

EURO-MEDITERRANEAN SEMINAR ON FREEDOM OF ASSOCIATION

Casablanca, 5, 6 and 7 October, 2000

General Declaration

Within the framework of the joint action conducted by Euro-Mediterranean non-governmental organizations and in coordination with the Arab Initiative for the Freedom of Association, the following organizations: Association Démocratique des Femmes du Maroc, Espace Associatif, Organisation Marocaine des Droits Humains and the Euro-Mediterranean Human Rights Network, held a seminar on the Freedom of Association on 5, 6 and 7 October, 2000 in Casablanca. Representatives from human rights organisations and institutions, women's and development associations as well as experts from different countries of the region attended the seminar.

Considering the international standards as the basis for the freedom of association, as they are defined in particular by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights which have been ratified by all Mediterranean states,

taking in particular as a basis the Declaration on the Rights and Duties of Individuals, Groups and Bodies of Society for the Promotion and Protection of Universally Recognized Human Rights and Fundamental Freedoms of 9 December, 1998 (The Declaration of Human Human Rights Defenders),

Keeping within the letter and the spirit of the Barcelona Declaration of 28 November, 1995, including the commitment of the Euro-Mediterranean states to make the Mediterranean basin "an area of dialogue, exchange and cooperation to ensure peace, stability and prosperity", promote the rule of law and democracy within their political systems and respect human rights and fundamental liberties as well as "to guarantee the effective and legitimate exercise of these rights and liberties," including the freedom of expression and the freedom of association for peaceful ends".

Convinced that the association, as an entity independent from public authority, represents a basic institution for democratic societies and a necessity for promoting the participation of individuals in the development process,

Considering the promising emergence within several Mediterranean countries of a civil society which actively contributes to the promotion of human rights and the defence of specific and general interests,

After having analysed the experience of a number of Mediterranean countries and the actions taken to promote the freedom of association, and considering the "Declaration of Principles and Criteria relating to the Freedom of Association in Arab Countries" of 10 May, 1999 (the "Amman Declaration") as well as the "Arab Initiative for the Freedom of Association".

Considering that the objective of the Casablanca Seminar is:

- to place the question of the freedom of association within a Euro- Mediterranean context and to take stock of the current situation.
- to adopt a work programme and identify ways and means likely to be used in order to promote the freedom of association within the context of the Barcelona process and in synergy with the ongoing initiatives.

Strongly regretting that notwithstanding their constitutions and the commitments they have taken in relation to the international community and within the framework of the Euro-Mediterranean Partnership, several South and East Mediterranean states continue

to impose arbitrary or abusive obstacles and/or restrictions on the exercise of the freedom of association by different means such as enforcing the state of exception and/or maintaining a legal system of authorization, marginalizing or disnating the rule of law, using administrative and financial constraints or even repression or intimidation against leaders and members of associations.

<>The participants in the seminar on the Freedom of Association:

Reiterate the strategic importance of promoting and protecting this fundamental freedom for the development process, the establishment and/or consolidation of the rule of law in the South and East Mediterranean countries;

Underline the fact that the freedom of association implies respect for a number of principles established by the international instruments among which the Declaration on Human Rights Defenders. Among these principles and criteria which are contained in the Declaration of Amman and to which the participants subscribe, focus should be placed on the following:

1. the right to freely establish and manage associations without interference from the administrative authorities, it being understood that such establishment should stem from the will of its members and the management of its affairs should be handled by its own bodies.
2. the right of associations not to be subject to any measure of administrative dissolution or suspension, it being clear that such measures can only be pronounced through legal proceedings within the framework of a fair trial.
3. the non application of sanctions leading to loss of freedom on the members and officials of associations because of their associative activities.
4. the freedom of associations to develop their activities by means of appropriate human and financial resources derived from national, regional or international sources without any hindrance by the public authorities.

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

Reaffirm that the credibility of the commitments taken in Barcelona and the development of the human rights dimension in the Euro-Mediterranean Partnership implies primarily the existence of implementation mechanisms likely to promote fundamental rights and freedoms, comprising the freedom of association in the partner countries.

Call for the immediate suspension of all measures of intimidation or repression aimed at curbing the action of associations, including those measures designed to deprive associations from the material and financial means necessary for their action, in particular actions taken against international funding.

Consider that the measures taken against foreign funding of associations are clearly inconsistent with the letter and the spirit of the Euro-Mediterranean Partnership and the vital role which was recognized for civil society within the process of political, economic, social and cultural development.

Call for increased cooperation and coordination for the protection and promotion of the freedom of association among the Euro-Mediterranean Human Rights Network's collective and individual members, and the national and international human rights organizations.

Decide to adopt a Plan of Action for the protection and promotion of the freedom of association in the Mediterranean region.

Recommend the setting up of a follow-up committee to be entrusted with implementing the Plan of Action and recommendations of the Casablanca Seminar.

Done at Casablanca on 7 October, 2000

Annexed document: Amman Declaration of 10 May, 1999

The Declaration of Principles and Criteria Relating to the Freedom of Association in the Arab Countries

The legal experts and the activists in the Arab civil society gathered during the workshop held in Amman on May 9 and 10, 1999 on the "Legal Framework of Associations in the Arab World":

a. Realizing the importance of the pivotal roles which associations play complementarily with the state institutions and its various authorities, in a large number of functions and fields, the most important being: achieving sustainable human development, promoting citizen interest in public issues, empowering the association's members, improving their potential, directing their efforts, assuring the association's institutional continuity and independence, and enhancing democracy, democratic culture and strengthening civil society.

b. Affirming that associations cannot play these important roles except with due respect being given to the principle of the freedom of association, which is stipulated by most Arab constitutions, article 20 of the "Universal Declaration of Human Rights", article 22 of the "International Covenant on Civil and Political Rights", ILO's "Convention on Freedom of Association and Protection of the Right to Organize", the declaration issued by the United Nations' General Assembly titled "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", known in short as: "the declaration for the protection of the human rights defenders";

c. Believing that the role played by the freedom of Association in enhancing civil society requires democratic systems, institutions and processes, in addition to a true respect for the rule of law and the independence of the judiciary and lawyers;

d. Realizing that several problems and impediments face associations in varying degrees in the majority of Arab countries, thus hindering the social development and the development of civic action in these countries, such as the absence of democracy, human rights and fundamental freedoms, the continuity of security as a fundamental perspective for Arab governments reflected in several exceptional laws, the foremost of which are emergency laws. This is compounded by the widening scope of poverty, unemployment and social disintegration accompanied by a rise in the rate of illiteracy, and the deterioration of the educational systems, as well as the continuity of discrimination against women and the neglect of the rights of youth and children.

e. Noting that the legal systems and administrative practices in the majority of Arab countries, albeit in varying proportions, place impediments and obstacles in every phase of the existence of associations, starting from incorporation, to management, to dissolution, thus constituting severe violations of the Freedom of the Association, which reflects non-commitment to the provisions of the domestic constitution and international instruments. The dangers of these violations are compounded by the lack of awareness

about the importance of the freedom of Association and the absence of democratic culture.

f. Considering that setting principles and criteria, which clarify the extent to which laws may regulate associations without affecting the principle of freedom, is a very important matter, allowing for its dissemination with the broadest possible category of legislators, citizens and associations, and facilitating its distribution and use in Arab and local strategies, in order that Arab legal systems become, in this respect, consistent with these criteria and principles.

Now therefore, the participants declare the following:

- The Principle of the Freedom of Association

- And the Limits of the Regulation of Association

1. Every natural or corporeal person enjoys the right to freely participate in the formation and management of associations, and to freely adhere thereto and withdraw therefrom, in order to achieve one or more purposes that do not seek the distribution of profits. The association, in turn, shall enjoy the right to benefit from an independent legal personality enjoying rights and freedoms.

2. This right shall not be restricted except by provisions stipulated expressly by law and as required in a democratic society. These restrictions shall not be interpreted except restrictively and limitatively; in the event of ambiguity, the principle of freedom shall prevail.

3. The State, in participation with civil society, shall establish a regulatory framework that encourages the practice of the freedom of association and that strengthens an independent, active and democratic civil society. The public administration shall treat associations equally without any discrimination.

FORMATION

4. The fundamental principle, on which the freedom of Association is based, is the right to form associations without the need to obtain a prior permit or license. Thus, associations are formed by the agreement of their founders; their formation can be made public by a previous information/notification, but may not be subject to any previous intervention by the public administration or the judiciary.

5. The purposes of associations, irrespective of their qualification or the scope of their activities, their charters and by-laws, the personality of their founders, their affiliation or number, may not be a reason to impose any impediments and hurdles on their formation.

6. The administrative procedures applicable to the formation of associations, even through a regime of information/notification, cannot create obstacles to the formation of associations. Such procedures must be swift, clear, simple, cheap and should not be subject to the discretion of the public administration.

7. Associations shall enjoy a legal personality, separate from their individual founders, as soon as they are formed by information/notification, along with all the rights attached to this legal personality, such as a separate financial estate, legal standing in courts for all matters relating to their own interests or the fulfillment of their purposes, and the right to own movable and immovable properties, receive donations and aids.

STATUTES AND BY-LAWS

8. The founders of associations enjoy the right to freely set their statutes and by-laws freely without any interference. The public administration may prepare optional forms of

such documents in order to assist founders in the formation process and as a service to them.

9. Associations have the right to freely amend their statutes and by-laws, including their purposes and scope of activities, at any time according to their statutes and by-laws, and following the same principles applicable to the formation of associations, without interference from the public administration.

MANAGEMENT

10. Associations are managed by the bodies stipulated in their own statutes and by-laws. The public administration may not interfere in nor affect the process in which they conduct their meetings, elections and activities.

11. The Freedom of Association principle includes the freedom of adhering thereto and withdrawing therefrom, as well as the right for associations to set the conditions of their membership.

12. In order to guaranty transparency, publicity and credibility, associations must keep accounting books and records, appoint auditors when necessary, and include in its statutes and by-laws provisions preventing conflict of interests between associations and their members.

SOURCE OF FINANCE

13. Associations have the right to develop their financial resources, including - but limited to: members fees and donations, gifts, grants and aid form any natural or corporeal third-party person, local or foreign.

14. The State must introduce in its laws, tax and duties exemptions to association, encourage donations and gifts by deducting them from taxes in reasonable rates.

However, these privileges and tax exemptions should not become means of interference in the association affairs.

CONTROLS

15. Freedom of Association does not mean the absence of accountability and control. Associations must therefore be responsible towards any interested party and within the limits of the interest that warrants such controls, through the following bodies:

a) Members of the association for all its affairs.

b) Public opinion and society in case there is a legitimate public interest pertaining to the activity of the association (such as financial transparency if the association is seeking public funding).

c) Ordinary courts.

d) Public Administration (for financial control only) within the limits of what the association benefits from special tax rules and benefits.

VIOLATIONS

16. The governing principle is that penalties must be proportionate to the violations, and that no criminal punishment may be applied to the civil activities of associations or their members.

DISSOLUTION

17. The principle is that the public administration cannot dissolve associations; associations may not be dissolved except by a resolution passed by its own governing bodies or by a final and enforceable decision of a court, following trial that would have

allowed the association the right to defense in a fair and public hearing and in instances that are clearly and limitatively defined by law.

GUIDE LINES FOR A WORK PROGRAM ON FREEDOM OF ASSOCIATION

The participants at the seminar on freedom of association in Casablanca agreed on the following guide lines for the follow-up to the Casablanca seminar on freedom of association.

The follow-up committee was recommended to

On a regional and national level

- * Encourage and support actors within the Euro-Mediterranean countries to promote legislation on associations in agreement with the spirit of the Casablanca Declaration on Freedom of Association and the Amman Declaration of Principles and Criteria relating to the Freedom of Association in Arab Countries.
- * Promote regional campaigns on common issues and support solidarity campaigns with civil society in countries facing set-backs related to freedom of association.
- * Strengthen exchange of information on the question of freedom of association between NGOs in the region in order for them to benefit from each others' experience. This includes the support of the dissemination of information and exchange of experience on freedom of association by means of the internet.
- * Facilitate the exchange of experts when drafting of alternative laws are needed.
- * Strengthen cooperation across sectors (such as human rights, discrimination against women, and sustainable development) on questions pertaining to freedom of association.
- * Develop a plan of action to counter the rise of 'governmental non-governmental organisations'.
- * Identify initiatives and projects that would enhance associations capacity to promote freedom of association.
- * Support national information campaigns aiming at mobilising civil society on the question of the right of freedom of association.
- * Enhance discussions on principles and criteria concerning the administration of associations and their internal statutes, with the aim of identifying rules and conducts that would improve their administration, enhance their democracy and credibility, and contribute to the strengthening of their capacity.
- * Enhance discussions on the relation between local NGOs and international funding agencies aiming at developing transparent and democratic strategies for the promotion universal human rights values. The recommendations of the EMHRN with regard to the MEDA Democracy Programme (comprising questions of priorities, management, the size of grants, and consultations with civil society) would constitute a useful input in this regard.

In relation to the Euro-Mediterranean Partnership

- * Advocate for the development of mechanisms to promote and protect freedom of association within the context of the Euro-Mediterranean Partnership in the spirit of the Declaration of the Casablanca seminar of freedom of association and the Amman Declaration of Principles and Criteria relating to the Freedom of Association in Arab Countries, and building on the human rights mechanisms of the United Nations and the

European Court of Human Rights as well as international conventions, declarations and resolutions pertaining to freedom of association.

* Enhance advocacy for the development of projects aimed at promoting freedom of association within the framework of the national indicative program established between the EU and its Mediterranean partners.

* Strengthen interface mechanisms between local organisations and the EU institutions.

* Establish and up-date a calendar of activities of the Euro-Mediterranean Partnership as a help to target and time advocacy for the promotion and protection of freedom of association.

* Regularly update the EMHRN Guide to Human Rights in the Barcelona Process.