

**BARCELONA +5:
WHAT RESULTS
FOR HUMAN RIGHTS?**

WHITEBOOK

presented to the

**EURO-MEDITERRANEAN
MINISTERIAL MEETING
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Human rights assessment of five years of Euro-Mediterranean Partnership November 1995 – November 2000

An area of dialogue, exchange and co-operation based on the strengthening of democracy and respect for human rights ?

In Barcelona in 1995, 27 states of the North and the South of the Mediterranean – the 15 Member States of the European Union and Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey and the Palestinian Authority committed themselves to «turning the Mediterranean basin into an area of dialogue, exchange and co-operation guaranteeing peace, stability and prosperity» by establishing «a comprehensive partnership through strengthened political dialogue on a regular basis, the development of economic and financial co-operation and greater emphasis on social, cultural and human dimension».

Although the political and security dimension of the Partnership, as well as its social, cultural and human aspects are an integral part of the Partnership, the economic and financial pillar constitute the main motivation for this new entity, of which the progressive establishment of free trade in the Mediterranean region by the year 2010 is at the core. Its realisation demands the «strengthening of democracy and respect for human rights». On this basis, the Partners committed themselves to respect the Universal Declaration of Human Rights and the international human rights conventions to which they are parties.

The Partnership has progressively developed with the conclusion of bilateral Association Agreements between the EU and the Mediterranean countries. All Association Agreements include a human rights clause (Article 2). Human rights defenders from both shores of the Mediterranean welcomed the principles for respect of human rights stated in the Barcelona declaration and the Association Agreements.

November 2000 marks the fifth anniversary of the Barcelona Declaration, as well as the 50th anniversary of the European Convention on Human Rights. Even though progress has been made since then in terms of human rights protection, much work remains to be done to ensure that the fundamental rights and guarantees enshrined in this instrument are genuinely and concretely available

to all men, women and children in Europe and in the countries of the South and the East of the Mediterranean.

The persistence of human rights violations and impunity in Europe is a reminder that a lack of political will, and not scarce resources and contending priorities constitute the underlying reason for impunity, and that the argument that respect for human rights can only be achieved at a certain level of social and economic development has no foundation. Human right violations continue to occur not only in countries with a well-documented history of endemic human rights violations or countries facing challenging political upheaval and social and economic transition. This shows that respect for human rights does not depend on the level of social and economic development and that neither « a lack of resources », nor « conflicting priorities » can be used as justification for the persistence of human rights violations in Europe, but rather a lack of political will to prevent and halt them.

Since 1995, human rights organisations from the South and the East of the Euro-Mediterranean region have developed their activities within the framework of the Euro-Mediterranean Partnership. At the national level, they made use of the perspectives offered by the negotiations of Association Agreements with the European Union including the human rights clause. At the regional level, they have significantly strengthened their ties : in the South, a genuine Arab human rights movement has come into existence. At the same time, a partnership between civil societies on both shores has emerged as a result of regular follow-up conferences to the Barcelona Declaration.

On the eve of the 4th Euro-Mediterranean conference in Marseille 2000, eight international human rights organisations take stock of the results of the partnership. In many countries of the region, they observe the following persistent areas for violations :

- Perpetrators of human rights violations profit from endemic impunity
- Physical, as well as symbolic violence against women persists
- Freedom of expression is muzzled
- Torture and other forms of cruel, inhuman or degrading treatment or punishment are systematically practiced
- Severe restrictions on freedom of association
- Human rights defenders are confronted with attacks on their freedom of action
- Criminal justice and prison systems are in urgent need of reform

1. Endemic impunity for the perpetrators of human rights violations

In spite of some progress in the last ten years in parts of the region, impunity remains widespread in the Euro-Mediterranean region. Serious violations, including torture, ill-treatment and extrajudicial killings, continue to take place. In depth investigations leading to judicial prosecution remain rare. These shortcomings are common in the Euro-Mediterranean region, in clear violation of international and regional human rights treaties ratified by the states concerned. As long as the perpetrators of these violations are not publicly held accountable for their actions, they will continue to commit these violations and there will be no justice for the victims.

2. Physical and symbolic violence against women

Women's conditions in the region are hardly addressed in the Barcelona Declaration: a few lines stress women's role in economic development. However, the aims of the Euro-Mediterranean Partnership cannot be achieved without the full participation of women in the economic, social, cultural and political life of their society. Honour crimes in Jordan, widespread practise of female circumcision in Egypt, prohibition of civil marriage in Lebanon are examples of how the participation of women today is undermined and sometimes seriously at risk because of inequalities enshrined in the legislation or attitudes, and the lack of political will of the governments of the region. Although all countries of the region – except Syria – ratified the Convention on the Elimination of all Forms of

Discrimination against Women (CEDAW), they typically made reservations which nullify the essence of this Convention.

3. Obstacles to the freedom of the press

Among the 27 countries of the Euro-Mediterranean Partnership, four of them systematically violate freedom of the press, and six regularly breach it. Since November 1995, eleven journalists were killed, and at least one thousand were interposed and at least 450 were attacked or threatened in those countries. Among the 17 journalists currently in jail, eleven have been in prison more than five years. States practices that muzzle the media are numerous, among them «disappearances», arrests, police brutality, harassment, suspension, censorship, and prohibition of newspapers.

4. The systematic practice of torture and other forms of cruel, inhuman or degrading treatment or punishment

Legislative and procedural obstacles, the continuation of states of emergency in the region, the acceptance of confessions obtained under torture – in violation of relevant international standards – as well as a general climate of impunity explain and feed the systematic practice of torture and other forms of cruel, inhuman or degrading treatment or punishment. So far, the Partnership has been unable to answer properly to the problem of torture in the region, be it in the short or the long term.

5. The muzzling of freedom of expression

By signing up to the Barcelona Declaration, the states expressly committed themselves to respect freedom of expression, which nevertheless continues to be frequently violated. This is further demonstrated by the breaches of journalists' freedom of speech (both local and international journalists), by restrictions on the possibility for the opposition – notably the Islamists - to express its position, by the way the authorities restrict the work of NGOs and by the use of laws on «national security» to control civil society.

6. Blatant restrictions on freedom of association

Control of associations from the South and East Mediterranean countries is often so restrictive that it prevents them from working freely. This control often includes : authorisation and registration by the authorities of the association, imposing internal rules concerning the running of associations, criminalization of activities falling under freedom of association, defamation campaigns or criminal charges and law suits against NGOs receiving foreign funds, etc. Such restrictions are often justified on the pretext to preserve «unity « or «national security». These restrictions especially target human rights and democracy NGOs. Simultaneously, an increasing number of NGOs established by governments were created these last years ; these «GO-NGOs» are controlled by governments but pretend to represent civil society.

7. Systematic violation of freedom of action of human rights defenders

Since 1995, in spite of nice speeches about civil society and human rights, the most restrictive measures and practices were implemented by states against those who promote respect for these fundamental rights. As an example, all the states of the region, unanimously, supported the appointment by the United Nations Commission on Human Rights of a Special Representative in charge of the protection of human rights defenders. At the same time, human rights defenders face detention, torture and ill-treatment, criminal charges and law suits, surveillance, confiscation of passports, intimidation, and defamation campaigns against them and their families.

8. The necessity to reform criminal and detention policies

Human rights do not stop at the doors of prisons. The situation of detainees - men, women and children as well as foreigners and minorities - remains worrying in the majority of the 27 partner countries, including in the European Union. Serious problems include overcrowded prisons ; poor detention conditions amounting sometimes to cruel, inhuman or degrading treatment ; long duration of administrative detention in violation of relevant international standards; incommunicado detention ;

and repeated violations of the right to a fair trial. The partnership has had a very limited impact on the penal and prison situation in the Mediterranean countries. The basic texts establishing the partnership largely ignored that aspect. The necessity of penal and prison reforms must now be clearly included in the human rights dimension of the partnership.

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Considering the continuous and in some cases increasing human rights violations, the states of the region have not taken the necessary steps to implement their commitment to « turning the Mediterranean basin into an area of dialogue, exchange and cooperation guaranteeing peace, stability and prosperity (...) based on the respect for human rights and democratic principles. These states have the appropriate tools to turn their commitments into action – especially with the human rights clause included in the association agreements and by negotiations between the European union and its partners. It is time that these mechanisms be used and we are determined to work relentlessly in this direction.

RECOMMENDATIONS

In this regard, AMNESTY INTERNATIONAL, ARTICLE 19, INTERNATIONAL FEDERATION OF HUMAN RIGHTS (FIDH) HUMAN RIGHTS WATCH, WORLD ORGANIZATION AGAINST TORTURE (OMCT), PENAL REFORM INTERNATIONAL, REPORTERS SANS FRONTIERES

CALL THE STATES PARTIES TO THE EURO-MEDITERRANEAN PARTNERSHIP TO:

1. Respect their international commitments, notably the Universal Declaration on Human Rights, and international human rights conventions and covenants which they ratified, as well as human rights provisions included in the Barcelona Declaration.
2. To make operational Article 2 of the Association Agreements between the European Union and its Southern and Eastern Mediterranean partners, by which the parties commit themselves to respect human rights and fundamental freedoms.
3. To set up concrete mechanisms to assess compliance with the human rights clause, which should include:
 - Regular and impartial monitoring of the human rights situation on the territory of all contracting parties;
 - Monitoring the freedom of action of human rights defenders to act and speak freely in order to defend the rights of others;
 - Programmes of action to implement recommendations of relevant international human rights bodies (United Nations treaty bodies, Special Rapporteurs of the Human Rights Commission, etc.);
 - Continuation of relevant demarches towards partner countries on individual cases of human rights violations.
4. To bring their laws, policies and practices into line with the UN Convention on the Elimination of All Forms of Discrimination of Women and its Optional Protocol; the International Convention of All Forms of Racial Discrimination; the International Convention on the Rights of All Migrant Workers and Members of their Families.

5. To accede to and respect the United Nations Convention on Refugee's Status (1951), its 1967 Protocol, and the United Nations High Commissioner for Refugees Executive Committee's interpretation of these instruments.

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IMPUNITY IN THE EURO-MEDITERRANEAN REGION

INTRODUCTION

Notwithstanding the progress made in parts of the Euro-Mediterranean region in recent decades, in the year 2000 impunity remains an endemic problem and is one of the most important causes for the wide range of human rights violations which continue to plague the region. There is ample evidence of continuing serious human rights violations in the Euro-Mediterranean region, including torture, ill-treatment and extrajudicial executions. Thorough investigations resulting in those responsible being brought to justice are a rare occurrence. Such failings remain an entrenched feature of the political landscape of the region, in stark contradiction to the spirit of the international and regional human rights treaties which the governments of the region have solemnly pledged to uphold and implement. As long as those who commit the violations are spared public scrutiny and are not held accountable for their actions, they and others will be encouraged to continue on the same path, the victims will continue to be denied due redress, and the violations will continue.

As well as marking the fifth anniversary of the Barcelona Declaration, November 2000 also marks the 50th anniversary of the European Convention on Human Rights. Even though progress has been made since then in terms of human rights protection, much work remains to be done to ensure that the fundamental rights and guarantees enshrined in this instrument are genuinely and concretely available to all men, women and children in Europe. The persistence of human rights violations and impunity in Europe is also a reminder that the underlying reasons for impunity have to do with lack of political will, and not with scarce resources and contending priorities, and that the argument that respect for human rights can only be achieved at a certain level of social and economic development has no foundation. It is not only in countries with a well-documented history of endemic human rights violations or those going through a time of challenging political upheaval and social and economic transition that human rights violations continue to occur and perpetrators of these violations are granted impunity. This report aims to highlight the patterns of impunity in the Euro-Mediterranean region, documented in detail in the numerous reports issued by Amnesty International (list annexed).

OBSTACLES TO ENDING IMPUNITY

Perhaps the greatest single obstacle to ending impunity for torture, ill-treatment, extrajudicial executions and other human rights violations is the failure of governments to ensure that prompt, thorough and impartial investigations are carried out. Even a cursory survey of the phenomenon of impunity shows how the fundamental prerequisites of justice continue to be frequently, and in several countries systematically, ignored. The key patterns of this failure are: absence of thorough and independent investigations; unacceptably lengthy investigative or judicial proceedings, when these take place; insufficient protection, or lack of it, against reprisals, threats or other form of intimidation

of victims, complainants and witnesses; and inadequate levels of sanctions, or lack of sanctions, against the perpetrators of the violations.

Absence of thorough and independent investigations

International human rights treaties require that all allegations of human rights violations be investigated. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that prompt and impartial investigations be carried out whenever there is a reasonable ground to believe that an act of torture has been committed, and makes it clear that this duty is not dependent on a formal complaint by the victim, and stipulates that victims have the right to complain and to have their cases promptly and impartially examined.

In North Africa and the East Mediterranean proper investigations are almost never carried out into the whole range of serious human rights violations, notably torture, unlawful killings and extrajudicial executions. Even in the most extreme cases, where the violations have resulted in the death of the victims, investigations have rarely been ordered; when ordered, investigations were often not carried out or not followed through; neither the methodology nor the outcome have been made available. Often security forces and government authorities participate in cover-ups to destroy the evidence and hide the truth. The bodies of those who have died under torture or who have been extrajudicially executed are often buried by the security forces without allowing the families to see them, and when autopsies are performed it is by state-appointed, rather than independent, doctors. The most common official explanation of these deaths is suicide or heart attack. Detainees who have been tortured have no access to independent medical examination.

In July 1999 the UN Committee against Torture concluded that the Tunisian authorities had failed to investigate the death of Faical Barakat, who died as a result of torture in 1991. In Egypt, it has not been possible to obtain any information about the investigation the authorities claim to have opened into the death in custody in suspicious circumstances of lawyer 'Abd al-Harith Madani in April 1994.

Often when questioned on specific cases by international or regional human rights mechanisms governments responded that investigations had been or were being carried out, even though victims and their families and lawyers had never been informed of such investigations, but provided no details about the findings or progress of the said investigations. In several countries during the past five years not a single case of torture, death as a result of torture, or extrajudicial execution has ever been the object of a thorough, independent and impartial investigation and virtually none of the law enforcement officials responsible for such grave violations are known to have been convicted. Failings in these investigations have occurred at all stages of the procedures and have been the responsibility of security forces, the judiciary and government authorities.

In other countries, where investigations into complaints are generally carried out these have often been slow, lacking in thoroughness and inconclusive, have failed to fulfill the necessary criteria of independence and impartiality and have rarely resulted in those responsible being brought to justice and sanctioned for the violations committed. Examples include the case of Osmo Vallo, who died in custody in Sweden in May 1995, and of Shiji Lapite, who died shortly after his arrest in the United Kingdom in December 1994. In recent years the European Court of Human Rights and UN human rights mechanisms have expressed concern about cases of failure to investigate human rights violations and to bring those responsible to justice in several European countries.

Unacceptably lengthy investigative or judicial proceedings

¹ UN bodies such as Human Rights Committee, the Committee against Torture, the Special Rapporteurs on torture and on extrajudicial executions, or the Working Group on Disappearances, or regional bodies such as the African Commission on Human and Peoples' Rights.

When investigations into human rights violations are carried out they often tend to drag on for unreasonably lengthy periods - up to a decade in some cases, indicating a failure of the region's judicial and administrative systems to deal effectively with cases of torture and other violations. Judicial and administrative or disciplinary proceedings often last for years and in some cases the length of the judicial process is such that by the time a trial opens, accused officers may not be tried because the period during which prosecution could be brought has lapsed. The effective impunity which officers frequently enjoy as a result of the excessive length of investigation and judicial proceedings and the fact that it takes such a long time for victims and complainants to bring law enforcement officers to court and obtain justice, contributes to discouraging victims from lodging complaints and undermines public confidence in the system of administration of justice. In Algeria the inquiry which the authorities claim was carried out into the killing of some 100 detainees and five prison guards in February 1995 in Serkadji Prison, in Algiers, led to a trial in 1997 which was a travesty of justice. The verdict was later overturned but no date has yet been set for the retrial and in the meantime at least one key witness of the massacre has been assassinated. In Belgium, two years after an investigation was opened into the death of Semira Adamu, following an attempt to deport her forcibly from Belgium to Nigeria in September 1998, the finding of the investigation were still unknown and no one had been brought to justice. In July 1999 the European Court of Human Rights found France guilty of violating international norms on torture as well as on fair trial within a reasonable time in connection with the case of Moroccan/Dutch national Ahmed Selmouni who was tortured in Bobigny in 1991.

Insufficient protection for victims, complainants and witnesses

Article 13 of the UN Convention against Torture requires State Parties to take steps to ensure that complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of their complaint or any evidence given.

However, in several countries in the region intimidation and persecution of victims, complainants and witnesses constitute one of the main obstacles to accountability and justice and explain why complaints may be relatively few in comparison to the scale of the problem. In some countries, when adding the risk of persecution for those involved in lodging complaints and the lack of confidence of victims and human rights defenders alike in the justice systems, it is almost surprising that people continue to take pains to file and follow up on complaints. In Tunisia, for example, in recent years relatives of Faical Barakat were subjected to repeated threats and intimidation after having filed a complaint with the UN Committee against Torture (see page 2). More recently, witnesses in the case of the death in custody of Ridha Jeddi, hours after his arrest on 17 September 2000 in Menzel Bourguiba, have also reported having been threatened.

Inadequate levels of sanctions, or lack of sanctions, for the perpetrators of violations.

In many countries the occasions when those responsible for human rights violations are brought to justice are comparatively rare and the sentences passed in general are so light as to contribute to an atmosphere of impunity. In some countries the pattern of nominal sentences for law enforcement officers convicted of human rights violations, pardons and lax enforcing of sentences are all contributory factors in the failure to eradicate impunity.

In some countries officers already convicted for a crime of torture, but whose appeals were still pending, have been selected for promotional courses. Where first instance sentences may more appropriately reflect the seriousness of the crime committed, they may be substantially reduced on appeal to non-custodial sentences. In the case of Spain, for example, in 1997 the UN Committee against Torture stated that "The sentences imposed on public officials accused of acts of torture, which frequently involve token penalties not even entailing a period of imprisonment, seem to

indicate a degree of indulgence which deprives the criminal penalty of the deterrent and exemplary effect that it should have and is also an obstacle to the genuine elimination of the practice of torture.”

In several countries, the impartiality of a number of criminal investigations into allegations of ill-treatment has been questioned, with claims that prosecuting authorities frequently view the evidence presented in favour of the suspected police officer as more credible than that in favour of the victim. Very few judicial investigations into allegations of ill-treatment are known to have resulted in the prosecution of police officers and in a number of instances where officers were found guilty of ill-treating detainees, the sentences imposed on the guilty police officers were nominal. The trend of a low rate of prosecution of police officers who are alleged to have ill-treated detainees in proportion with the number of complaints has continued.

In Egypt, even though hundreds of victims have managed to obtain compensation by civil courts for the torture they were subjected to by police and state security officers, not a single case is known to have resulted in the prosecution of the members of the security forces responsible for the torture.

In Israel and the Occupied Territories torture was legal until 1999. In April 1995 ‘Abd al-Samad Harizat died as a result of violent shaking by the Israeli security forces. In June 1996 the Israeli Justice Ministry announced that an interrogator who had shaken Harizat was acquitted on most counts but convicted of “not carrying out his duty”, and had returned to his post. In November 1996 an Israeli military court fined four Israeli soldiers a symbolic *agora* [about one cent] for “making excessive use of their weapons” and unlawfully killing a Palestinian youth who failed to stop at an army roadblock in the West Bank in 1993.

Impunity for mass violations and abuses in the context / aftermath of conflict

Impunity is a major challenge for those countries which are in, or coming out of, conflict situations. In Algeria, where since 1992 more than 100,000 people have been killed, and tens of thousands have been tortured and have “disappeared”, impunity, previously widespread for members of security forces and paramilitary militias, has since 1999 been formally extended to members of armed groups responsible for killings, torture and other grave abuses. In the past year over a thousand members of armed groups were granted amnesty and thousands of others have been exempted from judicial prosecution in a “turn the page and forget” approach which has denied the victims the right to truth and justice.

In Lebanon, following the recent Israeli withdrawal from its self-styled “security zone” in the south of the country and the collapse of the South Lebanon Army (SLA), Israel’s proxy militia, hundreds of members of the SLA, including persons who committed serious human rights abuse and war crimes, have gone to Israel, where government policy has condoned certain types of human rights violations, including extrajudicial executions and torture, resulting in impunity for the perpetrators; others are reportedly present in other Euro-Mediterranean countries. To date the Israeli government has failed to investigate and bring to justice Israeli and Lebanese nationals within its jurisdiction accused of committing serious human rights abuses or war crimes.

In October 2000, at a special session of the UN Commission for Human Rights, European governments voted against a resolution to set up an international investigation into the killing of more than 100 people, the vast majority of them Palestinians and including at least 25 children, during a wave of violence in Israel and the Occupied Territories, and the areas under the jurisdiction of the Palestinian Authorities.

Universal jurisdiction

Article 5 of the Convention against Torture requires that each State Party ensures that anyone who is alleged to have been responsible for acts of torture and who is present in any territory under its jurisdiction is brought to justice. In recent years there have been some positive developments in this respect. However, the application of universal jurisdiction by governments of the Euro-Mediterranean region has remained very limited.

In March 2000 the UK Home Secretary decided not to extradite former Chilean Head of State General Augusto Pinochet to Spain and allowed him to leave the UK to return to Chile. The UK Home Secretary also decided not to proceed in respect of extradition requests from Switzerland, Belgium, and France. These three governments as well as the Spanish government decided not to appeal the decision of the UK Home Secretary.

In June 2000 four Rwandese nationals residing in Belgium were committed for trial accused of committing war crimes in Rwanda in the context of the 1994 genocide. The trial of Alphonse Higaniro, Vincent Ntezimana, Sister Gertrude Mukangango and Sister Julienne Kizito is expected to take place in 2001. All four are currently at liberty. Although several individuals believed to have played a leading role in the 1994 genocide in Rwanda were known to be living in various countries in Europe, North America and Africa, by the end of June 2000 only one of these countries, Switzerland, had tried and sentenced a Rwandese national for war crimes under its national jurisdiction. In the context of legislation enacted in 1993 and 1999, a number of criminal complaints have been lodged with the Belgian courts since 1998 and criminal investigations initiated against several leaders and prominent members of past and present administrations of various foreign states.

AI welcomes any action taken to combat impunity, wherever it occurs, and calls on states to ensure prompt, thorough and independent investigations into all allegations of crimes under international law. Some progress has been made in recent years in the region, but a great deal more political will is required to ensure that those, including former and current heads of state, accused of crimes against humanity, such as torture, extrajudicial executions and "disappearances", are brought to justice.

IMPACT OF THE EURO-MEDITERRANEAN PARTNERSHIP AGREEMENT

In practice the EMP Agreement has contributed nothing concrete to the fight against impunity in the region. The first bilateral EMP Agreement was signed with Tunisia, where human rights violations were and are routine and where impunity is endemic, and the second bilateral EMP Agreement was signed with Israel, at the time the only country in the world where torture was authorized by law.

The absence of an improvement in the human rights situation in general and concerning impunity specifically since the first bilateral EMP Agreement took effect, poses an acute challenge to the EMP Agreement and to EU policy in the Mediterranean region. How the EU proceeds in this regard towards the first countries where an EMP Agreement has come into effect, will have precedential impact on the EU's credibility and effectiveness in treating human rights issues with its future Euro-Mediterranean partners. The conference and seminars about human rights training and promotion which the EU organizes or finances are not and cannot be a substitute for the concrete and measurable steps which are necessary to put an end to impunity in the region.

CONCLUSIONS AND RECOMMENDATIONS

The provisions of Article 2 of the EMP Agreement must be applied consistently and in accordance with international human rights standards. A credible human rights approach should not only provide the basis for programs to enhance human rights protection and promotion, but also involve concrete actions aiming at ending human rights violations, notably by taking a firm stand against impunity.

To this end concrete mechanisms should be put in place to regularly assess compliance with Article 2 by all contracting parties to the EMP Agreement, including mechanisms to regularly and impartially monitor the extent to which the contracting parties take concrete action to address impunity:

- all complaints of violations should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators, and the methods and findings of such investigations should be made public. During the investigation, those officials suspected of having committed the violations should be suspended from active duty, and when there is sufficient admissible evidence suspects should be prosecuted. Those found guilty must be punished by sanctions commensurate with the seriousness of the crime. Complainants, witnesses and others at risk during such investigations and prosecutions should always be protected from intimidation and reprisal.

- states should ensure prompt, thorough and independent investigations, wherever allegations of crimes under international law are made. If such an investigation shows that there is sufficient evidence for a prosecution, then, in accordance with international law which allows the national courts of any state to try people accused of such crimes, regardless of the nationality of the alleged perpetrators or victims and regardless of where the crimes were committed, AI calls on states to bring the accused to trial or extradite them to another country for trial, in accordance with international standards. No one should be extradited to a country which cannot assure that any trial on such charges meets international standards for fairness and does not result in the imposition of the death penalty or other cruel, inhuman or degrading punishment.

ANNEX

AMNESTY INTERNATIONAL'S REPORTS ON IMPUNITY On EURO-MEDITERRANEAN COUNTRIES - 1996-2000

- Algeria: Truth and justice obscured by the shadow of impunity, 08-Nov-00 (MDE 28/11/00)
- Algeria: Fear and silence: a hidden human rights crisis, 19-Nov-96 (MDE 28/11/96)
- Algeria: Civilian population caught in a spiral of violence, 18-Nov-97 (MDE 28/23/97)
- Egypt: Indefinite detention and systematic torture: the forgotten victims, 3-Jul-96 (MDE 12/13/96)
- Europe: Failures at fifty: impunity for torture and ill-treatment in Europe on 50th Anniversary of European Convention on Human Rights, Nov-00 (EUR 01/04/00)
- Europe: Concerns in Europe: January - June 2000, 21-Aug-2000 (EUR 01/03/00 - this report is issued every six months)
- Federal Republic of Germany: Continuing pattern of police ill-treatment, 03-Jul-97 (EUR 23/4/97)
- Ireland: Briefing to the UN Human Rights Committee on Human Rights Concerns, 01-Aug-00 (EUR 29/1/00)
- Jordan: an absence of safeguards, 1-Nov-98 (MDE 16/11/98)
- Lebanon: Human Rights developments and violations, 09-Oct-97 (MDE 18/19/97)
- Libya: Gross human rights violations amid secrecy and isolation, 25-Jun-97 (MDE 19/8/97)
- Morocco/Western Sahara: Human rights violations in Western Sahara, 18-Apr-96 (MDE 29/4/96)
- Palestinian Authority: Prolonged political detention, torture and unfair trials, 02-Dec-96 (MDE 15/68/96)
- Portugal: A brief perspective on Amnesty International's concerns, past and present, 01-Dec-96 (EUR 38/15/96)
- Syria: Caught in a regional conflict: Lebanese, Palestinian and Jordanian political detainees in Syria, 27-Jan-99 (MDE 24/1/99)
- Syria: Continuing human rights concerns in Syria: A briefing, 26-Feb-99 (MDE 24/7/99)
- Syria: Repression and impunity: the forgotten victims, 11-Apr-95 (MDE 24/2/95)
- Tunisia: Repression thrives on impunity, 2-Nov-95 (MDE 30/19/95)
- Tunisia: A widening circle of repression, 9-Jun-97 (MDE 30/25/97)
- Tunisia: Human rights defenders in the line of fire, 1-Nov-98 (MDE 30/20/98)
- UK: The Pinochet case: Universal jurisdiction and the absence of immunity for crimes against humanity, 01-Jan-99 (EUR 45/1/99)
- United Kingdom: The case of General Pinochet: Universal jurisdiction and the absence of immunity for crimes against humanity, 01-Oct-98 (EUR 45/21/98)
- United Kingdom: Deaths in custody: lack of police accountability, 24-May-00 (EUR 45/42/00)
- UK (Northern Ireland): End impunity for ill-treatment: The David Adams case, 04-Nov-99 (EUR 45/45/99)



Fédération Internationale des Ligues des Droits de l'Homme

Violence against women in the Euro-Mediterranean region since November 1995

Introduction

Forced marriage, workplace intimidation, exploitation, crimes of honour, genital mutilation, conjugal violence, sexual harassment, trafficking, prostitution, salary inequalities, discrimination, slavery, rape, systematic violations of women's rights and dignity in armed conflicts... the list that describes all the forms of violence against women in the world is extensive. Whatever form the violence takes, be it physical, sexual, or psychological, it is always conducted on the same basis: an imaginary inequality between men and women.

The place of women in the Barcelona Process

In November of 1995, Barcelona hosted the first Euro-Mediterranean conference, the point of departure for an ambitious Euro-Mediterranean partnership whose objective was to make the Mediterranean region a zone of dialogue, exchange and co-operation that would guarantee peace, stability and prosperity. The governments present at this conference adopted the Barcelona Declaration, which affirmed that the realisation of this objective requires the universal recognition of the reinforcement of democracy and the respect of human rights. These universally recognised rights include, of course, the rights of women as fundamental human rights: "Women's rights are human rights" all the nations of the world were reminded at the World Conference on Women in Beijing (September 1995). The Declaration reaffirmed the irreplaceable role of civil society for which signatory nations are encouraging its reinforcement.

While the Barcelona Declaration makes human rights the basis of the partnership, the situation of women in the region has only been brought up in an incidental manner, as a few lines in the agreement, by underlining their role in economic development. Yet the realisation of the objectives of the Euro-Mediterranean partnership cannot be attained without full participation of women in the Mediterranean in the economic, social, cultural and political life of their respective societies.

Today, this participation is being hindered and in certain cases is being gravely dismissed due to inequalities between men and women in law codes, pervasive attitudes, and a lack of political will on the part of regional governments to advance the cause of women's rights. All the countries in the region with the exception of Syria have ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Yet if one looks at the situation more closely, the international conventions are often limited because of a series of reservations that limit the substance of the convention on its essential points. These

reservations are generally connected to ties between law and religion. In countries where Islam is the predominant religion, a strict approach to Shari'a (Muslim law) often forms the central focus of these reservations. Inequality between men and women is thus legalised with regard to questions concerning *personal status* and familial relations, including issues of civil status, marriage, legitimacy, capacity, nationality, etc.

Faced with these situations, women of the Mediterranean have organised themselves to denounce these diverse forms of violence and inequality, to demand the end of legally-sanctioned discrimination, and to win the battle against negative representations and backward social practices. Scores of women's associations have been created these past few years and transnational networks have been established, and thousands of women dedicate themselves to more general human rights associations. For example; the 95 Maghreb Equality Collective, created before the World Conference on Women in Beijing, brings together defenders of women's rights in Algeria, Morocco and Tunisia; the Aïsha Network – Forum of Arab Women, a network of Arab women's NGOs from Palestine, Lebanon, Jordan, Egypt, Tunisia, Morocco, Sudan, Yemen and Algeria, created in 1992, promotes women's rights and demands equality throughout the region. And the Permanent Arab Court to Resist Violence Against Women, created in 1995, works to break the wall of silence that surrounds victims of violence by allowing them to testify. A large number of local or national associations are themselves members of these networks.

Violence against women in the Euro-Mediterranean region

Categories of violence

Perpetrators of violence against women, while diverse, may be grouped into three principal categories according to the United Nations Declaration on the Elimination of Violence against Women of 1979. The first category is the family, which includes dowry-related violence, conjugal rape, and exploitation-related violence. The second category concerns society, the space in which women are victims of rape, sexual cruelty, sexual harassment and workplace intimidation, in educational establishments and elsewhere, and forced prostitution. The third category is the state, responsible for violence that it directly perpetrates or tolerates; this category includes violence sanctioned by a state's legislation. No region of the world is a safe haven for women, and even if each region has its own particularities, one finds that these three categories share a common denominator of the insufficiency of political programs developed by public authorities to prevent the violence and to punish the perpetrators.

The current situation and mobilisation

Crimes of honour in Jordan

Jordan ratified the Convention on the Elimination of Discrimination against Women (CEDAW) on July 1, 1992, but not without several reservations. These reservations include Article 9(2), which allows women to pass their nationality on to their children; Article 15, concerning women's freedom to choose their domicile; and Article 16, concerning the rights arising upon the dissolution of a marriage in connection with maintenance and compensation.

Throughout the Middle East, there exists a code of familial honour which is based on society's desire to preserve what it considers to be the integrity of the family. This traditional principle allows for the murder of women who have brought shame to the family. According to UNICEF, an average of 23 honour crimes are perpetrated. Oftentimes the women are

victims of rape or simply rumour or suspicion, and indeed 95% of so-called honour killings are carried out solely on the basis of suspicion of extramarital activity. The majority of the victims are virgins. Furthermore, victims who survive murder attempts remain threatened and often have nowhere safe to go.

A campaign has been launched in Jordan with the goal of abolishing Article 340 of the Jordanian Penal Code, which stipulates that “[h]e who catches his wife or one of his female relations in a flagrant act of adultery, and kills or wounds one or both [of the participants], may not be prosecuted.” In the context of this campaign in January 2000, for the first time, a demonstration in Amman brought together some 5000 people to protest crimes of honor. This impetus has encountered firm opposition from the Islamic Action Front, political arm of the Muslim Brotherhood, which denounces it as “a Western plot aiming to destroy and corrupt our society.”

Genital mutilation in Egypt

Egypt ratified CEDAW on September 18, 1981 and had reservations about Articles 9 and 16 as well as Article 29 (2).

Violence remains one of the most important problems in Egypt even within the realm of sexual discrimination. Domestic violence protected by impunity, non-recognition of marital rape, an absence of women in the legislature, discriminatory judicial decisions concerning the punishments that men and women receive for committing the same crimes - there are many obstacles to the end of violence against women in Egypt.

Another form of widespread and socially protected violence is the practice of genital mutilation, which thrives throughout Egypt in spite of the combative efforts of NGOs. Currently, 97% of Egyptian females are subjected to this treatment. A 1991 investigation revealed that 80% of city-dwelling women and 98% of rural women approve of this practice. Female circumcision fulfils a social function: girls are taught that to successfully repress their sexuality so as to better prepare them for marriage, society demands that “respectable women” not appear “lewd” (Abdel Halim, quoted in Margaret Schuler, *From Basic Needs to Basic Rights*, 1995, p 253). Although the Egyptian Minister of Health issued a decree forbidding this practice, the official text still allows doctors to carry out such an operation if they deem it “necessary”.

The problems of women in Egypt are manifold and NGO interventions on their behalf are necessary. Yet, to be able to play a necessary role in this sense, Egyptian NGOs need a space for self-organisation and free association, a right which is unfortunately extremely restricted by the laws which govern such associations in Egypt. In the context of restrictions on freedom of action for associations and defenders of human rights, NGOs for the defense of women’s rights and general human rights NGOs are organizing themselves. A “Task Force Against Female Genital Mutilation” has thus been set up to coordinate the battle against female circumcision.

Civil marriage in Lebanon

The Convention on the Elimination of Discrimination against Women (CEDAW) entered into effect in 1997. The government entered reservations about Articles 9, 16 and 29 (see above).

In Lebanon, personal status is established according to confessional laws. There currently exist 18 recognised confessions throughout the country and there is no single uniform civil code (a law was proposed by the Cabinet in 1994 but never presented to Parliament). All questions concerning personal status such as inheritance, marriage, the rights of children or divorce are dealt with by each community and by their own personal status laws and judges.

There are therefore many different laws which regulate conjugal relations in such a way that these questions do not work in favour of Lebanese women.

One particular aspect of the consequences of this situation is the prohibition of civil marriage. Lebanese law recognises civil marriages from other nations, but will only authorise religious marriages in Lebanon itself. Many mixed couples therefore “travel” to neighbouring countries to have a civil marriage.

Some organisations and campaigns have worked in favour of civil marriage, notably the Movement of Human Rights, which collects funds to allow young couples to marry in Cyprus. This organisation is campaigning for the establishment of a national law permitting couples to marry without renouncing their religion.

The opponents of this project are particularly hostile and use the mutual respect of beliefs as a pretext to refuse it. The consequences for women in a free union or having had a civil marriage are very difficult to endure: they are often rejected in their community, and even their own families.

These questions of personal status contribute to relegation of women to a marginal role in Lebanese society.

Violence against women in Algeria

In Algeria, the Convention on the Elimination of Discrimination against Women came into effect in 1996, but the government entered reservations about Articles 2, 15, 16, and 29.

In Algeria, personal status organises the life of Algerian women in a completely discriminatory manner: women do not have free consent in marriage whatever their age (the presence of their guardian is obligatory); they can only divorce under the most restrictive circumstances; protected in theory from polygamy, they cannot prevent their spouse from marrying other women; only the father is entitled to guardianship of the children. This discrimination also carries over into the realm of education where girls are somewhat less educated than boys, as well as in the realm of employment.

Physical violence in the home is common, and as women have left their homes they encounter social violence (sexual harassment, pressure, or assaults against women living alone).

During the armed conflict begun in Algeria in 1992, women in particular were targeted by terrorist groups (abduction, rape, etc.). Faced with this violence, rather than establish universal rehabilitation programmes for the victims, authorities have most often limited themselves to a formal discourse of compassion on their behalf.

Another problem that must be brought to light concerns the wives of the disappeared, often destitute. The only means of gaining guardianship over their children and access to the inheritance to which they are entitled is to obtain an official judgement of death. Although their husbands are reported missing they keep hoping to find them alive, and as long as truth and justice are not established it is difficult for them to request a death certificate.

Moroccan plan for integration of women in development

Morocco ratified the Convention on the Elimination of Discrimination against Women (CEDAW) in June 1993, but entered reservations about Articles 9, 16 and 29 (see above).

Although since 1995 the judicial condition of women has not changed, today it forms part of a lively debate. In March 1999, the Prime Minister presented the Plan of Action for the integration of women in development, a plan prepared by various departments of ministries concerned with this issue and by non-governmental organisations working for the defence of women's rights.

This plan of action presents reforms and steps in response to four principal objectives : to guarantee the full and lasting participation of women in education, to put into place a political programme for reproductive health, to guarantee equitable and lasting participation of women in economic development, and to eliminate all forms of discrimination with regard to women.

This plan has been presented as a unit, given the interdependence of the different domains which it will affect. Around this plan, for the first time, a pluralist and democratic debate concerning the condition of women has been launched and continues to take place. Its critics do not reject it in its entirety, but attack it primarily on " the reinforcement of the power of women ", and notably on the question of the reform of the Personal Status Code. For their part, associations for the defence of women's rights and organisations for the defence of human rights have mobilised to defend this plan of action and to obtain significant modifications in the Personal Status Code.

Violence against migrant women in Europe

While migration immediately after the war consisted principally of men emigrating for economic reasons, migration in the last few decades has been largely marked by the presence of women emigrants. Poverty, human rights abuses, and the consequences of armed conflicts have led more and more women seek refuge in northern countries, reputed to be more respectful of their rights. The Barcelona Process poses limits to the free circulation of people between Europe and the southern banks of the Mediterranean, risking even further the oppression of women.

If violations of women's rights are customary in countries south of the Mediterranean, physical and symbolic violence committed against migrant women are equally present in many European countries in the north. In this sense, despite the commitment of the European Council of Tampere in October 1999 to assure the protection of the rights of minorities, women and children, the reality reveals that the rights of immigrant and foreign-born women, candidates for asylum and those without working papers are frequently violated. Increasingly drastic and arbitrary measures to control migration flows at national borders have infringed on the rights of many migrants and those requesting asylum, and women in particular. Accordingly, in Germany, Belgium and France, women of foreign origin have died from

being violently turned back at the border. Others have been held in detention centers or the international zones of airports. The legal and physical conditions of these holding zones constitute grave attacks on the rights and dignity of those detained. Social and judicial discrimination (education, access to work, salary), prostitution, slavery, physical, psychological, and moral and sexual violence perpetrated in detention centres constitute some of these notorious human rights abuses. The signing of bilateral conventions between certain European nations and nations of emigration has resulted in a stepback in the rights of immigrant women since these conventions allow for the application to immigrant couples of the law from their country of origin. And this right legalises an inequality between women and men, for example in authorising constraint at the time of marriage or repudiation, or unequal inheritance rules. Accordingly, through a series of legal rules, most European societies keep immigrant women in a category of inferior status.

Domestic violence in Europe

In spite of legislation that advocates equality between men and women in Europe, women are still the victims of discriminatory practices, in particular concerning salary, access to high posts in the professional and political worlds. But the worst phenomenon in a developed region like Europe is domestic violence. It is probably the most common form of violence committed against women. Studies are particularly difficult to make as most cases of violence are kept hidden by the victim themselves and by their eye-witnesses. Nevertheless, some research in European countries shows that the phenomenon concerns women without regard to social nor cultural level, and even in countries which are reputedly advanced in equality matters of equality. Thus, domestic violence is as common in Finland as in Spain. Studies show that more than 25% of women declare having been the victim of physical violence from their partner. Beyond the physical scars, the victims of violence suffer from psychological trauma. Fear is usually what prevents them from lodging a complaint, and often leads women who dared to react to back down.

States have long ignored this problem. Over these past few years, the legislation of member States has progressed, in particular with regard to the possibility of indicting the perpetrator as well as in obtaining necessary aid for the victim, but those programmes that have been put into place remain insufficient.

Recommendations

The 27 signatory states of the Barcelona Declaration must commit themselves to initiate, as a priority, programmes of action guaranteeing the rights of women as fundamental human rights conforming to international standards and respectful of the principles of universality and indivisibility.

To this end, they are called to:

- 1- Reinforce, in the final Declaration of the Euro-Mediterranean conference of foreign affairs ministers, on November 15 and 16, their commitment to work towards the recognition, respect and reinforcement of civil, political, economic, and social rights of women ;
- 2- Include in the programmes of each of the three parts of the Euro-Mediterranean partnership – political and security, economic and financial, and social and human – the question of equality and the parity of women and men ;

- 3- Support and reinforce the action of NGOs working for women's rights and assist them to put in place mechanisms for taking decisions and follow-up measures regarding Euro-Mediterranean partnership programmes;
- 4- Systematically include the question of the rights of women in the order of the day of meetings of the Council of Association;
- 5- Scrutinize programs for the promotion of equality that can be made operational through National Plans of Action. These NPAs should be supported financially by MEDA. Equality of the sexes must, in effect, be taken into consideration from programming stage;
- 6- See to it that the fundamental importance of gender-based equality is taken into account in all the initiatives financed by MEDA.

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The Euro-Mediterranean Partnership And Freedom of Expression (1995-2000)

ARTICLE 19
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INTRODUCTION

In 1995, the European Union undertook an initiative with twelve Mediterranean countries. The Euro-Mediterranean partnership, via the Barcelona Declaration, established a common framework to ensure, "a comprehensive partnership among the participants... (in order to) strengthen political dialogue on a regular basis, (and to develop) economic and financial co-operation and greater emphasis on the social, cultural and human dimension"

As part of the Declaration, the participants undertake to "respect human rights and fundamental freedoms and guarantee the effective, legitimate exercise of such rights and freedoms, including freedom of expression, freedom of association for peaceful purposes and freedom of thought, conscience and religion".

In the five years following the Barcelona Declaration, much progress has been made on implementing the economic aspects of the agreements. The human rights elements of the Declaration, however, remain underdeveloped. Key impediments are the lack of mechanisms to monitor implementation or progress by any of the partners on the rights issues described, lack of provisions for enforcement of the terms of the Barcelona Declaration in the area of human rights, and general lack of any action by partners on either side when abuses are reported by third parties.

In this survey, ARTICLE 19 has assembled a number of elements which, when taken together, can be considered to give an indication of the state of freedom of expression in a given country. These include an analysis of the broadcast media, the plurality of the press, media law, the role of censorship, defamation legislation, status of non-governmental organisations and access to official information. As this report demonstrates, many of the countries that are part of the Euro-Mediterranean partnership need to make progress in key areas in order to truly uphold the obligations they have to human rights under the Barcelona Declaration and other international agreements.

THE BROADCAST MEDIA AND NEW TECHNOLOGIES

It is possible to identify an overwhelming trend of governmental control of the broadcast media throughout the region. In Syria, there is a complete state monopoly of Syrian-based radio and television. Although there is an extensive choice made available by free-to-air satellite channels and widespread satellite dish ownership, there is only one channel available that is not run by an Arab state. In Tunisia, there are three ERTT (*Établissement de la radiodiffusion télévision tunisienne*) channels. ERTT receives government funding and is run by an appointee of the President. Its content is entirely pro-government. Similarly, the Egyptian government retains monopoly control over broadcasting through the ERTU (*Egyptian Radio and Television Union*), and ensures that the content of the programmes aired serves the interests of the ruling party. In Lebanon, the number of radio stations has been reduced from 52 to 4 and TV stations from 100 to 11, in a worrying drive to diminish the diversity of opinion in the public arena.

In Turkey, however, there is some evidence of the relaxation of the government monopoly on broadcasting. Since 1994, a plethora of radio and television stations have begun operating. National stations tend to be

financed by two main media groups but there are many independent local stations representing a diversity of opinion. Kurdish language broadcasts remain prohibited despite promises of reform in order to meet standards set by the European Union. Satellite dishes are widely owned and there are over 120 local channels and 12 national channels in Turkey's satellite TV market.

The growing accessibility of new technologies to the public is increasing the means available to individuals to obtain information outside the official channels. For example, Morocco, Syria, Egypt and Israel have all hosted a rapid expansion of the internet market with pay-per-use access becoming a popular method of communication. In Jordan, the only obstacle to internet access is the relatively high cost – there are six ISPs which must all get their lines from a state telecommunications company and are subject to high pricing policies.

PLURALITY OF THE PRESS

Accessibility and plurality of the press is crucial to the promotion of healthy democratic debate. Only the Lebanon, however, displays concrete signs of an actively plural press. Whilst there are only Arabic daily newspapers in the Lebanon, foreign language publications including *Time*, *Newsweek* and *L'Orient le Jour* are both available and very popular.

In April 1997, ARTICLE 19 reported that thirty-five national and 800 local newspapers existed in Turkey, although two groups that relied on state funding monopolised the print media. With the 1991 lifting of Law 2932 which prohibited languages other than Turkish, the possibility has arisen of legal Kurdish language publications. Kurdish publications do, however, face regular suppression and confiscation. In Algeria, six out of thirty national dailies are state owned whilst in Egypt, three government-owned dailies dominate the market, although nine political parties produce weekly publications. In Jordan, all weeklies are privately owned but dailies are not. There is no pluralistic independent press in Syria or Tunisia.

PRESS LAWS

Whilst press laws are benign in many countries, several governments have recently amended legislation to increase state control over the media. The definitions of offences for which the press can be prosecuted are often nebulous in the press laws of the region. The broad application of these terms and concepts enables the respective governments to determine the scope of freedom of expression and to prosecute members of the press at their discretion.

In Jordan, a 1997 modification of the 1993 Press and Publications Law allowed the government to close several critical media outlets. The 1995 Press and Publications Law in the Palestinian Authority regulates domestic and imported publications and gives the Palestinian Authority very wide powers to regulate the media as well as institutions which disseminate information. The PPL prohibits the publication of a whole range of information that may harm "national unity", religion, morality, or reduce confidence in the currency. Similarly, a 1995 revision of the Egyptian press law tightened governmental control over the press and increased penalties for defamation, although fines for libel were reduced. The 1990 Media Law in Algeria bans visual or written matter that contravenes Islamic principles, national values or that may incite fanaticism.

CENSORSHIP OF THE PRINT MEDIA

Prior censorship is a tool commonly utilised by governments across the region to control publications' content. The Jordanian Department of Press and Publications is responsible for the prior censorship of books and imported publications and also vets newspapers and magazines after publication. Whilst foreign publications are regularly imported into Jordan, under the 1998 Press and Publications Law they can be confiscated if in violation of restrictions on the subject matter, particularly criticism of the King and Queen. The Tunisian government insists that each newspaper office must deposit copies of newspapers prior to publication. Seminar papers are censored in a similar fashion. There is complete censorship of the press in Syria owing to absolute state control of news-gathering, printing and distribution of publications.

Censorship is often justified in relation to the preservation and protection of the state, as in the case of Turkey. Turkey's constitution states that "the press is free and shall not be censored", however, publication of articles can be prohibited if they are not in the Turkish language or if they threaten the external security or "indivisible integrity" of the state. The protection of the unitary nature of the state is often invoked to suppress Kurdish publications.

In many countries, laws require journalists to be registered by the state in order to practice their profession. In order to pre-empt confrontation with authorities, including the possibility of de-registration and other penalties, many journalists and newspapers practice self-censorship. The Moroccan government exerts pressure on journalists to exercise self-censorship in particular regard to three taboos; the constitutional status of the King, the King's role as religious leader of the nation; and the status of the Western Sahara. The Palestinian Authority's actions against the media have led to the general practice of self-censorship around material that is critical of the Palestinian leadership or that is of a sexual or religious nature. In Israel, the foreign and domestic media are compelled to exercise self-censorship on the basis of 'voluntary' Censorship Agreements, last revised in 1996. Running parallel to this code are Defence (Emergency) Regulations of 1945, which allow for summary closure of publications and restrictions on distribution. Self-censorship can also be induced in response to extra-legal harassment of journalists including physical attacks.

Censorship by means of economic pressures including preferential allocation or withdrawal of state advertising rights has been reported in a number of countries, including Algeria. Governmental control of publishing houses and advertising revenue in Egypt also means that opposition publications encounter financial difficulties.

DEFAMATION LAWS

Across the region, the imprecise drafting of defamation provisions and their inclusion in Penal Codes serves to allow criminalisation of statements of opinion, the expression of value judgements, and the publication of true information. Laws also penalise statements that may be incorrect but are issued in good faith. It is crucial in a democratic society to encourage the interchange of opinions and to ensure that robust institutions, and the public officials that populate them, are exposed to high levels of criticism and inquiry. As defamation is essentially a means for private individuals to protect their right to reputation, no legitimate state interest is engaged and its enforcement through the criminal justice system is unwarranted.

According to the Algerian Justice Ministry, 141 journalists have been charged with defamation since 1996 and 156 press cases have been brought to the courts, mainly at the instigation of private complaints. Legal harassment of this kind can be unrelenting. Since the creation of Arabic daily newspaper *al Rai* in 1998, the publishing manager has been prosecuted 70 times for libel.

In Egypt, under the Press Code, defamation is punishable by a maximum of three years in prison and substantial fines. Criticism of the government has led to bans on distribution and other restrictions, as in November 1997 when copies of *The Economist* and *Le Monde* were seized by government officials.

In the Lebanon, Tunisia and Turkey, special provision is made for the protection of the reputation of the Head of State and is accompanied by particularly severe penalties. In Tunisia, the defence of "truth" is only permitted in limited circumstances and criminal penalties for defamation and false speech have been explicitly extended to the internet.

Seditious libel remains part of the Israeli Criminal Code and in Syria, the acts of defamation and disparagement are criminalised by the Penal Code and the General Law on Printed Matter.

FREEDOM OF INFORMATION AND NATIONAL SECURITY

With freedom of expression, the right to access official information underpins all human rights and is crucial for the construction and development of democratic societies. It equips individuals to question those that govern them and to make informed political choices. Informing the public of its rights and promoting a culture of openness within government are essential if effective freedom of information legislation is to be implemented.

Access to information is severely restricted in several countries in the region, ostensibly to preserve national security. In Algeria, all information "relating to national security" may be withheld. Due to the excessively broad and elastic definition of 'state security' in the Syrian State of Emergency and Penal Code, there is *no* freedom of information. In Tunisia, national security provisions within the Criminal Code allow an extremely broad classification of national secrets with penalties for breaching the Code of up to ten years imprisonment. Secrecy concerning security and defence issues in Israel is maintained through a number of pieces of legislation including the 1977 Penal Code and sections of the Basic Law: the Knesset and the Government. Despite the restrictions imposed by military censorship, however, in 1999 the Israeli media were able to disclose the fact that MOSSAD agents had been caught red handed tapping phone-lines in Berne.

The Tunisian government fosters a culture of secrecy which compounds its legal constraints on freedom of information. The Criminal Code establishes obligations of "secrecy" for civil servants. The only source of information is the Presidential Palace.

In order to be effective, legislation must remain consistent and in keeping with the goal of ensuring the free flow of information. Whilst the Egyptian 1996 Press Authority Law guarantees the rights of journalists to gain access to and publish information held by public authorities, further legislation has been introduced which undermines this precedent. For example, the Law on the Armed Forces prohibits reporting on the military and the Document Publication Law requires prior authorisation to publish previously unpublished official documents.

CONCLUDING REMARKS

The lack of commitment to freedom of expression exhibited in the countries analysed remains of grave concern to ARTICLE 19. Blanket restrictions on reporting and access to security-related information remain in force in Algeria. The increasingly restrictive censorship and media regulations enforced in Tunisia since 1987 have placed a stranglehold on freedom of expression and also freedom of association, assembly and movement. In order to crack down on Islamist organisations and ensure the survival of the government, the Egyptian authorities have constrained freedom of expression and entrenched the official monopoly of the media. The freedom of non-governmental organisations (NGOs) has recently been challenged by new legislation in Egypt and association Law 153 has been used to limit the activities of NGOs by restricting their access to foreign funding. Human rights defenders and NGO activists have been targeted by Egyptian authorities, especially the EOHR (*Egyptian Organisation for Human Rights*). Independent organisations have been closed and their directors imprisoned. The Turkish government has initiated some tentative improvements to its freedom of expression record – for example, the release of many imprisoned journalists – but a restrictive legal framework remains in place. In the Palestinian Authority, measures allegedly introduced to support the peace process have since been utilised to suppress dissenting voices. When it is politically expedient to do so, TV and radio stations, publications and opposition and religious groups are silenced, often by extra-legal measures. The Israeli Security Forces have attacked Palestinian journalists with relative impunity.

There are, however, some signs of improvement in a handful of countries. For example, the widespread availability of new technologies, the tradition of free press and the developing tourism industry point to a favourable future for freedom of expression in Lebanon, although the course of the Middle East Peace Process inevitably affects the situation. The Israeli press is free to be extremely critical, often to the point of

sensationalism, on matters such as governmental corruption. There has been a general improvement in the human rights situation in Morocco since the early 1990s with the release of 400 prisoners of conscience and the 1990 creation of the *Conseil consultatif des droits de l'homme* and *The Ministry for Human Rights*, although in 2000 some foreign journalists have experienced problems in operating in the country. The Algerian government has issued assurances to foreign press organisations that it is committed to press freedom, although this has been contradicted by statements broadcast on Algerian radio that “journalists should be partisan and serve the state interest”. The growing strength of civil society organisations in some countries has also ensured a greater resistance to restrictive governmental policies and aggressive conduct: women’s organisations, human rights NGOs and workers unions are robust and active in Algeria, Morocco, Turkey and Lebanon.

ARTICLE 19 MAKES THE FOLLOWING RECOMMENDATIONS:

- The partners of the Euro-Mediterranean initiative should entrench their commitment to human rights by implementing, at the earliest opportunity, mechanisms for monitoring and enforcing their obligations under the Barcelona Declaration
- Across the region, state monopolies on broadcast media should be relaxed, independent licensing regimes established and governments should ensure that any publicly-funded media uphold a genuine public service remit rather than reflecting governmental interests.
- Legislation allowing state control over media content should be repealed, as should regulations requiring the licensing of journalists in order that they may practice their profession within the law.
- Regulation of obscene materials, inasmuch as it can be justified, should be dealt with by post-publication sanctions with appropriate due process guarantees.
- Defamation laws should be amended to reflect the following:
 - Custodial sentences attached to crimes of defamation should be abolished and defamation should be decriminalised and reduced to a civil tort.
 - Special penalties for defaming or insulting the Head of State and other public officials should be revoked.
 - Truth should be a complete defence in defamation proceedings.
 - The burden of proof should be on the plaintiff to prove the falsity of a statement and not on the defendant to substantiate his or her innocence.
 - Clear guidelines should be issued to assess damages to ensure that awards are proportional to the harm caused, and that any alternative remedies, including an apology, are fully taken into account.
- Freedom of information legislation, in line with best law and practice, should be guided by the principle of maximum disclosure where information is disseminated in all but very limited circumstances. Restrictive legislation should be revoked and a transparent bureaucratic culture encouraged. Blanket restrictions on reporting and access to security related information should be repealed and mechanisms introduced to facilitate the appeal of decisions to withhold information.
- Whilst national security is a concern common to all governments, a substantial harm test should be included in any legal restrictions on the availability of information on these grounds. This would ensure that arguments founded upon the prioritisation of national security can only be invoked to refuse information if substantial harm is likely to result from its disclosure. A public interest test would also ensure that if the public interest in receiving the information is greater than the threat to national security, the relevant information would be disclosed.
- Freedom of information legislation should be introduced based on the principle of maximum disclosure. This should be backed by a positive obligation on officials to provide information and an independent appeals procedure for applicants to follow if their information requests are denied.
- Peaceful non-governmental organisations should be allowed to operate freely, without the need to obtain official permission.

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This report was prepared by Clare Hinkley-Smith and Bethan Grillo-Simpson and edited by Ilana Cravitz.

Fourth Euro-Mediterranean Summit (Marseille, 15-16 November 2000)

Twenty-seven countries - plus Libya, which has observer status - will take part in the Fourth Euro-Mediterranean Summit as part of a partnership process with the European Union. Four of those countries are known to violate press freedom: Libya, Syria, Tunisia and Turkey. Although the infringements of press freedom take different forms, one thing all their governments have in common is that they are violating the very principle of the partnership. By adopting the Barcelona Declaration in November 1995, the governments promised to "respect human rights and fundamental freedoms", and to "ensure that those rights and freedoms, including freedom of expression, can be effectively implemented". Infringements of press freedom have also been common in six other states, although the situation is less alarming: Algeria, Egypt, Israel, Jordan, Morocco and the Palestinian Authority territories. In all ten countries, a total of 11 journalists have been killed, at least 1,000 arrested and at least 450 attacked or threatened since November 1995. In Turkey alone, 850 journalists have been arrested and 200 assaulted.

Eleven journalists killed

Compared to some other world regions, few journalists have been killed in the Mediterranean area during the past five years. The country worst hit was Algeria, where eight journalists were murdered in 1996 alone. Most of the 57 murders committed in that country between 1993 and 1996 have not been punished. Although most of the journalists were victims of violence by armed fundamentalist groups, a question mark still hangs over the identity of some of the killers. In Turkey, two journalists were murdered. On 8 January 1996 Metin Göktepe, a reporter with the extreme-left daily *Evrösel*, was beaten to death by police officers while being held at a sports centre in Istanbul. He had been covering the funeral of two prisoners killed during a protest at Istanbul prison when he was arrested. On 20 January 2000 the appeal court confirmed the sentence of the five policemen to seven and a half years in jail for manslaughter. The Göktepe family lawyers have appealed to the European Court of Human Rights.

Five journalists "missing" in Algeria

Five journalists went missing in Algeria between 1994 and 1997: Mohamed Hassaine, a correspondent for the daily *Alger Républicain* (1994), Kaddour Bousselham, a correspondent for the state-owned daily *Horizons* (1994), Djamil Fahassi, a journalist with national radio's third station (1995), Salah Kitouni, managing editor of the weekly *El Nour* (1996), and Aziz Bouabdallah, a journalist with the Arabic-language daily *El-Alam Es-Siyassi* (1997). The first two were probably kidnapped by armed fundamentalist groups. In the three other cases, however, various factors lead us to think that they were kidnapped by members of the security forces. On 9 July 1996 Salah Kitouni went to Constantine police

station after receiving a summons. His family has had no news of him since. In August 1996 relatives wrote to the state prosecutor inquiring about the journalist's whereabouts. In a reply dated March 1997, the prosecutor said that the police had handed him over to the Research and Investigation Centre of the fifth military region on 11 July 1996. The family has received no other reply to many subsequent letters to the National Human Rights Observatory, the government mediator and the head of state himself. The same is true of the Bouabdallah and Fahassi families, who have never obtained satisfactory replies from the authorities to their requests for information about the missing journalists.

About 1,000 journalists arrested or jailed

Although the figure has fluctuated over the years, there do seem to have been fewer arrests in 2000. Of the 17 journalists currently in jail, 11 have been there for more than five years. Syria, where press freedom is totally inexistent, holds the record, with seven journalists locked up. Conditions in Syrian prisons are appalling and torture is commonplace. Nizar Nayyoub, a journalist with the weekly *Al Huriyya* and the literary journal *Al Ma'arifa*, as well as a member of the Committee for the Defence of Democratic Freedoms and Human Rights in Syria (CDF), was arrested by the security forces in January 1992. He was sentenced to ten years in prison for writing a CDF leaflet condemning numerous human rights violations during the December 1991 elections. He is now suffering from various after-effects of the prison conditions and torture he has endured. He has several fractured vertebrae caused by the so-called "German chair", a metal device with mobile parts that severely stretches the spine and puts extreme pressure on the neck and limbs. He can now only move around on crutches. The military authorities have made it clear that he will only be allowed to receive treatment if he agrees to sign a declaration recognising that he "made false statements about human rights in Syria" and undertakes to give up all political activities. Nizar Nayyoub has consistently refused.

In Libya, Abdullah Ali al-Sanussi al-Darrat, who has been held without charge or trial since 1973, is the world's longest-serving journalist prisoner. Investigations have failed to locate his whereabouts or find out anything about his state of health. All requests for information from the Libyan authorities have remained unanswered.

In Egypt, the three journalists currently in prison are fundamentalist Moslems. The emergency law in force since the assassination of President Anwar Sadat in 1981 is still being used to clamp down on journalists with Islamist sympathies and to justify bringing them before military courts for "colluding" with terrorists. Abd Al-Munim Gamal Al-Din, a journalist with the pro-fundamentalist biweekly *Al Shaab*, has been in jail since February 1993. In October of that year he was acquitted along with about ten other defendants after an eight-month trial before the Cairo military court, but instead of being released he was kept in jail. In May 1998 he started a 50-day hunger strike in protest at his illegal imprisonment. He is believed to be suffering from asthma and serious kidney problems.

Although no cases of torture have been reported in Turkey during the first ten months of 2000, some 50 journalists have been arrested. Most of them work for the pro-Kurdish, extreme-left or Moslem fundamentalist media that have been the authorities' prime targets for several years.

In the territories controlled by the Palestinian Authority, journalists who dare to criticise official policy are frequently arrested. There have been four arrests since the start of 2000, including Maher Alami, an independent journalist working for *Al-Istiqlal*, and Abdullah Issa, correspondent of *Asharq Al-Awsat*, who were held for several weeks during the first half of 2000 without being charged or given any explanation.

At least 450 journalists threatened, attacked or injured

In some countries, threats have proved the easiest way to silence dissenting voices. This is the case in Tunisia, where Taufik Ben Brik, correspondent of Reporters Without Borders, the French daily *La Croix* and the news agencies *Infosud* and *Syfia*, has been the target of constant official harassment for several years: anonymous threatening phone calls, personal insults, his phone and fax lines cut, his home kept under police surveillance, his passport confiscated, his car vandalised, etc. On 20 May 1999 Taufik Ben Brik was attacked outside his home by three plain-clothes policemen armed with chains and a club. The attack took place the day after an article he had written about Khmais Ksila, vice-chairman of the Tunisian Human Rights League, was published in the Swiss daily *Le Temps*. On 3 April 2000 Ben Brik started a hunger strike that lasted 42 days to protest the harassment.

In Morocco the interior minister publicly threatened Aboubakr Jamaï, publishing manager of the weekly *Le Journal*, in October 2000. Referring to an interview in the newspaper with the leader of the Polisario Front, the minister told the journalist: "Just as well you're not my son, or I'd have smashed your face in!"

In Egypt, during the October 2000 legislative elections, a reporter from the *Associated Press* news agency was assaulted by a police officer in a Nile delta town. Mariam Fam had gone to the town after hearing reports that the police were putting pressure on voters.

In Israel at least ten Palestinian and foreign journalists have been shot and injured by Israeli soldiers since 28 September 2000, when clashes resumed between Palestinians and the Israeli army. In October 1996 most of the 11 journalists injured by gunfire during clashes over the opening of a tunnel under the Esplanade of the Mosques in Jerusalem were deliberately shot at by Israeli soldiers. And over the past five years, more than 70 reporters have been assaulted by the army.

Meanwhile, during the October 2000 clashes the Palestinian Authority tried to put pressure on foreign journalists, particularly after film of the lynching of two Israelis in Ramallah was broadcast. But it is still hard to say with certainty whether the majority of these attacks or threats were the work of the Palestinian Authority's various security services or civilians.

Censorship is still in force and laws threaten freedom

Suspensions, censorship, banning newspapers - governments have a choice of methods for dealing with taboo topics. Turkey's broadcasting council, the RTÜK, hands down monthly sanctions to media for reasons as varied as "damaging the unity of the state", "incitement to hatred and violence", or "damaging general morality, social peace and family values". Since 1 January 2000 the RTÜK has inflicted a total of 4,291 days of suspension on more than 25 radio stations and television channels.

In Morocco, where the arrival on the throne of a young monarch raised hopes that the kingdom might open up more to basic freedoms, seven Moroccan and foreign publications (*Le Reporter*, *Le Quotidien du Maroc / Economie*, *Al Moustaqbil*, *Jeune Afrique - L'Intelligent*, *Le Figaro*, *Le Journal* and *Assahifa*) have been victims of censorship since the start of the year. Sensitive subjects are still legion: the future of Western Sahara, human rights violations under the former king, Hassan II, the fundamentalist movement, and so on.

In Tunisia all newspapers are imbued with the same flat tone. Foreign titles - which alone are in a position to criticise the government - are frequently victims of seizures. To mention just two, the French dailies *Libération* and *Le Monde* have been seized on more than 40 occasions in less than two years

the offending issues contained reports that either criticised the Tunisian president or condemned the state of human rights in the country.

In Jordan, legislative clauses that were particularly harmful to press freedom were repealed in 1999, but the reform did not go far enough. The penal code still provides for jail sentences for crimes of opinion. Journalists are obliged to belong to the official trade union before they are allowed to practise their profession. On 5 September 2000 Nidal Mansour, editor of the newspaper *Al Hadath* and chairman of the Centre for the Defence of Journalists' Freedoms, was excluded from the union for life because he was "not working full-time as a journalist". The move effectively bars Nidal Mansour from ever working as a journalist again.

In Libya, since Colonel Muammar Qadhafi set up his military regime 30 years ago, the media have been subject to total censorship and have been used for propaganda purposes.

Recommendations

In November 1995, at the Barcelona conference, 12 Mediterranean countries pledged to "act in accordance with the United Nations' Charter and the Universal Declaration of Human Rights", as one of the conditions of a partnership with the European Union. One of the clauses in the Barcelona Declaration states that respect for democratic principles and basic human rights is an "essential element" in the agreements between the countries and the EU. Yet during the five years that have elapsed since then, the state of press freedom in those countries has not improved significantly.

Reporters Without Borders calls for the immediate and unconditional release of all the journalists imprisoned for press offences (seven in Syria, one in Egypt, one in Libya and two in Turkey) and for fair trials for those charged with other press offences (two in Egypt, two in Turkey and two in Tunisia).

Reporters Without Borders urges the ten countries that signed the Barcelona Declaration and that are still violating press freedom to take all necessary steps to stop arbitrary obstacles being put in the way of journalists going about their work. Those who kill and kidnap journalists, as well as members of the security forces responsible for arrests, threats, assaults and torture, should be identified and brought to trial.

Reporters Without Borders calls for an end to arbitrary and illegal arrests, which are often directly instigated by state representatives.

Reporters Without Borders calls on these countries to abolish prison sentences as punishment for press offences, except in the case of those involving "racist or discriminatory comments or appeals to violence", as Abid Hussain, the United Nations' special rapporteur on the promotion and protection of the right to freedom of opinion and expression, recommended in a report published on 18 January 2000.

Reporters Without Borders urges the eight countries that flout press freedom (Algeria, Egypt, Israel, Jordan, Morocco, Libya, Syria and Tunisia), despite having ratified the International Covenant on Civil and Political Rights, to respect their commitments. We appeal to Turkey to ratify the covenant. Finally, Reporters Without Borders asks France, as the current chairman of the European Union, and Sweden, which is due to take over the post on 1 January 2001, to ensure that the ten countries condemned in this document respect their undertakings regarding press freedom.

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FREEDOM OF ASSOCIATION IN THE EURO-MEDITERRANEAN REGION SINCE NOVEMBER 1995

INTRODUCTION

On October 5-7, 2000 representatives from human rights organisations, women's and development associations as well as experts from a range of countries in the Euro-Mediterranean region adopted a Declaration on Freedom of Association. They thereby underscored the importance of promoting and protecting this fundamental freedom for the development process and the respect of the rule of law in the region.

The Barcelona Process is founded on the assumption that economic development, political liberalisation, and the building of democratic institutions, based on respect for human rights and a strong, independent civil society, goes hand in hand with creating peace, stability and prosperity. Thus freedom of association is a basic human right of every human being to join groups of one's choice and a precondition for the development of democratic institutions and for achieving the ambitious goals of the Barcelona process.

FREEDOM OF ASSOCIATION IN THE EURO-MEDITERRANEAN REGION

A Growth in Activities

Since November 1995, the region has witnessed a variety of civil society activities putting the question of freedom of association on the agenda both nationally and regionally. For example:

In Egypt a coalition of human rights NGOs has campaigned for almost four years against a restrictive new Law on Private Associations and Institutions, that was adopted by the People's Assembly on May 26, 1999, and declared unconstitutional by the Constitutional Court on June 3, 2000.

During the same period, a network of Palestinian NGOs invested huge efforts in promoting human rights-based legislation and succeeded in having the most liberal law on associations in the Arab world adopted by the Palestinian Legislative Council Authority in January 1999.

In Morocco, Espace Associatif, a network of human rights groups, women's organisations, and humanitarian and development NGOs campaigned all over the country

with the aim of reforming the existing law on associations that, after amendment in 1973, brought NGO activity under the exclusive and arbitrary control of the state.

The democratic opposition in Tunisia, defying imprisonment, torture, surveillance and harassment by the authorities, succeeded in maintaining a handful of viable independent NGOs and thus hope for a future democratic environment.

Examples of regional initiatives are numerous as well: National and international human rights NGOs advocated for years for a Human Rights Defenders Declaration which was finally adopted by the UN on December 9, 1998. The declaration highlights the importance of freedom of association. After a series of workshops, legal experts, human rights activists and lawyers from eight Arab countries adopted the comprehensive Amman Declaration, on May 10, 1999, setting out principles and criteria that should guide democratic legislation on associations. The Euro-Mediterranean Human Rights Network itself, a network of sixty South and North human rights organisations which was created as a civil society partner to the Barcelona process, has since its establishment in 1997 defined freedom of association as a strategic priority.

However, the resoluteness with which the question of freedom of association has been promoted has also been matched by a sense of urgency that civil society in the South and East Mediterranean is under threat.

Excessive control of associations

Five years after the adoption of the Barcelona Declaration excessive control of associations is still practised or is on the increase in South and East Mediterranean countries, first and foremost with reference to the need of protecting “national unity” or “national security”.

In legal terms, the following practices, which stand in contradiction to international human rights standards, are prevalent in determining restrictions on the right of association in various parts of the region:

- * NGOs need prior licensing to be recognised by the authorities and are subject to frequent use of parallel security procedures that are not codified by law;
- * Legal measures exist which: exclude certain categories of persons from forming associations; exclude certain associations from registering under the law; and restrict the range of activities of associations;
- * Excessive control of associations' board members and unwarranted restrictions on the functioning and organisational aspect of associations;
- * Excessive control of associations' relations with international organisations and their access to foreign funding;

* Heavy penalties and/or fines for activities that might amount to no more than the peaceful exercise of freedom of association.

* Suspension of freedoms under emergency or martial law

A few examples suffice to testify the difficulties met by civil society:

* The Turkish law on associations lists 23 groups of public employees who are prohibited from joining an association.

* In Lebanon the Interior Ministry interferes in the drafting of the incorporation documents for associations, and declarations of associations are circulated to police authorities which then often investigate and interrogate the incorporating members prior to granting a receipt..

* In Morocco, despite encouraging steps towards reforms, surveillance of NGO members by secret security services is still a common practice.

* In Syria since 1963 emergency law has prevented the establishment of any organised expression of civil society outside the control of the ruling party.

* In Algeria and other countries, associations are not allowed to join international networks or to receive international funding without prior authorisation by the authorities, which in practice exclude critics of the authorities from receiving necessary support.

* In Jordan a new law is under consideration which will seriously restrict the work of associations.

* The Egyptian authorities have used emergency laws designed to counter terrorism to arrest human rights and democratization advocates like Hafez Abu Sa'eda, Secretary General of the Egyptian Organisation for Human Rights, and Saad Ed Din Ibrahim, Director of the Ibn Khaldoun Centre, for accepting unauthorized foreign funding.

General attacks on freedom of association

Despite the commitment of the EMP countries to freedom of association principles, it seems that many governments in the region are reacting to the impact of globalization and the rise of the EMP as a new geo-political entity by increasing their control of civil society, in particular of groups and individuals representatives involved in advocacy, democratisation and human rights promotion.

Several governments in the region have made strenuous efforts to counter civil society initiatives.

Following the adoption by the UN of the Human Rights Defenders' Declaration on December 9, 1998, four Arab governments of the EMP (Algeria, Egypt, Lebanon, Syria) as well as Libya, co-signed an interpretative statement which devoid the declaration of any protective value by explicitly setting domestic legislation of the state concerned above international standards.

Authorities in Egypt, Palestine, Jordan, Tunisia and Morocco, which are themselves large receivers of foreign funds, have conducted campaigns over the past two years against NGOs for accepting foreign funding.

Finally, recent years have seen a growth in government controlled organisations or organisations run by groups that are close to the authorities, so-called governmental non-governmental organisations (GONGOs). In national and international fora they claim to represent independent civil society but most often they limit their activity to defending government positions and intimidating those who genuinely represent independent civil society.

THE IMPACT OF THE BARCELONA PROCESS

It is in light of these developments, which constitute an immediate threat to the viability of civil society in the South and East Mediterranean region, that the impact of the Euro-Mediterranean Partnership project should be evaluated.

Clearly, several EU governments, as well as private foundations based in the EU, contributed significantly to NGO activities promoting freedom of association through bilateral programmes in selected countries of the EMP since 1995.

The creation of the MEDA Democracy Programme in 1996, an EU program to support promotion of the rule of law, human rights and democracy and to strengthen civil society within the framework of the Euro-Mediterranean Partnership, has furthermore become a major asset for associations in the region.

Nevertheless, funding of independent NGOs has since 1995 only constituted a very small percentage of the total flow of funds channelled to the South within the framework of the Euro-Mediterranean Partnership. The MEDA Democracy Programme, for example, amounts only to one percent of total MEDA funds, and its outreach has been further reduced by inefficient and non-transparent management, as well as by government vetoes of projects, notably in Tunisia.

In general, the commitment of the EMP governments to base their cooperation on respect for freedom of association and support of civil society has not led to the creation of the necessary political and economic framework.

On a governmental level, the EMP has not produced any significant political initiative to promote freedom of association since its establishment in Barcelona 1995. Nor has any

comprehensive approach to the promotion of freedom of association been implemented within the framework of the MEDA programmes, which is the key financial instrument for promoting transition towards democracy based on respect for human rights principles.

Several EMP government countries seem to have opted for the thesis that authoritarian regimes are guardians of stability in the Mediterranean region rather than acknowledge the need for reform processes based on compliance with international human rights standards.

The public silence of the EU in relation to setbacks in the field of freedom of association, such as the recent arrest of Saad Ed Din Ibrahim, accused of receiving EU funds without prior authorisation and mismanaging these funds, and the temporary halt of funding by many EU states following Egypt's adoption of the restrictive law on associations last year, had a chilling effect on civil society in the region.

RECOMMENDATIONS

At the Casablanca seminar on Freedom of Association, mentioned above, the participants called for the immediate suspension of all measures of intimidation or repression aimed at curbing the peaceful action of associations, including measures designed to deprive associations of the material and financial means necessary for their work, in particular actions taken against international funding.

They furthermore considered that the political will of the states to reform their system of governance and to democratise their institutions should be measured in the light of their actual respect for individual and public freedoms, comprising the freedom of association.

Against this background, the EMHRN urges the governments of the Euro-Mediterranean Partnership to establish a work program for the promotion of freedom of association and provide it with necessary political and economic instruments for its implementation. The work program should include:

- * Regular assessments on a regional and a bi-lateral level of the development of the situation regarding freedom of association, in consultation with relevant national, regional and international NGOs and followed up by measures to counter setbacks and promote progress.
- * A comprehensive plan for legal reforms aimed at instituting international human rights standards in the region.
- * Economic support to accompany changes of legislation and practices including financial incentives to encourage reform processes.

EMHRN, 20 OCTOBER, 2000

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HUMAN
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HUMAN RIGHTS DEFENDERS IN THE BARCELONA ERA

Joe Stork
Human Rights Watch

The five years since the inauguration of the Barcelona process has witnessed a considerable dynamism in the area of human rights activism. The indicators of this dynamism are numerous, and include:

- The number of groups monitoring human rights generally or campaigning on specific issues--whether these be violence against women or investigating the fate of those "disappeared"--have grown in number and sophistication.
- Across the Euro-Mediterranean region, activists, lawyers, writers, jurists, artists, health professionals, youth organizers, and others have integrated human rights issues into their professional work.
- From Morocco to Syria, from Turkey to Tunisia, human rights activists and organizers have displayed extraordinary courage in challenging the repressive and abusive practices of governments, and confronted the intolerance of non-governmental social forces, especially in the press and some professional associations. Such space as they have managed to occupy in any given society is invariably the result of their continuing struggles to do so.
- This period has also seen the development of regional human rights networks. The large and very public meeting of Arab human rights activists in Casablanca in April 1999 was one sign of this. Specialized regional networks such as the Center for the Independence of Judges and the Judiciary, the Arab Program for Human Rights Activists is another. So is the EMHRN, linking groups in the Middle East with international and European counterparts, or the meeting sponsored by the FIDH bringing together groups working on the issue of "disappearances." Other informal networks--their informality compelled by continuing governmental hostility--provide further opportunities for sharing concerns and strategies.

One could perhaps argue, to keep this picture in perspective, that such signs of growth and dynamism were a reflection of a similar flourishing globally. The human rights movement in the Middle East is arguably the youngest in the world. Its higher visibility and greater presence today is laudable but its presence and influence remain proportionately behind those in other regions.

One thing that has changed very little in the five years since Barcelona is the extremely low tolerance of governments in the Euro-Mediterranean region for the monitoring and

BRUSSELS HONG KONG LONDON LOS ANGELES MOSCOW NEW YORK RIO DE JANEIRO WASHINGTON

public reporting activities of human rights defenders. Four of the Barcelona partner governments--Algeria, Egypt, Lebanon, and Syria--actually co-signed a statement of reservations to the U.N. Human Rights Defenders' Declaration effectively declaring themselves unbound in any practical way to the protections it specifies and proclaiming that domestic legislation supersedes any obligation to uphold international standards in this regard. The practice of other Euro-Med partner states has shown similarly little intent on their part to uphold the standards of the declaration. Unfortunately this low tolerance of the "southern" partners appears to have been matched by a high tolerance of their "northern" counterparts for such behavior, reflected in the failure of the European Council to address the systematic assaults on the work of human rights defenders in the region.

Back in 1995, the year of Barcelona, Hasan al-Alfi, then Egypt's Minister of Interior, crudely lambasted Egyptian human rights groups in no uncertain terms. "Unfortunately, these organizations obtain their information from offenders, wierdos, and people who have a vested interest," he said. Specifically with reference to a series of Egyptian Organization for Human Rights (EOHR) studies on different prisons, he dismissed them as "sheer lies and fabrications...aimed at tarnishing Egypt's image." A year later President Mubarak sounded a similar note, charging that rights groups "interfere in the internal affairs of the country.... They are just defending terrorists and criminals."

While one does not usually come across such unvarnished official animosity today, at least in public fora, the fundamental attitude appears to have changed little. Consider, for instance, Algerian President Bouteflika's dismissal of the calls of human rights groups--Algerian as well as international--for inquiries to establish responsibility and accountability for mass killings. "Intellectual coquetry," he snorted when he was asked about this on a visit to Canada in April. The disdain President Bouteflika expressed on that occasion is expressed every day by officials in the ministries of justice and the interior when they respond--or more to the point do not respond--to the families of individuals who have not been seen from the time four or five or six years ago when they were picked up by one branch or another of the security forces. The same disdain marks the demeanor of the Algerian generals who wield power behind the presidency and who have yet to be called to account for their failure to protect thousands of ordinary Algerians massacred in towns and hamlets, some of them nearly adjacent to military posts.

In no Euro-Mediterranean country have human rights defenders paid a higher price than Syria. No locally-based human rights organizations are allowed to operate freely and with the protection of legal status. Of the ten activists associated with the Committees for the Defense of Democratic Freedoms and Human Rights (CDF) who were imprisoned in 1992, three--Nizar Nayouf, Muhammad Ali Habib, and Alif Muzhir--remain in detention. Nayouf disabled from years of torture under interrogation and reportedly in solitary confinement in Mezze military prison. Syria has dismissed the concerns Human Rights Watch and other organizations have raised about Nayouf's poor health, and in the process repeated charges that the CDF activists had "deliberately fabricated lies against Syria and caused her harm, under the pretext of defending human rights."

Tunisia takes a different approach from that of Syria. The government boasts incessantly of its commitment to human rights, but there are few countries where the gap between such claims and the actual record is so vast. When independent Tunisian activists, at great risk to themselves, attempt to set the record straight, the authorities display no tolerance for such views. Consider President Zine Abidine Ben Ali's response to demands of Tunisian activists to register the Conseil Nationale des Libertés Tunisiennes (CNLT) and allow it to carry on its monitoring activities as a recognized, legally protected organization. "It is out of the question that in the name of public liberties illegal structures are set up claiming for themselves the status of associations, organizations, or committees," he ranted at a July rally for ruling party cadre, with unmistakable reference to the CNLT. In that same speech he denounced as "traitors" those who spoke openly about Tunisia's awful human rights record, especially those who spoke abroad, and the next day Dr. Moncef Marzouki, the CNLT spokesman who had just returned from a visit to Paris, London, and Washington, was fired from his position at the school of medicine of the University of Sousse. Last month, in October, Dr. Marzouki was prevented from leaving the country (for a meeting in Barcelona to discuss the Barcelona process). He is presently under investigation and has been summoned for interrogation in connection with a paper he authored and circulated privately at a meeting of Arab human rights defenders in Morocco in late September.

It is well known that one of the few areas of inter-Arab government cooperation, real cooperation, is among the ministries of interior and the security apparatuses that are answerable to them. In a January 1997 interview in *An-Nahar*, Lebanon's Minister of Interior Michel Murr described a meeting of interior ministers of Arab League member states in Tunis a few months earlier. The ministers, he said, "were complaining of the human rights organizations in their countries." "The work of these organizations and their movements do not aim to protect human rights but to paralyze security operations and countries' security policies," he added. Murr indicated that the ministers decided to contact Western governments funding these organizations and ask them to cease this support.

We do not know if the interior ministers came up with an agreed-upon plan of action at this or subsequent meetings, but we can discern clear trends in the way that Arab governments have been dealing with NGOs generally and human rights organizations in particular. Here Tunisia and Egypt have been the unmistakable trend-setters:

- Appropriate the discourse of human rights.
- Establish high profile but low-impact human rights offices in key ministries such as foreign affairs, justice, and the interior.
- Draw up restrictive legislation governing the activities of NGOs
- Allow some groups to function legally but undertake surveillance and harassment at levels that make it impossible for them to function effectively
- Punish those who challenge these limits "within the law"--the laws in this case being penal code provisions against "spreading false information", "defaming public order." or the like.
- Encourage or sponsor the establishment of organizations representing themselves as independent but whose main function is to defend the government's human rights practices and disrupt efforts of genuine human rights defenders to carry out their

activities.

It is difficult to find tangible evidence that the Euro-Mediterranean process initiated at Barcelona has to date brought any improvement or improved protection to the human rights defenders in the region. Any effort to evaluate of the situation of defenders after five years of Barcelona must take note of the March 1999 evaluation of the "MEDA Democracy Program" prepared for the European Commission, which explained that Syria and Tunisia received the smallest amount of grants owing to "the severe political obstacles to directly assisting NGOs in these countries without agreement by the governments and the totalitarian nature of the political system."

Two observations are in order with regard to this unusually candid and accurate characterization of political reality. One is the fact that these two countries--Syria and Tunisia--represent the opposite ends of the Barcelona process. Tunisia has for several years had an operational Association Agreement--indeed, it was the first "partner" country to complete the process of signing and fully ratifying the agreement. With Syria, by contrast, there have been only several rounds of apparently inconsequential exploratory negotiations. Perhaps the process will accelerate under the rule of the new president Bashar al-Asad, but even so the expectation in all quarters is that Syria will be the last or the potential Euro-Med partners to sign and ratify an Association Agreement, probably not before 2010. The authoritarian character of the Syrian regime is long-established and well-recognized. What is remarkable, and what stands as an indictment of the Barcelona process as it pertains to human rights, is the fact that essentially the same characterization--in the words of the MEDA evaluators, "totalitarian"--applies also to the country that has committed itself, under Article 2 of the Association Agreement, to respect human rights and democratic freedoms, and that has emerged from ministerial-level association council meetings without sanction for its persecution and suppression of human rights defenders.

The point is not that the situation of human rights defenders in Tunisia--where there is a narrow margin for operation--is equivalent to that in Syria--where persons who have identified themselves as human rights activists continue to serve long prison terms under horrific conditions. But the situation in Tunisia is without question bad enough to keep MEDA from having much operational impact in that country, and to provoke the rather devastating assessment of the MEDA evaluators. More to the point, human rights practices in Tunisia generally, and the situation of defenders in particular, remains as bad if not worse than when the Barcelona process was initiated, and several years of an operational Association Agreement has not produced any discernible improvement.

We find a similar deterioration of conditions in Egypt. During a period of active negotiations over a draft Association Agreement, the government has become increasingly aggressive in its efforts to control and discredit organizations dedicated to monitoring and defending human rights. This period has witnessed raids on the offices of the Arab Program for Human Rights Activists; the arrest and detention of the head of the Egyptian Organization for Human Rights (EOHR: the case against Hafiz Abu Sa'ada has yet to be formally closed); the arrest, detention, and forthcoming trial (at this writing scheduled for November 18, just a few days after the Marseilles summit) of Saad Eddin Ibrahim and his associates in the Ibn Khaldun Center; and promulgation (in May 1999) of a new Law on Civil Associations and Institutions (Law 153/99)

that mandates unwarranted restrictions on the activities of non-governmental organizations, including human rights groups, and authorizes a high degree of government interference in their internal affairs. When that law was overturned by the Supreme Constitutional Court, apparently on procedural grounds, the EOHR was informed that its application to register under the existing law had been deferred "upon a request from security officials."

The situation in other Euro-Med partner countries also testifies to a serious gap between pronouncement and practice regarding human rights defenders, as indicated by these recent developments in the region:

- On May 27, Algerian security forces detained Mohamed Smain, head of the Relizane office of the Algerian League for the Defense of Human Rights (LADDH) after he attempted to document evidence at a grave site connected with the case of the two former mayors implicated in mass killings in the area. He was released the next day but authorities confiscated his videotape of the site.
- Rachid Mesli, an Algerian human rights lawyer who had been released from prison in July 1999 after serving all but a few days of a three year sentence on trumped up charges, was stopped at the airport and questioned in June after returning from a meeting in Geneva about the future of Algeria. Surveillance of his activities intensified and a prison acquaintance was reportedly tortured in an effort to elicit, among other things, damaging information about Mesli, leading him to fear that he would be arrested and returned to prison. Mesli left Algeria with his family in August and requested political asylum in Switzerland.
- In the territories under Israeli military occupation, lawyers for Palestinian detainees frequently had difficulty gaining access to their clients, and closures often kept Palestinian human rights workers and lawyers from traveling freely within the West Bank, the Gaza Strip, and Israel.
- On August 8, Palestinian Authority Chief of Police Ghazi al-Jabali al-Jabali ordered LAW and its director, Khader Shkirat, banned from "visiting prisons, detention centers, police command centers, and police locations" because of his "continuous attacks on the [Palestinian] Authority." The order came one day after Shkirat was violently removed from the Ramallah Police Headquarters when he raised cases of police torture of detainees.
- In Turkey criticism of the authorities or questioning the state's monolithic view of society is often viewed as a form of disloyalty bordering on treason. Over the past five years members of the Turkish Human Rights Association's (HRA) fifty-nine branches have been detained, tortured, imprisoned and subjected to death threats. HRA branches in Diyarbakir and Van have been frequently closed down by order of the Emergency Region governor, whose administrative decisions cannot be challenged in the courts.
- In Morocco Capt. Mustafa Adib was convicted for a second time in an unfair military trial of "insulting the royal armed forces" after he complained of corruption and racketeering among the high command at the air base where he was stationed.
- In September the Jordanian Press association suspended Nidal Mansour, editor of *Al-Hadath* weekly, for accepting foreign funding for a local press freedom organization.

The serious and persistent government or government-sanctioned attacks on human rights

defenders and interference in their work throughout the region constitutes a serious challenge to the Euro-Mediterranean project as it moves into its second five-year phase. The challenge is both to the governments that commit these abuses and to the governments that allow them to pass without consequence. European governments have invested a much greater effort into combating migration and denying asylum protection, for instance, than to addressing the human rights abuses that contribute to the outflow of migrants and asylum seekers.

Recommendations

- The official communique of the Marseilles summit should reflect the unambiguous commitment of all Euro-Mediterranean partner states to uphold and implement the U.N. Declaration on Human Rights Defenders (UNGA Res 53/144 of December 1998).
- All Euro-Mediterranean partner states should review domestic legislation and remove or amend provisions which are contrary to the letter and spirit of that Declaration.
- A review of compliance in law and in practice by partner states (including E.U. member states) with the Declaration and with the provisions of the International Covenant on Civil and Political Rights pertaining to freedom of association and freedom of expression should be on the agenda of Association Council as well as appropriate Association Committee and Working Group meetings, and should be addressed in notes and briefings regarding the work of such meetings.
- The partner states should set up a working group on human rights for all Association Agreements where they do not already exist.
- The European Council Presidency, the E.U. High Representatives, and the Commissioners charged with foreign policy and development should, as a matter of procedure, meet with human rights defenders in partner countries and countries negotiating partnerships, especially persons and organizations who would otherwise not be able to approach E.U. bodies and policymakers in Brussels. Findings from those meetings should be included in briefings for the press as well as for other member states.
- High representatives of partner countries and countries negotiating partnerships should meet with human rights defenders in European Union member states regarding issues of concern, including the protection and promotion of the rights of migrant workers and their families.

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The Penal and Prison Situation in Mediterranean Countries

Contribution by Penal Reform International (P.R.I.)

Penal and prison reforms are neither easy to introduce nor quick to implement. It is of course a question of amending laws and changing judicial procedures and prison rules. Above all, it means changing habits and attitudes of those directly involved in the administration of justice and more generally of the wider public. It is a slow process that demands time, even when political will is there. These questions, however, have been given particularly low priority in the Barcelona process and lack any indicators. Reference to human rights and good governance has certainly been made and would constitute the basis for the above reforms, but these references do not specifically target penal and prison issues. The effects of the Barcelona partnership seem to be negligible. What is left, therefore, is the internal dynamics of societies and States. The positive changes observed in some countries such as Morocco are not due to the Barcelona process particularly, but to internal dynamics. Otherwise, deplorable situations, if not worse, prevail in other countries such as Turkey and Syria, indicating how little effect the Euro-Mediterranean partnership has had so far on the issues of penal and prison reforms.

I – What effects does the Barcelona partnership have on penal and prison issues?

The texts currently in force, bilateral agreements, recommendations and declarations regarding the administration of justice give very little place to issues related to prisons and criminal justice matters in general. For the Barcelona process, the issue of prisons surfaces mainly when it relates to political prisoners or prisoners of conscience. This aspect is obviously important for the defence of fundamental freedoms. But the global dynamics of penal policy and prison reform in the Euro-Mediterranean countries are simply not there. Prison conditions as such awaken hardly anybody's interest. Is it because prisoners are considered guilty forever? For many people, it would seem that human rights stop at the prison gates. And yet, the situation of detainees, be they men, women or children, foreigners or minorities, is a very serious problem in most of the 27 partner countries, including within the European Union. Prisons are overcrowded and prison remains the main, if not the only,

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form of punishment. Yet not many voices are raised to challenge this state of affairs. Except for political cases, the texts, speeches and declarations of Barcelona find nothing wrong with penal sanctions as they are.

II – Has the Barcelona partnership enabled any progress in human rights with regard penal and prison issues?

A detailed examination of prison conditions in the 27 countries involved in the Partnership would lead to a negative and often distressing finding. It should be noted however that five years is not a long enough period to come to significant conclusions about the Barcelona Declaration with regard to human rights and imprisonment. Progress in penal and prison matters needs time, political will and efforts to raise awareness among the public. Follow-up of a declaration such as Barcelona also requires time and political will and sustained efforts to raise awareness. Penal and prison reform issues should therefore become part and parcel of human rights issues within the Partnership.

III – What are the main recommendations made to the Partnership for the future with regard to penal and prison issues?

This lack of attention to penal and prison issues in the Partnership's programmes should be addressed. It should be recognised that prisons are and should be part of society. To consider prisons as outside society can only aggravate already serious deficiencies of justice and would be detrimental to public safety. Prisons must therefore be treated as an integral part of society. Prison health is an aspect of public health. Education within prisons is part of the formal educational system. Skill training for prisoners is an integral part of professional training and programmes to protect and treat juvenile offenders, and part of national plans for the protection of children and adolescents.

Penal and prison policies should be integrated among the concerns of the Partnership. There should be working groups and workshops to assess the general situation of prisoners, review sentencing policies, juvenile justice, the condition of women in prison, the fate of minorities and foreigners in prison, and conditions of sick people in detention. The question of prisoners on remand is becoming a grave concern everywhere, as societies look for ways to combat prison overcrowding.

Groups or "cross" workshops should also be set up. For example, the authorities, institutions or groups specialised in women's issues should study the situation of women in prison together with those who work in prisons. The same should be done for foreigners, refugees or juveniles in detention.

At the outset of the 21st century, it is essential that we change our paradigm regarding penal matters and question the repressive attitudes that predominate both south and north of the Mediterranean. International instruments should be referred to and promoted within this Euro-

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Mediterranean partnership. The United Nations Standard Minimum Rules for Developing Non-Custodial Measures (Tokyo Rules, 1990), the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985), the United Nations Resolution on International Cooperation to Improve Prison Conditions of July 1997, the Resolution on International Cooperation to Reduce Prison Overpopulation and Promote Alternative Sentencing of July 1998, can and should be constantly referred to. The European Council's texts on penal issues should also be a source of inspiration for the rest of the partner countries. Mediterranean countries could adopt a resolution or subscribe to a declaration that would confirm the international texts in this domain.

It is essential to open up prisons and other places of detention to the outside world in order to improve prison conditions. An intermediate stage for some countries already consists in authorising independent institutions, local and international NGOs, and civil society to enter prisons and act on prison-related issues. Greater involvement of civil society would help find the most suitable solutions. In the long run, this would facilitate everybody's work, including that of the authorities.

Furthermore, an important step in the right direction would consist in setting up institutions to observe and collect data on prisons and the whole criminal justice system, country by country. This would enable stakeholders to assess the system's evolution and the prisoners' situation by category (men, women, juveniles, sick people, remand prisoners, etc.). Such structures are being set up gradually in some countries and should be encouraged and supported.

Finally, Penal Reform International hereby invites those States with more advanced penal systems and policies to support the other States and contribute to a salutary movement that would be integrated in the partnership and in bilateral agreements. Likewise, all partner countries should open up their prisons and places of detention, and should encourage community involvement in the criminal justice and in prison reform. Support for independent NGOs and civil society groups would push for legal reform and more progressive penal policies. This, in turn, would undoubtedly contribute to widen the scope of freedoms and to set up systems that better respect human rights. Partnership should in fact create greater harmonisation between the different members. This harmonisation should be done in such a way that the situation of the worst off prisoners improves to attain that of prisoners whose rights are better respected, and so that more progressive laws gradually replace those of repressive regimes. Otherwise, the partnership would lamentably fail.