police routinely block visitors from entering the offices of even the legal political parties, for example, by holding people back in the entrance and telling them that as non-members they are not allowed to enter. The Tunisian League for Human Rights is able to meet as a Central Committee but all of its fourteen local offices across the country have been closed and sealed by the police, and its central premises in Tunis are constantly surrounded by twelve security officers. League activists calculate that every day there are two hundred *flics* alone who are deployed in branches of the League. In other cases, landlords are being threatened into denying or cancelling rental contracts with the NGO or party in question, often under dubious excuses. One leftist opposition politician said his party was lucky that his landlord belonged to a religious minority because it meant that the regime left him alone, since they could not put him under pressure without a loss of face. In 2005, two leaders of the legal PDP opposition party carried out a hunger strike lasting one month, in order to press the regime to refrain from closing down their offices. The incident was well-publicised by international broadcasting chains and was eventually successful, as the government gave in to the PDP's demands and left their premises open.

By a similar token, associations and political parties are often prevented from holding meetings, congresses and rallies. As was mentioned previously, the Tunisian League for Human Rights has been unable to hold its general congress since 2000, in spite of various attempts to do so and substantial international advocacy. Other groups, such as the National Council for Liberties in Tunisia (CNLT), have chosen to hold their general assembly abroad. With the exception of the two weeks before general and presidential elections, political parties are not allowed to hold rallies or engage in any sort of public campaigning. If they try to book a venue in a hotel, they find that it has been fully-booked years in advance, or the prices are skyrocketing, or the electricity has suddenly broken down. Even the legally-recognised parties are almost as unlikely to be able to hold an annual congress (which must be cleared by the authorities, and thus encounters the usual problem of not getting a receipt). Most civil society representatives also report being systematically prevented from gathering if they are more than a handful, even in a private house, otherwise the police are likely to enter the building and dissolve the meeting. Some activists are on such bad terms with the government that they are not allowed to receive any visits at their home or office, or they are prevented from leaving their house to go to a specific event. People who attend events, visitors and other supporters are often questioned regarding their identity, their relation with the group in question and their family. Even the leaders of legal parties note that their number of members is just a fraction of their actual supporters, given that anyone opting for official membership 'must have a lot of courage'. Under such conditions, civil society is being deprived of practically all possibility of efficiently engaging in networking and strategic planning.

Many activists have their workplace transferred to the province, or are barred from travelling. While in theory every Tunisian citizen is entitled to a passport, the ID papers of individuals considered disagreeable are routinely confiscated. Alternatively, renewal after they expire is often denied, which effectively prevents these citizens from travelling abroad. On the other hand, some people are forced to travel or commute. For example, several judges - democratically elected members of the Board of the Judges Association who had planned to introduce some major internal reforms - were replaced and eventually transferred to courts several hundred kilometres away from their home town. In another example, the son of a human rights activist working on torture was suddenly transferred to a school in a town hundreds of kilometres away from his parents' house.

Often it is not political but economic pressure that is meant to make an individual compliant. A judge and member of the Tunis-based International Association for the Support to Political Prisoners (AISSP), who had been the first to publish an article about solitary confinement in Tunisia, was beaten up in the street and then the hotel owned by his family was closed by an administrative decision. Eventually he had to stop working as a judge, and his family has hardly enough to live on. This example also illustrates how the *pouvoir* operates not only through economic pressure but through physical attacks as well.

Since 2000, the regime has increasingly employed legal forms of harassment, via the judiciary (rather than the police), in order to keep control over dissent. According to human rights activists, the judiciary is totally controlled by the government and issues political decisions in a judicial wrapping. Instead of being accused of political activity, activists find themselves charged with all kinds of illegal but non-political activities. One presidential candidate for an opposition party reported that currently he has no less than twelve cases against him pending. Financial irregularities and drug charges are common ways of silencing uncomfortable individuals. In 2008, a critical journalist was convicted on drug charges while protesting his innocence. Incidentally, whilst convicting secular activists on grounds of terrorism is unpopular, doing the same with Islamists is an easier task for the regime, since harsh measures against Islamists sell well on the international market.

Political engagement also has serious professional consequences for many activists. For example, one lawyer reported that the *flics* contact and threaten her clients and tell them not to work with her, at the same time manhandling them in front of the lawyer's offices and preventing them from entering. By harassing the lawyer's clients and telling them their cases are lost if they work with a lawyer who has fallen from grace with the government, they have succeeded in substantially reducing her stock of clients. In a similar way, the authorities engage in systematic defamation and slander, which activists say is intended to harm political activists' reputation and income. The official website of the Ministry of the Interior publishes defamations against a number of individual human rights defenders, that usually have very little to do with their actual activity (for example, the site claimed that a prominent female activist working on torture was illegally trafficking cosmetics from Italy).

Arrests and interrogations in the ministries and in police stations are among the standard measures used to intimidate activists, their families and their supporters. According to the AISSP there are currently about 1,300 convicted political prisoners in Tunisian prisons. After the release of most of the en-Nahda prisoners on 7 November 2008, the majority of political prisoners are mainly unionists and young men with an Islamist leaning. Activists agree that an amnesty for all political prisoners is among the preconditions for any process of democratisation. The security forces are also increasingly overpowering when it comes to the growing number of social uprisings. Recent peaceful strikes among students, for example, were clamped down upon by hundreds of policemen. Rights activists reported this to the UN Human Rights Council, but the Minister of Justice claimed that these were only isolated cases, in which police had to be deployed to maintain public order.

Indeed, harassment is by no means limited to psychological techniques; human rights defenders report that physical assaults and torture are an integral and even common part of the picture. A number of activists report of being assaulted and beaten up in the street by police or security officers, in reaction to activities that crossed a line with the regime. These included the public denunciation of torture and solitary confinement, or giving critical interviews to international broadcasting chains. Whoever gets beaten up by *flics* in the street has no legal means of bringing the perpetrators to justice because they have no physical proof, and even if they do, the judiciary is likely to drop the case. There have been no judgments on torture cases so far.

Tunisians who have too much contact with foreigners - in particular with pressure groups and government representatives - are subject to reinforced harassment and attempts at intimidation. Indeed, the press often states that too much contact with foreigners is to be avoided. Also the foreigners themselves, even diplomats and politicians, are not exempt

from systematic harassment. To show they are present, security agents get physically close to foreign visitors who take an interest in Tunisian domestic politics, and also take other measures in order to scare them. On occasion this has included physical attacks - on journalists, for instance, and even on a member of the European Parliament. Just before the World Information Summit was held in Tunis in 2005, a journalist from the French paper *Libération* was attacked with a knife at a demonstration. The journalist filed a case but there was no follow-up by the Tunisian courts, and eventually, the case was dropped. In May 2006, a delegation of foreign observers including EUMP H  lene Flautre and some prominent international activists were attacked in the street by security agents. In 1999, the UN Special Rapporteur for Freedom of Expression was invited to visit the country. This was the only time any Special Rapporteur has ever been invited (he was a friend of the Tunisian Ambassador at the UN). When the man wanted to visit some illegal organisations, however, the *flics* actually denied him access to the building. The Rapporteur left horrified, reportedly saying he had never seen or experienced anything like that.

The consequences of systematic harassment for Tunisian political life are far-reaching. Tunisians must live with the permanent sensation of being followed and observed. In consequence, people develop an outright paranoia and they think twice before engaging in 'subversive activities'. Self-censorship and anticipatory obedience grow naturally. Moreover, during the last few years, the personalisation of power has grown even stronger. Today, Ben Ali's picture is hanging in every barber shop.

Control of the media and telecommunications

Tunisia routinely figures at the bottom of international rankings of press freedom and freedom of expression. With only a few exceptions, the media landscape is totally controlled by the government, hence it is very difficult to obtain remotely objective information about the situation in the country. Journalists are potentially subject to the same harassment as political and human rights activists when they go beyond the narrow boundaries set down for them by Ben Ali's regime. Red lines that should not be crossed include, for example, reports about President Ben Ali and his family, including the various scandals that involve them, but also positive comments on Islamists. Reports about democracy and human rights, and even mild criticisms of the government in this regard, are not automatically problematic –as long as they are couched in very general language– as they often serve the regime's PR of pluralism.

Of all the authoritarian regimes in the region, the Tunisian authorities have acquired the greatest notoriety for their far-reaching efforts and sophistication in systematically blocking and controlling unwanted internet content. Specific sites such as Facebook and YouTube are sometimes fully, partially or temporarily blocked to users trying to access them from within Tunisia. The Tunisian Internet Agency (ATI) at the Ministry of Communications is in charge of centrally-controlled internet surveillance. This task is facilitated by the fact that the ATI is also the central internet service provider, through which almost all other Tunisian providers are channelled. This enables the agency to control practically the whole network, including not only websites but also e-mails. E-mail accounts of suspicious individuals are monitored just as routinely as e-mail exchanges with users abroad.

Tunisian activists have therefore got used to asking for confirmation of receipt when sending an email, or using a number of different email addresses for different purposes. People help each other by passing on downloaded proxies that conceal the identity of the user on the internet, thereby preventing emails from being monitored –that is, until the ATI has tracked and disabled the proxy and a new one has to be found. In spite of the increasing sophistication of internet surveillance, rights NGOs maintain websites and publish their articles and news on the internet, and many of them stubbornly create a new site anytime the previous one gets blocked. Under these conditions, however, fluent communication among and with Tunisian activists –both by email and via websites– is becoming increasingly difficult.

Public and private broadcasting media are almost entirely controlled by the state. A notable exception has been the radio station Kalima, which has gained a reputation for its outstanding attempt to provide 'real' information, that is, information untainted by state interference. While Kalima only functioned as a radio station it was tolerated by the government, but when it was about to start broadcasting via satellite the police stormed Kalima's premises, taking away computers and documents. Today, however, Kalima is still able to broadcast a one-hour programme that is repeated five times daily and is sent by satellite from technicians in Italy –beyond the reach of the Tunisian authorities. Kalima journalists work in a largely *ad hoc* manner. For example, they are conducting interviews over Skype which, they believe, the ATI is still unable to control. As the station's premises remain closed and journalists have been denied internet access at their home and offices, they go to a public cybercafé and do their work in a corner. Kalima journalists argue that on the one hand they have become good at improvising, but on the other they struggle to maintain the level of professionalism required for thorough reporting.

However, in spite of its popularity among listeners, many people are afraid to support Kalima openly. The phone numbers of Kalima staff are widely known so many people call them up to share information. But Kalima staff report that when they tried to distribute papers with their radio frequency on the streets of Tunis, many people refused them out of fear. Most print media have never published Kalima's frequency, including opposition party organs. Producing the programme itself only costs about €1,000 a month, which is being provided by an NGO from Qatar. Indeed, Kalima staff are confident about the future of their programme. Even if the government infiltrates their network, they say that they have little to hide because it is all on their radio programme. In one instance, the government successfully bribed a journalist working for Kalima who came from a very poor background, and who then wrote articles critical of the programme. Kalima has been doing pioneering work in the Tunisian media landscape. Partly in order to counter-balance Kalima's appeal, and above all the influence of Islamist satellite networks, the government has now set up its own radio station - the religious but pro-governmental channel Zeytouna.

With regard to print media, there are three kinds of newspapers in Tunisia: pro-government papers, private papers, or the journals of political parties. The state has a direct grip on all three, to varying degrees. While the private papers are somewhat freer in their editorial line, they also depend on advertisements for their survival. These are *de facto* controlled by the government. The regime, editors say, 'opens and closes the tap as it wants'. As a result, there are no outlets that can be considered totally independent. The law states that legal opposition papers are to receive state subsidies. Most other private outlets, however, depend on advertisements and sales for their survival. According to editors, those papers that do get subsidies are from time to time called up by the authorities and asked to publish on specific topics. In relative terms, some papers such as *Le Temps* and *Sabah* are slightly more straightforward than others. The journal *L'Expression* was also considered relatively independent until a few months ago, when its editor was sacked and replaced by an RCD member.

The print media have a comparatively small readership. In spite of this, every issue is carefully screened and blocked if necessary. Single issues of papers do not require prior authorisation to be published, but in practice, editors report that the *flics* go to the printers to read every issue before they hit the kiosks and some issues are banned from distribution. Alternatively, very few copies are sent on to the sellers so that the paper is sold out immediately, or the kiosk sellers are given instructions not to openly display the paper in question, so that people need to ask for it. For example, an issue of the opposition party journal *Attariq al-Jadid* was recently blocked because it published an article containing the minutes of a trial of a leader of the Gafsa events, which - according to the Ministry of the Interior - risked 'disturbing public order'. The paper appealed the decision but received no reply from the court. Editors say the *pouvoir* decides beforehand the maximum number of copies that a paper will be allowed to sell, but there nevertheless remains a 'democratic minimum' of

copies that must be published in order to prove that the journal exists. There are two kinds of distribution companies for opposition papers with a nation-wide distribution: a private distribution company (in which the state can easily intervene) or the central governmental distributor Sotupress, which has a monopoly in Tunis. Local papers, by contrast, have their own distributors and can escape state intervention more easily.

There are two main professional associations for journalists: the Tunisian Journalists Association, which has been in existence for over four decades, and the Tunisian Journalists Syndicate, which was founded in 2008. The two organisations differ, above all in their approach towards the regime, with the Association voicing more direct criticism whilst the Syndicate sees itself rather as a mediator that tries to 'build bridges and enter into dialogue' with the authorities, thus rejecting what they call a 'confrontational approach'. The Journalist Association's publication of a very critical report on the situation in the Tunisian media made the organisation fall from grace with the authorities, who have now broken all ties with it. The Syndicate also seeks to promote freedom of expression and of the press, but always moves within the boundaries of Tunisian law, in order to avoid conflicts with the authorities. Both associations are internationally connected and are members of global press networks such as the International Journalists Federation and the Arab Journalists Association. Relations with and support from international actors are deemed highly important to give the associations protection against regime clampdowns. In spite of their differing approach, however, both organisations agree that the press in Tunisia mainly serves to distribute government propaganda, rather than constituting an information service for citizens. Both note that journalists have hardly any opportunities to spread objective information about democracy and human rights in the country and have been under increasing pressure over the past few years.

Not surprisingly, the role of the media during electoral campaigning is largely that of a state propaganda apparatus. Opposition politicians claim that they have not appeared on TV for decades (except in photographs on screen, accompanied by texts stating what they allegedly have to say on social, health or employment issues). As a result, some opposition presidential candidates complain that people hardly even know their faces. Others note, however, that in spite of their inability to campaign openly, not one day passes without people approaching them in the street to greet and encourage them.

Throughout most of the year, public rallies, the distribution of party programmes or advertising are forbidden, and young party activists have in the past been sent to prison for several years just for putting up posters of a legally registered opposition party on their university campus. With international attention focused on Tunisia, campaign time is exceptional. The two weeks in the run-up to the elections, during which international networks report extensively from Tunis, are a short window in which the government strategically provides a 'break' from its usual grip on political opposition. For two weeks, people have slightly more freedom to move around and discuss issues, and opposition parties are even allowed to hold rallies, distribute programmes and put up posters in the street. Once the election is over, however, all goes back to normal.

During the 2004 legislative and presidential elections, every candidate had the right - according to the electoral law - to appear for a given period of time on TV and radio (five minutes for the head of each list running for parliament, and two hours for presidential candidates). In practice, however, the contributions of each candidate were screened and modified by the authorities before being put on the air, and were broadcast at the times of day when viewing figures are at their lowest, such as at night or during the rush hour. In the upcoming 2009 elections, not even this will take place, as the electoral code has now been amended. According to opposition candidates, a further amendment to the electoral law is about to be passed that will install pre-censorship for presidential candidates' speeches by the Higher Council of Communication, without any clear criteria being established. Except for five members originating from political parties, the members of this body are all directly appointed by the president. Presidential candidates may appeal against this decision

but have no realistic chance of judicial follow up. In preparation for the 2009 presidential elections, all papers were full of long lists of organisations that collectively pleaded with President Ben Ali to run again as a candidate - a demand which he mercifully accepted in a well-publicised public announcement.

Given the impossibility of campaigning on Tunisian media outlets, opposition parties increasingly count on new media and international satellite TV networks as a means of campaigning. International TV channels offer positive opportunities for opposition parties to become known to a wider audience and to speak relatively openly about the situation in Tunisia. International networks such as Al Jazeera, BBC and France 24 have covered opposition parties' campaigns. Opposition candidates stress that this coverage, in addition to reaching people in Tunisia and abroad, provides them with an important cover against the actions of the Tunisian regime. However, correspondents of international channels also need the government's approval to get accreditation in Tunisia and many (the latest example being the correspondent of Al Jazeera) have been in serious trouble with the government and have been expelled from the country. Moreover, the electoral code forbids Tunisians from giving any electoral recommendations on foreign TV or radio during the election campaign.

Anti-Islamist policies

The 2003 Anti-Terrorism Law gives the authorities broad powers to clamp down on almost anyone for breaching 'national security'. However, the regime has used the Law almost exclusively against Islamists. The main reason for this is that jailing secular human rights activists on unproven terrorism charges is not popular with Tunisia's international partners, whereas the latter do not object to the jailing of Islamists on the same grounds. Until recently, most political prisoners were members of en-Nahda, Tunisia's largest and most influential Islamist movement. Since the release of the Nahda prisoners in late 2008, however, the majority of political prisoners have been young people with an Islamist leaning, often accused of illegal internet activities (such as critical blogging or visiting jihadist websites). Defending Islamism is among the biggest taboos in Tunisian public life, and the regime is ready to clamp down ruthlessly on anyone, be they Islamist or secular, who even broaches the issue. There is real fear amongst the population that lending even five dinars to an Islamist could eventually lead to prosecution for supporting an illegal organisation. Most importantly, however, political activists of all colours agree that the regime is successfully using the Islamist terrorist threat as a way of blocking democratisation.

The RCD's policy of repressing and excluding Islamists is widely considered a main reason for increasing youth radicalisation. Like most countries in the region, Tunisia hosts different currents of Islamism, ranging from moderate, non-violent reformers to radical, militant Salafists. But instead of prosecuting radicals and empowering moderates, the government sticks with its approach of confronting all Islamist tendencies alike. Selling all Islamists as potential terrorists has provided the regime with a convenient pretext for its tight grip on society as a whole and forms part of its international PR. Like other authoritarian rulers in the region, Ben Ali has successfully convinced his international counterparts that if he were not in power, radical Islamists would take over –an idea that still serves to erase all European doubts. Accordingly, the Tunisian regime does not look favourably on the recent alliances between secular and moderate Islamist currents which, reputedly inspired by the Egyptian Kefaya movement, aim to promote their common aim of a shared political project for democratic reform. Unlike Bourguiba - observers say -, Ben Ali is a clever strategist who has succeeded in breaking up civil society and political parties through his policy of divide and rule. Recognising moderate Islamists as legitimate societal actors presents the regime with a number of fundamental dilemmas, since its own illegitimate grip on power is not compatible with the empowerment of a potential competitor, and at the same time erases one of the major tools the regime uses to keep this competitor under control while keeping

domestic and international criticisms at bay. So far the strategy of repression has worked well because it is easier to maintain and is perceived by the regime as less risky than a tiresome cohabitation. Moreover, there has not been any significant pressure on the regime to end its blunt repression of Islamists. This is slowly changing though as US and European governments increasingly view moderate Islamists as interesting interlocutors.

However, the government's traditional harshly secular approach towards the role of Islam in society has lately been undergoing some changes. From the early 1990s, the leadership of en-Nahda was jailed, its remaining members persecuted and its structures dismantled. Part of the leadership under Sheikh Gannouchi is still active whilst in exile in London. Over the years, en-Nahda underwent a process of moderation, rejected violence and turned to advocating participation in politics. With harsh repression and jailed Nahda leaders becoming an increasingly embarrassing issue for the Tunisian regime internationally, the government decided to release all Nahda prisoners (although one was almost immediately returned to jail). On the other hand, the general trend in the region towards a revival in practising Islam can also be observed in Tunisia (for example, the share of women wearing headscarves has risen noticeably in recent years), as the regime increasingly seeks to use religion in order to bolster its own position. With the structures of formerly powerful Islamist movements being largely dismantled, the regime attempts to benefit from the rise of 'popular Islam'. While maintaining its officially secular stance, many observers believe that the regime has now embarked on a new strategy to 'Islamicise society', but in the way that it chooses. While the strategic use of religion to bolster the government is not new in itself (for example, Tunisian Imams are obliged to praise Ben Ali in their sermons), it is now being done in a much broader and more systematic way.

By means of Ben Ali's son-in-law Sakhr El Matri, the regime has set up the aforementioned religious radio station Zeytouna (olive, after the famous mosque of Tunis). Thanks to heavy government promotion and support, radio Zeytouna has quickly turned into one of the most popular radio stations in Tunisia. Essentially, the station was set up to prevent people from watching Islamic satellite channels to counterbalance Islamist influence. It marks a turnaround in strategy by the regime, following the introduction of satellite TV in Tunisia three years ago. Other examples of the government's new strategy include the opening of Qur'an schools in the wealthy quarters of Tunis ('to capture the bourgeoisie', activists say), and the establishment of an Islamic Bank. Increasing influence from the Gulf also plays an important role, as the share of Gulf investment in Tunisia is sharply rising and some Gulf businessmen make their investment conditional on the improvement of the 'negative, un-Islamic image' of modern Tunisia. Here, too, Ben Ali's son-in-law plays an increasingly influential role as the 'man from the Gulf'.

In spite of the government's recent Islamisation efforts, however, confrontation between Islamists and secularists continues, albeit in a more subtle manner. While the Tunisian government is under increasing international pressure to legalise en-Nahda and other moderate Islamist movements, this is not likely to happen in the foreseeable future. By trying to employ a more religious discourse, the regime also aims to outrun the Islamists, by providing its own interpretation of popular Islam. The government's new discourse –which typically consists of very general moral statements about Islam being a faith of tolerance, love and peace– is well received by the population, and stands in stark contrast to both the anti-Islamic discourse of the Bourguiba regime and to Western discourse, which is often perceived as Islamophobic. With its new strategy that combines pro-Islamic and anti-Islamist elements, the government tries to display an overall attitude that is pro-religious but modern at the same time.

STATE – CIVIL SOCIETY RELATIONS

The need to develop and strengthen civil society has been stressed by Ben Ali on numerous occasions and is nominally an important element in government policy and public discourse. Indeed, the government cooperates with civil society organisations in many instances. A

number of measures have been adopted to foster the emergence of new associations and civil society networks. Government activities in this regard include the creation of a national day of associations and the establishment of a microcredit financing system from which new associations not entitled to public funding can benefit. In 2000, the Centre for Information, Training, Studies and Documentation on Associations (IFEDA) was created by decree as an 'observatory' for the association sector and an administrator of public grants to associations. Several ministries have partnerships with associations, and civil society has increasingly been providing support for services in the fields of social work, education, youth, women, sports and the environment.⁸ Crucially, however, rights activists say that such types of support and cooperation are largely aimed at empowering GONGOs and encouraging associations working on apolitical social and development issues, but exclude independent associations which are active in the field of democracy and human rights.

In contrast to the majority of civil society associations that are active in the social and cultural fields, the relationship between political civil society (including human rights associations and political parties) and the state is extremely strained. Tunisian rights activists cynically point out that in reality, the main state interlocutors for associations and political parties are the police who follow and harass them on a daily basis. Many political activists and organisations would like to engage in dialogue with the regime over issues of political reform and human rights. But at present the government shows no inclination even to talk to independent civil society, let alone engage in any kind of regular consultation. No exception to this are the *Conseils Supérieures* that are organised by each ministry (except for those of International Affairs, Defence, the Interior and Justice) in their respective policy area. Each *Conseil* meets once a year behind closed doors and includes the parties represented in parliament. The output consists of a report of which all participants get a copy (and to which opposition parties contribute about five lines). The associative sector is excluded from these Council meetings, and their practical significance is negligible. Negotiations over registration and other issues concerning associations nevertheless take place informally, wherever people have personal contacts in the government. For example, one opposition politician talked over his party's failed attempts to register over a coffee with a former classmate, who happened to be a minister in government. But beyond this ad hoc and personalist approach, no other dialogue between the two sides, let alone institutionalised consultation, is taking place. This is all the more astonishing since wider Tunisian civil society is highly moderate and does not seek to organise a revolution, so the regime could establish dialogue, thus demonstrating inclusion, with little risk to its own prospects.

The Tunisian League for Human Rights, which at a theoretical level seems predestined to play the role of intermediary between civil society and the government, is a thorn in Ben Ali's side. The president, activists were told in private, reportedly has a personal problem with the association. With the League being besieged by the government, there is currently no actual or potential intermediary institution that may induce a dialogue between political civil society and the government. During the early 1990s, the League had an honorary president who had personal access to Ben Ali, which facilitated the organisation's relations with the government substantially. However, no such personal links exist today. Lately, the League has been trying to start up an informal dialogue with the government, contacting it through intermediaries to find out what it is thinking and whether they would be willing to negotiate, but none of these attempts so far have borne fruit and the situation remains at a standstill.

On the whole, the government appears to lack both the will and the need to agree to any sort of negotiations or systematic consultations with civil society over political matters.

LOCAL CALLS FOR REFORM

The absence of consultations or systematic dialogue between civil society and the government on matters of political reform implies that, unlike rights NGOs in other parts of the region who have formed alliances and drawn up concrete proposals and reform

programmes, Tunisian political civil society has little room to draw up concrete demands for legal and political reform. Struggling for survival, many rights organisations lack both the capacity and the freedom to publicly present a set of calls for reform that challenge the status quo other than in a very general, abstract manner. In a legislative framework that forbids NGOs to engage in 'political activities', it is hard to conceive how the latter should be able to draw up concrete demands of political reform, let alone discuss them with the authorities. While political opposition parties represented in parliament do have this freedom in theory, they know that their permanence in the system would be threatened by any attempted advances that cross the red lines drawn by the regime.

Activists point out that even if the government were open to civil society's demands, such a dialogue would be of only limited use due to the highly personalised and centralised nature of Tunisian politics, which reduces the circle of people who have any decision-making power to a handful (or even just one). At the end of the day, civil society activists agree that efforts to strengthen particular rights and liberties in an isolated way are hardly ever effective or sustainable. The current highly repressive political climate in Tunisia suffocates political participation and impedes the emergence of both an active, independent civil society and a political party landscape able to provide alternatives for an era after Ben Ali. Everything comes down in the end to the need to implement a genuine process of democratisation that goes beyond isolated cosmetic measures that do not touch any of the regime's prerogatives.

While the above described legal and factual obstacles to free association in Tunisia constitute important obstacles in the path of civil society, it is clear that freedom of association, expression and assembly cannot be achieved via selective reforms in specific areas, but rather they must be developed within a framework of a genuine, systematic process of democratic political reform. Civil society representatives agree that such a process needs to start with an amnesty for all political prisoners and must provide, among other matters, for a disconnection of governmental institutions from the RCD party, a massive reduction of the president's powers, the establishment of a genuine separation of powers via Constitutional reform, and an institutionalised guarantee for the accountability of political leaders, who are to be chosen in free and fair elections.

Notes

¹ Steven Heydemann, 'Upgrading Authoritarianism in the Arab World', Saban Center at Brookings Institution, October 2007.

² Michel Doucin (ed), 'Guide de la liberté associative dans le monde', La Documentation française, Paris, 2007, p. 305.

³ Unless indicated otherwise, all the articles quoted in this section refer to articles of the Associations Law.

⁴ All legal texts are available for download from the online database of the Centre National Universitaire de Documentation Scientifique et Technique (CNUDST), <http://www.cnudst.rnrt.tn/wwwisis/jort.06/form.htm>.

Translations made by the author.

⁵ Doucin, p. 303.

⁶ Doucin, p. 303.

⁷ Legal competence with regard to electoral matters lies with the Administrative Court (which is able to reverse administrative decisions which do not comply with the law).

⁸ Doucin, p. 305.

THE SPANISH TRANSITION PROCESS: KEY COMPONENTS AND LESSONS LEARNED

The following report summarizes two events the Club de Madrid co-hosted to discuss the Spanish transition process, drawing lessons learned and identifying those areas most relevant to project stakeholders and their own national reform processes.

I. HISTORICAL CONTEXT: SETTING THE STAGE

Summary: 19-20th centuries, the Second Republic and Civil War:

During the 19th and 20th centuries, the government in Spain was led mostly by a parliamentary monarchy influenced significantly by the army and the church. The Parliament, known as "*Cortes Generales*", was rife with political corruption. There was a two-house parliament but the election of deputies and senators was largely fixed and parties were mostly groupings of aristocrats and oligarchs. The first liberal constitution was adopted in 1812 and was known as the Constitution of Cadiz. King Ferdinand VII repealed it, however, and sentenced anyone who defended the idea of a constitution to death. There were later Constitutions (1845 and 1876), but they were weak and unenforced, and the Parliamentary majority remained representative of a very small oligarchy. In the first decades of the 20th century, Spain fell into a political crisis under a military dictatorship, led by General Primo de Rivera. When this regime failed, the result was a democratic regime, the Second Spanish Republic.

The Second Republic, established in 1931, brought political freedoms and democracy. Following the King's departure, a highly democratic system of proportional representation elected a unicameral parliament and the military stayed in its barracks. The Government allowed autonomy for Spain's regions and endeavoured to improve the situation of workers and rural residents. During the Second Republic, two major political blocs developed - a strong right-wing, conservative bloc; and a progressive, left-wing bloc. This eventually led to political confrontation during the 1936 elections when the left-wing bloc, known as the "*Frente Popular*" (People's Front), was declared the winner. Several army generals (including many of those that had served in North Africa) organised a *coup d'état* almost immediately. This began the bloody Civil War which lasted from 1936-1939, resulting in over a million deaths and ending with the victory of General Franco.

II. THE END OF FRANCO AND THE BEGINNING OF THE SPANISH TRANSITION

Franco's Final Years and the Transition

The Spanish political transition from Franco to a Constitutional Monarchy can be divided into three major stages: 1) crisis of the final years of the Franco regime; 2) political reforms, in particular the Political Reform Act (*Ley para la Reforma Política*); and, 3) drafting and approval of the current Constitution.

I. The Crisis of the Final Years of the Franco Regime

For almost four decades, despite the growing strength of a clandestine opposition and failed attempts to overthrow Franco, the dictatorship controlled the country with an iron fist, until Franco's death in November 1975. The army, State security forces and the support of large sectors of the population were the backbone of Franco's dictatorship. Death sentences or long prison terms for opposition militants persisted up until the death of the dictator. The Franco regime banned all political parties except the fascist (*Falange*) party led by Franco himself. The Army had political power and the Catholic Church declared the Civil War a Crusade, with Franco as the hero of the struggle against communism and liberalism. Under Franco, political liberties and regional political autonomy were suppressed.

The economic development during the last years of the regime and the shift from an agriculture based economy to industry opened the door to social change, giving rise to a labour movement and the establishment of underground unions. A strong student movement appeared in the main universities and democratic students' unions were founded. Sectors of the Church began to distance themselves from Franco and young clergy even protested against the system. The Communist Party, the party leading the fight against the Franco regime, gained strength. New political parties also formed. The *Partido Socialista Obrero Español* (Spanish Socialist Workers Party) was renewed with Felipe González elected as its leader. Political parties joined two major platforms: the democratic platform and the democratic *junta*. These political parties joined the opposition struggle underway, which had gained in strength over the diversification and growth in the economy, which gave rise to a strong middle class.

Two days after the death of Franco, the leadership transition occurred on the basis of laws in force under Franco. Adherence to the Spanish principle of "from law to law via the law" meant that succession to King Juan Carlos, as dictated by Franco's law of succession of 1966, went undisputed. Juan Carlos I was proclaimed King of Spain and he appointed the first Government of the Monarchy. This was really the final government of the dictatorship, led by Carlos Arias Navarro, the last head of government appointed by Franco. Arias Navarro was reluctant to make reforms due to strong opposition from Franco's supporters. On 3 July 1976, the King chose to replace him with Adolfo Suárez. King Juan Carlos believed the younger Suárez had the right profile to lead a reform process. Though his relative youth distanced him from the image of the aged dictatorship, Suárez had also been Secretary General of the Franco's ruling party which connected him to the supporters of the Franco regime and made it easier for his appointment. Reformists and the democratic opposition accepted his appointment with great reserve because of his strong link to the Franco regime. In exchange for the promise to legalise all political parties, the democratic opposition chose not to oppose the Monarchy and to support a national transition process. This became to be known as the "*reforma pactada*" or "pacted reform".

II. The political reforms

On 16 July, after initial contacts with the opposition, Adolfo Suárez announced his Government programme and plan to introduce the **Political Reform Act**, a succinct law that called for democratic elections. He also called for amnesty for political crimes, the reinstatement of public liberties and national reconciliation. On 15 December 1976, the Suárez Government put the bill to a referendum. Almost 78 percent of the population participated, with 72 percent of the votes cast in favour of the reforms proposed by Suárez. In subsequent general elections Suárez' political party, the *Unión del Centro Democrático* (Union of the Democratic Centre), obtained a majority in the lower house "*Congreso de los Diputados*". The Socialist Party came second, and the Communist Party was third, followed by the main nationalist (regional) parties.

While the Political Reform Act opened the doors to legalising political parties, it also opened the doors to a period of uncertainty, which saw political violence from the far right and the terrorist Basque Nationalist group, ETA. The left-over administrative apparatus of Franco's regime feared that the new leftist government would seek revenge and blame them for crimes and corruption during Franco's regime. The left feared the intervention of military forces and civil confrontation in the new government, which would create general political uncertainty. This fear became rather useful as it effectively meant that the left and right (republicans, monarchists, democrats and everyone else) were obliged to make compromises to achieve democratic consensus.

III. Drafting and approval of the Constitution

The constitutional process's key to success was consensus. For the first time in Spain's history, all political forces reached agreement to create a Constitution for all.

The Constitution was drafted beginning in May 1977 and ending late 1978. The process began in the Parliament's Steering Committee, moved on to the Constitutional Committee, and then the Plenary, before the whole process was repeated in the Senate, until the text was finally approved by the two Chambers. It was a long process of debate which resulted in a Constitutional referendum receiving overwhelming approval on 6 December 1978. The effort between Franco regime supporters and the regime's opposition to reach an agreement was key to the Constitution's success. Built on this consensus came a Constitution based on five fundamental principles: Democracy, the Rule of Law, the Social State, Parliamentary Monarchy and the Autonomous Regions. The constitution outlined a modern, democratic, parliamentary Monarchy and a highly devolved system, which in practise functions like a federal system as each autonomous community (region) in Spain has its own Parliament that enacts laws, a Government that rules at the confidence of parliament, and a strong administration. The Constitution is now 30 years old and represents the longest period of democracy in Spain.

Conditions that allowed the political model to work

1. A strong and affluent middle class: The Spanish economy had grown tremendously during the 1960s, and by 1975 the middle class had reached a similar standing to those in other western European countries. Some people believe the Republic failed in Spain in the 1930s because Spanish society had not reached the necessary prosperity level needed to sustain a democratic system.
2. Spain was an Administrative Law State (governed by rule-of-law): There were laws on the Legal System, on Administrative Procedure, on Jurisdiction under Administrative Law, on Expropriation, and on Administrative Responsibility. Since 1858, a professional civil service had developed, one not dominated by a party or the government in power. Both of these conditions contributed to an effective, peaceful transition.
3. The monarchy: By drawing on his authoritarian power, the King helped maintain peace and acted as a pillar of strength and stability for civil servants, judges and the military. The Monarchy was a point of reference for change from one legal system to another without any sort of leadership or legal vacuum.

Conflicts resolved through structural components of the transition

- The **conflict for power** was resolved when King Juan Carlos gave up absolute power for a **parliamentary monarchy** accepted by all, in which the King acts as head of state, representing all Spaniards; with a prime minister acting as president of the government.
- The **religious conflict** was resolved by **separating Church and State**, while still recognising the important position of the Catholic Church and its social and historical relevance.
- The **territorial conflict** between supporters of a centralised State and the various nationalist groups was resolved by means of the system of autonomous regions. This is a much-debated system that still generates tensions, but which recognises linguistic, historic and cultural differences among Spain's regions and has largely avoided violence.
- The **economic conflict** between the proponents of a free market economy and those of a socialist economy. This conflict was verbally resolved in the Constitution as a social market economy.

Four Political Phases

I. First (pre-1975): For many years and as the end of the dictatorship approached, there was significant resistance amongst political and social sectors to the Franco regime. **If that**

democratic opposition to Franco had not already existed, having built up over years, the transition would have been much more difficult.

II. Second (1975 and 1976): The death of the dictator triggered the need for a transition to democracy. The successor Arias Navarro Government lasted only a little more than a year. During this second stage, democracy did not yet exist but it became necessary. **The attempt by Arias Navarro to maintain the Franco regime without Franco failed.**

III. Third (1976-1981): The real transition to democracy began when the King appointed Suárez prime minister, replacing Arias. Large sectors of the previous Franco regime, including Adolfo Suárez, were in favour of democracy. **This was the beginning of a phase in which the Government, although it was a government that had taken its first steps under the Franco system, was clearly on the side of democracy.**

The period that Adolfo Suárez headed the Government, from 1976 to 1981 (with elections in 1977 and 1979), was a period of transition towards democracy with two key elements: the players and the rules of the game. Suarez had to determine the rules of the game with implicit or explicit collaboration from those who had opposed the Franco regime. The rules were the fundamental principles of democracy- a fair Electoral Law and the guaranty of basic freedoms within a volatile political context. These basic rights were implemented sometimes by means of legislation and other times as decrees. All the players had to play their part and the legalisation of political parties and trade unions became essential for the transition process. Just a few weeks before the first democratic (municipal) elections of 1977, the Spanish Communist Party was made legal, leading to a democratically elected Parliament which then passed the Constitution in 1978.

IV. Fourth (1981): The attempted coup of 1981, which took place as Prime Minister Calvo-Sotelo (1981-1982) was being elected successor to Suarez, who had resigned as head of Government a few months before the end of his term. **Democracy was consolidated when the King and some of the army leadership rejected the coup attempt, and the perpetrators of the coup were tried in court and stability was maintained.**

Spaniards turned out in large numbers to vote in 1982 and voted in favour of the Socialist Party, giving it an absolute majority (202 out of 350 deputies, still the largest majority ever in Spain's democracy). The Union of the Democratic Centre party to which Calvo-Sotelo belonged, collapsed in 1982, and the Socialist Party led the remainder of the constitutional development of Spain for fourteen years under the governments of Felipe González. With the near disappearance of the Union of the Democratic Centre, the right was eventually represented by the People's Alliance (Alianza Popular), which later became the People's Party (Partido Popular). This party organised itself sufficiently to defeat Felipe González' Socialist Government (corruption also brought the PSOE down) and win two elections led by José María Aznar. Today, the Socialist Party now led by José Luis Zapatero is back in power, having been elected in 2004, and re-elected in 2008. The opposition People's Party led by Mariano Rajoy still has large support in what for the most part has become a two-party state.

The Spanish model includes three main elements – consensus, peace and non-violence, and regional economic opportunity. Consensus: if democratic processes are to succeed a broad consensus is needed. Without consensus, democracy will remain fragile. In the case of Spain, democracy became truly consolidated when significant pro-Franco sectors, or people that had been working in important positions during the dictatorship, came out in favour of democracy. To isolate the radical political and social elements that existed in Spanish society (radical, pro-coup sectors and those stemming from ETA terrorism and smaller left-wing terrorist groups), the main weapon was consensus. Political processes took place peacefully, with the participation and agreement of all political forces. The quest for peace should be paramount both internally and externally. The third element is the existence of **regional economic opportunities** which encouraged the other processes. The European Union played a decisive role for Spain - first as an aspirant and then as a member - in the consolidation of democracy.

III. POLITICAL PARTIES AND CIVIL SOCIETY

The Franco regime banned union rights and many civil rights. By the late 50s and early 60s, workers began to mobilize and between 1969 and 1970 the dictatorship declared a state of emergency three times in response to protests. Professional organisations soon joined the protests and a sector of the Church, which had been a pillar of support for Franco, started to distance itself from the dictatorship.

The workers' movement played a decisive role in the democratic process. Starting in the 50s and 60s, assemblies were created in the workplace and from there a union called *Comisiones Obreras* developed. Workers' protests - first demanding higher wage demands, and then, as those were repressed, in solidarity with their comrades - were savagely repressed and people were jailed. This increased public solidarity igniting the student movement, not only for its own demands, but also in solidarity with the repression against the workers' movement. Many other social movements developed: intellectuals, artists, celebrities and professionals who started sustained protests against the repression and for their rights. Despite the regime's highly developed forces of repression, it did not have the strength to prevent the protests from continuing. In 1964, the dictatorship adopted a law of association that banned any political type of association, but which did allow society to create new movements such as the residents' associations that eventually mobilised hundreds of thousands of people. Protesters started by asking for better infrastructure and facilities (schools, transport, parking spaces, etc.) and almost immediately included demands for public freedoms and a political amnesty. A Housewives' Association movement began, that started by protesting against the high cost of living and went on to organise demonstrations of solidarity with those that were laid off from work, and ended up demanding political freedoms like other movements of its kind.

In 1969, several professional sectors created the Civic Commission which drafted a manifesto demanding freedoms in solidarity with the repressed. These assemblies were spontaneous and were made up not just of communists. They included practising Catholics, socialists and a large number of independents. The strikes became more and more important. Between 1971 and 1975, they increased five-fold. In 1972, union leaders were arrested, but this did not prevent continued strikes. In 1974, the opposition created the *Junta Democrática* (Democratic Board), which was set up essentially through the Communist Party and other smaller parties. It did not bring together all of the opposition because some did not want to join the *Junta* alongside the communists. 700,000 people went on strike in 1975 and 14.5 million hours of labour were lost. In 1976, there were 3 million unemployed and 180 million work hours lost to a two million person strike, the largest of the Spanish pre-democratic era. The same year, the *Convergencia Democrática* was created including the Socialist Party and other liberal parties. The *Junta* and *Convergencia* merged and, for the first time, all political forces in opposition to the regime were unified. This body had a clear programme demanding public liberties, elections, legalisation of all political parties, unions and absolute amnesty for all political prisoners. Negotiations started with the government and a *Commission of the Ten* was created with representatives from all main political forces. Prime Minister Suárez initially had strong reservations against the Communist Party. But, after the Atocha massacre when extreme right wing and para-police forces murdered five lawyers connected to the Communist party and seriously injured four others, all political parties were finally legalised.

Clear objectives: Spaniards wanted democracy, including a new constitutional framework; political, civil, and social rights; equality between men and women; and, those in the distinct regions, wanted greater autonomy. All political forces expressed their opinions and alliances and coalitions were formed through consensus on the end goals, not on political party lines. There were also leaders within these political forces that helped bring together the opposition including Suárez, the Communist Party's Santiago Carrillo and Felipe

González. The movement succeeded because of the strength it gained through inclusion of all parties pushing for the democratic transformation.

IV. JUDICIARY SYSTEM

Spain faced five major issues when the new Constitution was adopted in 1978, including a) the uneven distribution of wealth; b) the domineering role of the military; c) the predominant influence of the Catholic Church; d) regional calls for greater autonomy; and e) the lack of a national pact/agreement for political and social coexistence, respecting a series of principles and rights. Prior to the transition, there were no divisions of power and the Judiciary was controlled by the Executive. There were no fundamental rights guaranteed by law or upheld by courts. Therefore, the reform of the judiciary was fundamental.

The Spanish Constitutional Court is made up of twelve members appointed by the King; four of them are proposed by Congress with a three-fifths majority vote needed; four are proposed by the Senate with the same necessary majority; two are proposed by the Government and two are proposed by the General Council of the Judiciary. If laws adopted by the Congress and Senate are questioned for constitutionality, it is up to the Constitutional Court to rule on the matter. Only four bodies can go to the Constitutional Court: the President of the Government (Prime Minister), the Ombudsman, a group of 50 congressmen or senators, and the Executive bodies of the autonomous communities (regional governments). The independence of judges and magistrates in Spain is mandatory.

V. CONSTITUTIONAL REFORMS

I. In the area of fundamental rights: the guarantee of physical integrity and personal freedom were considered paramount. In order to protect both, laws were modified or new ones passed, such as a) the law abolishing the death penalty (except under military penal law in times of war); b) *habeas corpus*; c) limits on the duration of prison sentences; and, d) torture was to be tried under the Penal Code.

II. The Electoral Act was adopted, entrusting the Judiciary with the power to rule on contested election results. New laws were also enacted to abolish censorship and ensure the right to demonstrate, establish associations and political parties, and exercise freedom of speech.

III. Military jurisdiction, which tried military and civilian personnel, was reduced and restricted to trying only military personnel. In criminal cases, the investigation was separated from the proceedings, so that one judge carried out the investigation and a different judge tried the case. Legislation was also established to provide reparations for victims of judicial errors.

IV. In Public Administration, the central State Administration and the Administration of the Autonomous Communities were guaranteed. The Autonomous Communities, the regions with a degree of devolved power, were guaranteed the right to enact laws different from the State Administration in some areas of public administration. Local councils within the Autonomous Communities were also guaranteed and all administrative action was under the jurisdiction of the judiciary. Under the Franco regime, Spain was centrally administered, the regions had no autonomy, and regional languages, cultures and customs were repressed.

V. Article 116 of the Constitution amended the state of emergency clause so that states of emergency could be declared only by the Government with explanation through the Council of Ministers to Congress within a maximum period of 15 days. A state of siege can only be declared by an absolute majority of the House of Congress at the exclusive proposal of the Government. Military power was subordinated to civilian power.

VI. The Elections and Political Reform Act: A new system of corrected proportional representation, i.e. the proportionality between votes and seats is maintained, bearing in mind that the constituency is the province.

VI. MILITARY TRANSITION

The role of the armed forces assigned by the dictatorship was fundamentally to protect the political regime. The dictatorship did not trust the armed forces and kept them divided into three separate branches –Navy, Air and Land– each controlled by their own Ministries. Each ministry had economic, administrative, organisational and functional autonomy, and therefore had no vision of itself as a whole entity. The armed forces ministries were given large political roles but remained obsolete conceptually with outdated equipment. When the transition began, there were political and public debates while drafting the new Constitution: **What will the role of the armed forces be in the new Spanish democracy?** There were two distinct options: they could be an autonomous power and a guarantor of certain grand principles, or they could become a normal institution, subordinated to civil power. The second option was chosen, based on the concept that within all democracies the military has a special function as a public servant with the right to use force and tasked with the defence of a nation's borders and protection against its enemies.

Although Spain's military transition started with the appointment of Adolfo Suárez as President of the Government and his appointment of Gutiérrez Mellado as Vice President for Defence, the most significant military consolidation began after the elections of 1982, and was carried out gradually and coherently over an eight year period, addressing two main objectives: 1) to eliminate the political, organisational, economic and functional autonomy of the Armed Forces to give way to a professional body; and, 2) to change people's view of the military.

The Process

The **process of democratising the Armed Forces can be divided into three stages:** Legal, institutional and professional. This process was greatly assisted by the potential for (and eventual) NATO entry on the horizon, as military reforms were pushed and pulled by the requirements for membership.

Military transition: the first stage began with the military no longer dominating politics and no longer able to interfere in the political transformation already underway.

Military consolidation: the second stage began when civil government took control of defence, security and military policies and assumed the right to direct the Armed Forces. This period of consolidation can be divided into three phases: 1) the armed forces or armies no longer conditioned political life, but maintained organisational and operative autonomy; 2) they formally accepted civil supremacy but reserved fields in which they could still act freely; 3) they no longer needed areas of autonomy but maintained ideological control of the role of the military.

The third stage can be attributed to the **Military Function Act**, adopted by the Parliament in 1989, that restructured the military and redefined it as a professional army. 1989 also marked the end of the process to bring Spanish security and defence systems to European standards, Spanish membership of the European Union was approved and new accords were signed with the United States to reduce its presence on Spanish bases. The accumulation of these developments completed the military consolidation.

Key Contributors to the Success: As commander in chief of the Armed Forces, **King Juan Carlos I**, exercised a symbolic rather than operative role in character - one of great prestige and enormous authority recognised by all members of the Armed Forces and civil authorities. Everything would undoubtedly have been far more difficult without that authority above the politics, backing the reforms and even intervening very discreetly at certain delicate

moments to help the process. Spain's Government used NATO as a benchmark and followed foreign models and lessons learned, i.e. the United States, in creating a professional army. Because Spanish ministers of defence generally held their posts for a long time, there was a close understanding during the transition among the major stakeholders of the importance of this strong continuity. Governments and ministers changed, the Ministry of Defence slowly developed, but everything continued in a direction that had been carefully planned.

Terrorism added an additional complication. Radical Basque nationalism was strong in the eighties and nineties and it affected the *Guardia Civil*, the National Police, the military and the civilian population. The fight against terrorism was exclusively the task of the security forces, the National Police and the Civil Guard. The military was targeted although it had no role in the fight against the terrorists. The military acted in an advisory role, through discipline and continual communication of the anti-terrorist policy with the national police and Civil Guard. The military did not want to impose its criteria on the fight against terrorism at any time and accepted that this was the job of the Guardia Civil and the National Police.

US Military Bases: The image Spanish people had of the United States was a democratic country, which had won the war against the Nazis, but also a nation that supported the Franco Regime with military bases while he was a dictator. So, to the surprise of the Americans, Spain's new democratic governments told the US Government, "...there are not going to be any more American bases on our territory".

In its final stage, the transition was also helped by the downfall of the Soviet Union and the ensuing cut in defence resources. In the end, the Spanish military, remain well respected and was seen as the institution that underwent the greatest transformation and made the greatest efforts to adapt and modernise during the transition process.

VII. ECONOMIC TRANSITION

While the political transition and military transition in Spain have fairly specific dates, the economic transition was a much longer process that started in the 60s and continued through to the 90s; some even say to the present day. The economic transition preceded the political transition and some believe it directly facilitated the political transition to a large extent because it provided the appearance or existence of a middle class and collective welfare that acted as the foundation of a unified political movement. The successful economic transition in Spain can be largely attributed to the commercial and financial opening up of the Spanish economy to foreign markets beginning in the 60s. Since then, there has been an uninterrupted and progressive process of convergence and opening up of the economy to other countries with several important milestones beginning with an International Monetary Fund stabilisation plan in 1959, and preferential agreements with the European Community beginning in 1970.

Spain joined the European Community in 1986 and adopted the Euro between 1999 and 2001. Foreign trade as a percentage of the gross domestic product went from eight percent in 1960 to almost 70 percent in 2008. At the beginning of the 60s, Spain had a per capita income that was 55 percent of the average income of the European Community. In 2005, it had grown to 90-95 percent. Inflation dropped from an annual 25 percent in 1977 to nine percent in 1982. Unit labour costs dropped, as they began to be calculated on the basis of past inflation, and corporate surpluses recovered in comparison to the previous downward trend. There was a decline in corporate borrowing and private investment began to pick up.

Highlights of the Economic Transition

The **Facts of Moncloa**, an agreement amongst key politicians, political parties, and trade unions to plan how to operate the economy during the transition, was critical to: a) establishing wage and inflation controls; and, b) developing a major fiscal system and social

welfare policy, in particular between 1979 and 1982. In guiding the economic transformation, policy makers debated the question of whether to establish economic order internally- to organise the domestic economy first, level **the playing field** and then open up- or open up the economy first and deal with domestic order later, guide the. The Spanish experience shows that opening up and internal restructuring should go hand in hand, to ensure that external competition drives the internal sectors of the economy's transformation. The process of opening up to the outside world was positive for Spain and it meant that the country as a whole gained from a commercial and financial opening.

Reforms

Control of public spending and tax policy reform: public spending controls were put in place and a more progressive tax policy was formulated.

Reform of the financial system: a) a series of instruments was made available for an independent monetary policy control system, b) the standardization of the banking system coefficients related to liquidity and solvency c) the implementation of an auction system policy as a way of injecting liquidity into the system and d) the foundation laid for a modern public debt market.

Income policy: a) implementation of a wage increase control on the basis of expected inflation not recorded inflation b) steps taken to try to scale down financial and trade costs by means of a series of measures to deregulate the goods and services markets c) awareness that the above measures might not be sufficient to control inflation, therefore also needing to continue to use the administered price mechanism on staple commodities such as bread, milk, poultry and meat.

Exchange rate: a new policy, not committing to a devalued or undervalued currency that would enable easier exports while also trying to adapt the exchange rate to market conditions through a minimally controlled floating currency.

Problem of Unemployment: From a 1977 rate of five percent, unemployment grew to 25 percent in 1982, but the higher rate is due mainly to the fact that a) use of the natural unemployment rate, refers to the unemployment rate that in a price stability situation, corresponds to a country, more or less b) huge shift in the working population from the agricultural sector to the industrial and services sectors; because there has been investment (at that time there was investment by foreign emigrants who left in the 1960s and returned to a certain degree in the '70s and '80s); c) the incorporation of women and many young people, but women in particular, into the workplace and d) strong rise in labour costs in the previous period, in which they forced an enormous drop in corporate investment, and industrial rationalisation pushed a vast number of people out of the market, out of companies.

Disposable income, Recession and Inflation: During the transition period, economic policy instruments were not subtle enough to control the growth of disposable income or of the money supply, so inflation shot up, precisely because of the success of the exchange rate policy.

Welfare: Those who lost their jobs or were forced into early retirement due to the opening up process were compensated by creating a Welfare State with public spending. Public spending went from 18% of the GDP in 1960 to the mid 90s, after 30 years of transition, 46% of GDP, that is, practically half of the public spending accounted for practically half of the gross domestic product of the economy.

Post-Moncloa

In 1982, when the Socialist Party won the elections, a similar philosophy of economic policy was pursued to greater lengths. A series of measures was put in motion aimed at deregulating the financial system including a) access by foreign banks was encouraged but

regulated; b) the entire official credit system was reorganised (the official credit system in Spain was a group of banks owned by the State and specialised according to sectors and for the first time the exchange control system in force up until then was eliminated) and; c) the deregulation of a series of goods and services markets.

During this period, inflation dropped to 8.1 per cent; the balance of payments deficit went up from -2 per cent to +1.8 per cent, but unemployment was at 22 per cent, even higher than at the start of the new government's period in office. Importantly, in this first period of Socialist government the free market economy system became established and in 1985 Spain fulfilled the macroeconomic conditions to sign for accession to the European Common Market. At the end of the third period of Socialist government in 1996, there was an inflation rate of 3.6 per cent, a deficit of 4.4 per cent and a public debt of 69 per cent, with interest rates of 8.7 per cent, one step away from achieving the minimum limit to join the European Monetary Union, an event which took place in 1998. The success of the stabilisation policy initiated in the Moncloa Pacts is reflected in the fact that in 1998, the Spanish economy indicators were such that they enabled Spain's accession to the European Monetary Union to be signed, and, in 2002, the introduction of the peseta into the euro system.

EU Accession: Some say that a large part of the Spanish transition was funded or made possible by the European Union, because with joining, Spain had access to cohesion and structural funds. It is true that Spain had access to major funds that more or less represented 1% of GDP for about 10 years, between 1990 and 2000. But these sums were received in the final part of the process of economic transition. What is true, is that Spain joining the European Union acted as an exercise of transparency at the economic level, transparency in the functioning of the markets and the deregulation and realisation of markets, of a reduction in state aid or an enormous increase in the credibility of public policies and, therefore a reduction in the cost of the adjustment.

Of course there are no universal recipes, but perhaps if the Spanish experience teaches us anything, it is that the risks or the costs of not making the transition are far greater than the costs of the transition, that is, the transition does come at a price, but not making the transition has costs that are perhaps more hidden, but that does not mean that they are not any higher.

VIII. MEDIA

The media played an important role in the Spanish transition. An explosion of freedoms occurred after 1975 and newspapers of the Franco regime disappeared. Journalists highly significant during the Franco era adapted to the new press environment, retired, or were forced into retirement. We learned it is dangerous when media plays an influential role in the political, financial and judicial structure of a country rather than serves as a counter power. It is destructive to journalism and society when journalism places itself at the service of one of the major three powers: the executive, the legislative or the judiciary.

Changes in Regulation:

- Media Law of 1966 drafted by Minister Fraga Iribarne. Although the Media Law eliminated prior censorship, it was still necessary to submit copies of the newspapers at the Ministry of Information offices 10 hours prior to its publication. The Media Law was never repealed but it was no longer enforced.
- In 1978, Article 20.1 of the Constitution established a constitutional right to communicate and freely receive truthful information by any means of dissemination.
- The former foreign minister of the Socialist party and also Minister of Treasury of the right-wing party, Francisco Fernández Ordóñez, established a doctrine: the best media law is no media law at all. This doctrine is used in Spain and there are no special journalism laws.

- The conscience clause means you are entitled to compensation if you are dismissed for changing the newspaper's editorial line. Labor laws are somewhat regulated. Except for the Penal Code and the Civil Code, there are no other specific press laws. There is a Rectification Law and an Honor Law, similar to the Libel Law, which is also very conflictive. The Honor Law, which has been used often and has been criticized because the word honor is very specific, aims to be a Libel Law. The Rectification Law functions well when the courts apply it appropriately
- There are no prerequisites for publishing a newspaper. A company has to be created following the same steps as those required for opening a restaurant or creating a company in accordance with the Spanish Company or Limited Company Act. No administrative permit is required nor are there administrative requirements for being a director of a newspaper.

References for Further Information

- Anna Balletbò, 'Una Mujer en la transición', Flor del Viento Ediciones, 2004.
- Joaquín Bardavío, 'Crónica de la Transición (1973-1978)', Ediciones B, Barcelona, 2009.
- Rafael Chirves, Santos Juliá y otros, 'La transición treinta años después', Ediciones Península, 2006.
- Josep M. Colomer, 'La transición a la democracia: el modelo español', Barcelona, Editorial Anagrama, 1998.
- Ramón Cotarelo, 'Transición Política y Consolidación Democrática (1975-1986)', Madrid, CIS, 1992.
- Juan J. Linz, & Alfred Stepan, 'Problems Of Democratic Transition And consolidation. Southern Europe, South America, and Post-Communist Europe'. Baltimore. The Johns Hopkins University Press, 1996.
- José M. Maravall & Julián Santamaría, 'El cambio político en España y las perspectivas de la democracia' in O'Donnell, Guillermo, Schmitter, Philippe C. y Whitehead, Laurence (eds.) (1994) 'Transiciones desde un gobierno autoritario /1. Europa meridional', Barcelona, Editorial Paidós, 1994.
- Raúl Morodo Leoncio, 'La transición política', 3ªed., Tecnos, 1997.
- Charles Powell & Juan Carlos Jiménez (eds.) 'Del autoritarismo a la democracia. Estudios de política exterior española', Editorial Silex, Madrid, 2007.
- Charles Powell, 'España en Democracia. 1975-2000'. Barcelona, Plaza & Janés, 2001.
- Paul Preston, 'Juan Carlos, El Rey de un pueblo', Plaza & Janés, 2003.
- Narcís Serra, 'La transición militar. Reflexiones en torno a la reforma democrática de las fuerzas armadas', Barcelona, Random House Mondadori, Debate, 2008.
- Ramón Tamames, 'La economía española: de la transición a la Unión Monetaria', Madrid, Temas de Hoy, 1996.
- Javier Tusell 'Dictadura franquista y democracia: 1939-2004', Barcelona, Crítica, 2005.
- Javier Tussell Gómez, 'Historia de la transición', 1975-1986, Alianza Ed., 1996.
- Documentary: 'La transición española', RTVE, 2003.

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