



The International Journal of Not-for-Profit Law

Volume 9, Issue 2
April 2007

A Quarterly Publication of

The International Center for Not-for-Profit Law
1126 16th Street, NW, Suite 400
Washington, DC 20036
(202) 452-8600
www.icnl.org

Publisher

International Center for Not-for-Profit Law
1126 16th Street, NW, Suite 400
Washington, DC 20036
(202) 452-8600
www.icnl.org

The International Journal of Not-for-Profit Law, ISSN 1556-5157, is a forum for the discussion of civil society, philanthropy, nongovernmental organizations, and the law, published quarterly by the International Center for Not-for-Profit Law, www.icnl.org. Based in Washington, D.C., the International Center for Not-for-Profit Law promotes an enabling environment for civil society and public participation around the world. Views expressed here do not necessarily reflect those of the International Center for Not-for-Profit Law, its affiliates, or its funders.

Except where otherwise noted, all contents copyright 2007 by the International Center for Not-for-Profit Law.

The International Journal of Not-for-Profit Law

**Volume 9, Issue 2
April 2007**

Letter from the Editor 2

THE MIDDLE EAST: SENIOR RESEARCH FELLOW PAPERS

*Civil Society in the Arab Region:
Its Necessary Role and the Obstacles to Fulfillment*
Ziad Abdel Samad 3

*Civil Society in the Arab World:
The Missing Concept*
Sa'ed Karajah 25

The Algerian Law on Associations Within Its Historical Context
Chafika Kahina Bouagache 37

*Undermining Standards of Good Governance:
Egypt's NGO Law and Its Impact on
the Transparency and Accountability of CSOs*
Mohamed Agati 56

ARTICLES

Association Law in Finland
Matti Muukkonen 76

Social Change and the Connected Age
Allison H. Fine 84

Letter from the Editor

The International Journal of Not-for-Profit Law devotes this issue's special section to the Middle East, with four articles by former Senior Research Fellows at the International Center for Not-for-Profit Law. We begin with overviews of civil society in the Arab region from two different perspectives, by **Ziad Abdel Samad**, Executive Director of the Arab NGO Network for Development, and **Sa'ed Karajah**, Senior Partner at the law firm of Karajah & Associates in Amman, Jordan. Next, **Chafika Kahina Bouagache**, a Staff Attorney and Program Chief of the American Bar Association in Rabat, Morocco, assesses Algerian association law in the context of the nation's troubled past. Finally, **Mohamed Agati**, Executive Manager of the Development Support Center for Consultancy and Training in Cairo, provides a critique of NGO law in Egypt, focusing on the law's effects on organizations' transparency and accountability.

We feature two articles on other topics as well. **Matti Muukonen**, a professor in the Department of Law, University of Joensuu, Finland, summarizes Finnish association law. And **Allison H. Fine** of Demos, the author of the recently published *Momentum: Igniting Social Change in the Connected Age*, examines how new technologies can help civil society activists achieve their goals.

We thank all who made this issue possible: the *Chronicle of Philanthropy*, for allowing us to reprint Allison Fine's article; Rebecca See and Kareem Elbayar, for their meticulous web work; and, as always, our incisive and gracious authors.

We also gratefully acknowledge the assistance of the United States Department of State, which made possible our special section on the Middle East. This project was funded, in part, through the Department of State, Bureau of Near Eastern Affairs, Office of Middle East Partnership Initiative (MEPI) under Grant Number S-NEAPI-04-GR-145. The opinions, findings and conclusions or recommendations expressed herein are those of the Author(s) and do not necessarily reflect those of the Department of State. MEPI is a Presidential initiative founded to support economic, political, and educational reform efforts in the Middle East and expand opportunity for all people of the region, especially women and youth. More information about MEPI can be found at: "www.mepi.state.gov."

Stephen Bates

Editor

International Journal of Not-for-Profit Law

sbates@icnl.org

THE MIDDLE EAST: SENIOR RESEARCH FELLOW PAPERS

**Civil Society in the Arab Region:
Its Necessary Role and the Obstacles to Fulfillment**

Ziad Abdel Samad¹

Preface

Civil society in the Arab region today is weak. Can this weakness be attributed to badly formulated laws governing the civil society sector, or is it due to structural flaws in Arab civil society organizations (CSOs)? If it is the latter, have these flaws resulted in poor strategies and insufficient capacities to respond to the challenges facing the region?

A culture of charity prevails in Arab societies, in part because charitable giving to the poor is one of the five pillars of Islam. Charitable giving is placed at the same level as the other four pillars: faith, prayer, fasting for self-purification during Ramadan, and, for those who are able, pilgrimage to Mecca. Given the social importance of charitable donation, why is civil society as weak as it is in Arab countries?

This article seeks to explore the reasons that civil society in the Arab region has not fulfilled its potential. It analyzes the objective barriers limiting CSOs' abilities to increase their impact and improve their roles in society.

The culturally embedded value of charitable giving may not suffice to create a thriving CSO sector, just as lack of development in the region is not the only reason for the sector's weakness. This article considers other objective barriers limiting CSOs' abilities to increase their impact and improve society. These other factors may be external, such as lack of democracy, inadequate legal framework, or other restrictions imposed by the ruling regimes. Similarly, there may be relevant restrictions stemming from cultural and social realities. Or there may be internal limitations that result from poor organizational vision, policies, and strategies, as well as from the lack of human and financial resources, sustainable or reliable funding, and access to information.

¹ Ziad Abdel Samad is Executive Director of the [Arab NGO Network for Development \(ANND\)](#). Mr. Abdel Samad was a Middle East Senior Research Fellow during summer 2006 at the International Center for Not-for-Profit Law (ICNL). This article was edited by ICNL staff.

This research was mainly supported by the International Center for Not-for-Profit Law. While the author was a fellow in Washington, DC, President Douglas Rutzen and Program Director Catherine Shea provided extensive support. A special thanks to Kareem Elbayar, Civil Society Legal Intern at ICNL, who served as a research assistant during the period of my work at the ICNL offices, and to Office Manager Sylvia Staggs for her logistical support. Thanks also to Wafa Yassir, to Ziad Majed, to Natasha Shawarib who provided great support. I would also like to thank Program Manager Kinda Mohamadieh, Program Coordinator Cynthia Abi Rashed and Executive Secretary Hanan Younis of the Arab NGO Network for Development. They helped in conducting the survey and analyzing the data. Finally, special thanks to all our colleagues from the twenty-five NGOs that completed the questionnaires and sent them back on time.

This article incorporates new research that evaluates the results and effectiveness of CSOs in eight Arab countries. Section I establishes the definitions and CSO sector classifications used throughout the article; Section II provides an overview of external and internal issues pertinent to CSOs in the Arab region; Section III focuses on the results of the survey; Section IV presents case studies of Lebanon and Palestine to illustrate how the obstacles identified here have shaped civil society in each country; and Section V offers proposed solutions.

Although more in-depth analysis and follow up are needed, the research gives a clearer picture of the factors affecting CSOs in Arab countries. The research therefore may prove useful in setting priorities for interventions aimed at empowering CSOs and increasing their effectiveness and efficiency. These priorities necessarily vary somewhat from one country to another, according to local factors and challenges.

I. The Definition, Classification, and Role of Civil Society in the Arab Region

A definition of the CSO sector is important in order to find the commonalities in the sector. The definition should be flexible enough to encompass the changing nature of a non-profit sector that is linked to changing market and state forces, with the goal of increasing popular understanding of this sector and its role in enhancing democratization. Similarly, a classification is needed in order to shed light on the differences among CSOs. Together, definition and classification can improve our understanding of the types and roles of Third Sector entities and the challenges they face. This task is necessary for an evaluation of the role of the sector and the legal systems that govern it.

Structures that do not belong to the state or to the market are commonly considered CSOs. These structures include non-governmental non-profit organizations, including welfare, charitable, developmental, and environmental organizations. They may be professional and worker's trade unions, farmer and peasant groups, or social movements that reflect the needs of groups such as youth, students, and women. According to some researchers, they may include political organizations and parties as well. The CSO sector historically provided social services; it now also contributes to societal development, and sometimes to national strategies and structures.²

Consider, first, the question of a definition. In the cross-national analysis presented in the Johns Hopkins University Non-Profit Sector Series, Salamon and Anheier (2004) take on the challenge of clearly defining the non-profit sector. They consider definitions from four perspectives: legal, economic, functional, and structural/operational. Salamon and Anheier (1997) argue convincingly for an approach based on considerations of structure and operation, and encompassing indicators related

² In the study of civil society, the levels of interaction among institutions, among organizations, and among individuals are strongly related (Anheier 2004). These levels reflect the relationships between four main elements: state power, political and individual freedoms, economic functions, and social capital. They underlie individual participation in institutions and organizations, and indicate the level of citizenship in a country. Institutions are structural patterns that address and regulate specific areas or tasks; the rule of law is an example. Organizations include voluntary organizations, NGOs, non-profits, foundations, charities, social movements, networks, and informal groups that make up the infrastructure of civil society. Individuals are participants in civil society through membership, volunteering, organizing events, or supporting causes (Anheier 2004). This research focuses on the organizational level of interaction.

to the organization's relation to government, distribution of profit, governance, and participation. Specifically, this definition looks at the level of institutionalization of the organization, either through the formal incorporation charter or through the regularity of the organization's structured work. It looks at the separation of the organization from government, although government support, funding, and participation are permitted. It also looks at the distribution of profits of the organization, its governance structure (particularly its ability to control its own activities), and whether participation is voluntary.

The structural-operational definition of civil society serves well across nations, including developing societies where the state and the private sector are unstable and the surrounding context is highly politicized, as in many Arab countries. This definition, unlike a narrow legal definition, can encompass the diversity and continuously changing nature of the Third Sector, as well as the changing roles of the state and the private sector.

Civil society is situated between state and market, monitoring the powers and roles of each to assure a balance between them. However, especially in developing countries, it is important to consider the family as a third border to civil society (Anheier 2004), distinguishing between civil society and tribal or religious society. This issue raises additional challenges as we seek to define civil society in developing countries such as those of the Arab region. Structures built on family relations, including tribal, clan, and religious considerations, are not deemed civil society. Accordingly, just as civil society monitors the powers of the state and the market, it also has the potential to monitor tribal and clan relations in order to assure a balance among market, state, and family.

Within the Arab region, civil society is referred to as the "indigenous sector" (Kandil 1994). This terminology reflects the intertwining of the CSO sector and societal relations, which are dominated by tribal, clan, family, and religious ties. In several Arab countries, societal relations are more important than citizen-state relations. This stems from the weak notion of citizenship in Arab societies.

Moreover, the CSO sector in the Arab region is dominated by welfare and charitable goals, and is primarily involved in service provision and social assistance and welfare. The structural-operational definition includes the indigenous sector as well as other "borderline" civil society groups, which are abundant in developing countries due to factors such as vague relations with the government or unclear fundraising systems and funding sources.

Regrettably, no law governing CSOs in the Arab region takes these elements into consideration. All organizations, even purely *ad hoc* and temporary ones, are the same under the law when applying for registration; currently, for example, no distinction is made between grant-making foundations and charities that provide services. In short, governments in the Arab region have created legal structures without taking into account an analytical point of view, which has been an obstacle to the CSO sector's development.

In the study of civil society organizations, a definition alone cannot adequately explain the role and development of the sector. Civil society organizations are not homogeneous, and countries often enact different laws for different types of

organizations, with different oversight in public administration.³ Along with an appropriate definition, accordingly, a classification system is essential. The classification system can go beyond the legal framework, which may fail to recognize some CSOs. For example, human rights organizations in Egypt are not now allowed to freely register as NGOs. Thus, identifying the various classes of organizations may help determine the appropriate legal framework to regulate their relations with the state and the market. Other relevant factors include the structure of an organization, its relationship to the government, its financial structure, its governance and operation, and its contribution to enhancing social capital.

The role of civil society is growing internationally as a result of the decreasing ability of the state to provide services and assure social justice. In addition, contemporary societies are witnessing the development of social capital, increased interaction between people internationally, and increased awareness of human rights and tools for protecting them. The CSO sector often steps in to fill the gaps in these areas, and is often paid to do so by governments. This is a privatization of welfare, developmental, and environmental services of sorts; it promotes public-private partnership and may serve as a middle ground between relying mainly on the market or mainly on the state (Anheier 2004). For a variety of reasons, civil society in the Arab region has not realized this potential. However, Arab CSO leaders have debated the relationship between civil society and the state. Different activists question such a relationship in terms of its value, its relevance, and, especially, its appropriateness. The propriety factor often varies according to the type of CSO. For example, a service-delivery CSO might find coordination with government agencies a necessary part of doing business, while an advocacy CSO might believe that cooperation with the state would undermine the organization's goals.

We are now equipped with the structural/operational definition of CSOs, with a sense of the scope of organizations that should be included in a classification system, and with a general concept of the role of civil society in the Arab region. Other issues specific to the region have been highlighted, particularly the strength of family, tribe, and clan, and cultural and religious dimensions as possible reasons for the weakness of the CSO sector in contemporary Arab countries. Next, we turn to an overview of the key external and internal obstacles that CSOs in the region face.

II. Civil Society in the Arab World: External and Internal Obstacles

The obstacles faced by the CSO sector in the Arab region can be divided into two categories: external obstacles, some of which affect society as a whole, while others are more specific to the CSO sector; and internal obstacles, challenges arising from within the organizations themselves.

³ There should be no such administrative oversight. Oversight of CSOs comes from members, courts for all matters, financial auditors when public funds are involved, and so forth. An administrative authority is needed only as a registrar, to allow transparency and publicity of all matters related to CSOs. (Ghassan Mokheibir, Lebanese MP, expert in non-profit law, and the coordinator of the Arab initiative for the freedom of association.)

External Obstacles Facing the Arab Region

Many challenges affect the developmental process in the Arab region. These challenges are political, economic, and social in nature. Globalization, a complicated phenomenon, has various consequences in the region – militarization in all its forms; economic, social, and environmental challenges; and challenges resulting from cultural and religious diversity and extremism.

Additional external obstacles are specific to individual Arab countries. Some problems stem from legal systems in societies with little or no rule of law. These problems go beyond deficiencies in the laws themselves. In drafting laws for the CSO sector, one must take into account the complexity of societal relations, the political environment, the level of development, the concentration of power, the regime's behavior in dealing with CSOs, and other such factors. Many dimensions beyond the legal system can help or hinder efforts to foster an enabling environment for civil society.

In order to have a comprehensive picture of the regional context, we next consider both types of external obstacles – the general political, economic, and social obstacles; and the obstacles connected to a given country's legal system.

Political, Economic, and Social Obstacles

1. Militarization – Problems of Peace and Security

The Middle East has become a synonym for crisis and conflict. The causes are diverse, but a lack of security and societal instability is the common result. Militarization is primarily a result of foreign occupation in violation of international laws and conventions. An example is Palestine, where many United Nations resolutions have been violated for decades, and the international community is unable to end the conflict. More recently, we have seen this problem in Iraq, where the 2003 invasion undermined decisions of the UN Security Council as well as principles of international law. Moreover, the so-called “war on terror” is not a war but a doctrine with unforeseen consequences: it is spurring extremism and violence instead of achieving stability and tolerance.

Problems of militarization also result from various internal conflicts, as in Sudan, Algeria, and Western Sahara. A prominent example is the growing tension in countries of the Arabian Gulf, particularly Yemen, Bahrain, and Saudi Arabia. There, radical Islamic movements and sympathies are on the rise, largely in response to the humiliation caused by the double standards in enforcing international law, the foreign military occupation, and the military bases established in the region. These tensions of course are added to the societies' socioeconomic and political challenges.

2. The Political Context – The Need to Introduce Radical Political Reforms

Most Arab regimes are undemocratic, and some are totalitarian. Principal characteristics shaping the regional political context are the lack of sound public institutions, the absence of legislatures, recurring violations of constitutions where they exist, and judicial systems weakened by interfering political branches. The absence of the rule of law is another major problem. In most Arab countries, the state controls civil and political rights, and political and civil society organizations are heavily restricted. Further, the state manipulates elections through undemocratic electoral laws and

regulations. Moreover, reform agendas are creating high levels of internal tension, because of what is seen as external interference.

3. The Socioeconomic Context – Low Human Development Indicators

A society's level of development correlates with its civil society's level of activity (Salamon and Anheier 1997). Development enlarges the middle class, which supports voluntary initiatives and civil society organizations. Urbanization may also promote the non-profit sector, because of the prominent role played by middle-class professionals. Communications technology can also be a key factor: for example, as rural and poor urban populations are exposed to telecommunications, they may loosen their traditional ties and relations and instead affiliate with new groups, such as civil society organizations. Through such ways, the communications sector can foster the non-profit sector (Salamon and Anheier 1997).

Human, economic, and social indicators depict the Arab region as one of the worst in the world for development. According to the *Millennium Development Goals Report for the Arab Region* (MDGR), issued by the UN Economic and Social Commission for Western Asia in 2005, 31.5 percent of people in the Middle East and North Africa subsist on less than \$2 per day; moreover, 23.6 percent of them lack basic health and education services and a decent standard of living. The 2002 *Arab Human Development Report* (AHDR), issued by the United Nations Development Program, lists three major contributing factors: deficits in women's empowerment, insufficient freedom in general, and shortfalls of human capacities and knowledge relative to income. Illiteracy is another major challenge highlighted by the AHDR. Arab countries embark upon the twenty-first century burdened by more than 60 million illiterate adults, mostly women, and the number continues to increase.

In addition, the AHDR found scant information technology, and scant use of what does exist. Few people, further, have access to communications. This is due to many factors, the most important of which is the underdeveloped infrastructure. Moreover, Arab states have restricted individual freedoms, including the rights to free expression and to access to information.

Underdevelopment in the Arab region has thus led to a small middle class and poor access to communications and information. Without these two key underpinnings, civil society in the Arab region is understandably weak.

4. Culture and Religion

In societies with high levels of instability and insecurity, individuals tend to rely on their clans, tribes, religions, and other types of indigenous or ethnic structures. Clan, tribal, and religious affiliations strengthen when the state fails to provide security. These relations impede the formation of civil society, and hijack the concept of citizenship. Instead of strengthening social capital, a kind of clan and ethnic group mentality prevents coordinated action. Indeed, in many Arab countries, these tribal, ethnic, or confessional relations are stronger than state and local authorities.

Moreover, there is a pressing need for cultural reforms, particularly related to religious discourse. Reforms should tackle, among other issues, educational systems and the relations between religion and the state.

Many democratization initiatives have in fact been launched. The European Union initiated the first of these in 1995: the “Euro-Mediterranean Partnership.” In 2004, during the G8 summit in Sea Island, Georgia, another initiative was launched – the “Broader Middle East Partnership for the Future.” These two efforts join the many regional Arab reform initiatives launched in recent years, the most important of which is the declaration issued by the Summit of the League of the Arab States held in 2004 in Tunisia. Such initiatives stress the role of civil society and its participation in societal reform and democratization.

We face a crucial moment in the evolution of civil society in the Arab region. One hopes that civil society can grow to become a real partner in democratization, which in turn will promote the Third Sector's own achievement and sustainability.

Obstacles Related to Legal Systems

5. The Legal System and Governance Structures

Enhancing the effectiveness of the Third Sector depends on several interrelated factors. The most important is the legal system, a set of rules and regulations that protect individual and public freedoms. Ideally, legislation should accord with international declarations of human rights, and be developed in dialogue with local civil society. In relation to CSOs, the legal system's principal goal should be to regulate relations between organizations and the state.

CSO law, like any other law, should clarify the rights and the obligations of all concerned parties. However, in Arab countries across the board, legal structures governing CSOs are often poorly crafted or administered. For example, the same law may rule different forms of registered associations, without being tailored to their variety of objectives. Effective laws for CSOs provide a framework for good governance, systems of accountability, and public transparency.

As discussed earlier, in many Arab countries, tribal, ethnic, or confessional relations are stronger than the structures of state and local authorities. In practice, the relevant law is tribal or communitarian. It is difficult to envision the implementation and respect of a non-profit law under these circumstances, given the nature of the ruling power and the cultural constraints. Before it can help form an independent non-profit sphere, the legal system requires an adequate political and developmental environment. All discussion of a theoretical legal framework must take account of these considerations.

With regard to their non-profit legal systems, Arab countries can be divided into three main categories:

1. Countries that highly restrict civil society; these countries are characterized by the absence of a law governing non-profit types of organizations.
2. Countries with such a law, but one that serves principally as a tool for public authorities to pressure and restrict civil society organizations.
3. Countries with relatively liberal laws that create space for civil society to be freely active, but with problems in implementing the law that hinder civil society.

Despite the numerous initiatives for modernization and democratization in the region, most Arab governments still heavily restrict, through law and procedure, the

establishment and activities of civil society associations. Laws in most of these countries prevent any group of people from conducting public activities unless they are registered as an association. In some cases, associations are subject to excessively cumbersome registration procedures. An association's activities are restricted to those set forth in its founding documents, which cannot easily be altered. Moreover, the types of organizations are often defined by their activities as perceived by the state, regardless of the perceptions and objectives of a given association's members and constituency. In many countries, the government demands that the association obtain advance permission each time it organizes any public activities. Permission is also required if the association wishes to join any regional or global network or to receive funding from foreign donors. The government also has the right to monitor the financial status, public activities, and private activities of the association's members, and it may dissolve the association for any reason.

6. Government Policies

Governmental policies to control CSOs have many other aspects, three of which deserve mention. First, ruling elites are "defensive and jealous" of other potential powers, and therefore limit the scope of the non-profit sector (Anheier 2004). Monarchs and ruling elites also create their own organizations in order to enhance their political influence and power among the population, a phenomenon well known in Arab countries.

Second, states exert pressure to limit the influence of the religious non-profit sector. This situation is encountered with religious organizations in many Arab countries, such as the Muslim Brotherhood in Egypt, Tunisia, Syria, Libya, Algeria, and Jordan.

Third, the state sometimes finds it necessary to fund the non-profit sector so that it can provide essential social services. This may contribute to conceptual confusion, with the risk that government funding can transform the sector into an agent of the state (Salamon and Anheier 1997). This is not common in Arab countries, though it exists in a limited way in Lebanon, where the state contracts with philanthropic and religious institutions to serve orphans, people with disabilities, and the elderly. To a lesser degree, similar contracting occurs with some semi-private schools in Kuwait and in Tunisia.

7. Level of Centralization

Most Arab countries are ruled by monarchies or totalitarian regimes. Only Lebanon has living former presidents.⁴ In all the other Arab countries, the head of state stays in power until death or exile through coup d'état.

Moreover, in most of these countries, elections can be manipulated. Further, the regimes can dissolve elected parliaments that become uncontrollable. Where constitutions exist, they can often be easily modified to benefit the ruling party. The judiciary is not

⁴ Even in Lebanon, the constitution was modified twice in order to extend the term of the president, in 1995 and 2004.

independent; rather, it is restricted by the political branches, nominated by the executive body, and under the direct control of the ruling elites.⁵

In sum, the potential for a healthy and independent Third Sector is currently limited by highly centralized power structures, combined with ongoing tension between ruling elites and the main religious groups (e.g., the Islamic Brotherhood).

Internal Obstacles Facing Arab Civil Society Organizations

Internal obstacles that challenge Arab CSOs fall into three main categories:

1. Vision and Mission

First, many CSOs have weak visions and missions, along with inadequate strategies for accomplishing them. This obstacle has several causes. Across the Arab region, we find inconsistent understanding of civil society's role and potential, which may contribute to the organizations' difficulties developing clear mission statements. Moreover, countries of the Arab region often lack comprehensive development plans. Though ultimate responsibility for a national development plan should rest with the state, the plan should reflect a dialogue with civil society. The Third Sector's trouble developing visions and missions that reflect the priorities of their constituencies thus stems in part from the absence of a shared national vision, one capable of addressing national challenges and pointing toward strategies for advancing development.

2. Capacities

Civil society in most Arab countries faces systematic oppression by the state. In the last three or four decades, dictatorships and authoritarian and one-party regimes have flourished. These regimes have destroyed existing societal structures and prevented the rise of new independent ones. This context goes a long way toward explaining the weakness of civil society in the region. Although positive change is underway, building a strong and effective civil society in Arab countries will take time, strategies for raising awareness and building capacity, and practical resources.

3. Weak Internal Governance Structures

Finally, weak internal governance structures often prevent Arab CSOs from being more effective. One potential cause is the exploitation of civil society organizations by ruling elites, politicians, and even individuals seeking a public role in society. Civil society also can be abused by sectarian factions working to spread extremist ideologies. As discussed more fully below, CSOs often have a weak understanding of the main elements of effective internal governance.

III. Research Results

This section discusses the results of a survey of a limited sample of CSOs. The survey is designed to identify and summarize the main challenges facing CSOs in the Arab region. Questions seek to elicit information on the degree to which the obstacles described above – particularly the external obstacles at the country level and the obstacles

⁵ See the UNDP regional program on governance in the Arab region (POGAR), especially the democratic governance and the rule of law program, <http://www.undp-pogar.org/governance/judiciary.asp> (accessed April 15, 2007).

internal to CSOs – affect the organizations in different environments. We aimed to gather a sampling of information about the sector in various countries, not to build a comprehensive database.

Questionnaires were sent to 104 CSOs in eleven Arab countries that are members of the Arab NGO Network for Development. Responses came from 25 CSOs in eight countries, a response rate of 24 percent of CSOs overall, which included CSOs in 73 percent of the surveyed countries.

Responses were grouped by the nature of the country's CSO legal framework. The framework in those countries dubbed conservative is generally more restrictive and would be expected to pose more obstacles; the legal framework in those countries deemed liberal often reflects a *laissez-faire* attitude on the part of regulators. For example, in Lebanon, which is considered to have a liberal legal framework, the CSO sector is governed by a 1909 Ottoman Law, which refers to government agencies that have not existed for decades; in practice, the law is simply ignored. Although the small sample size does not allow broad conclusions, it does suggest preliminary ideas about the challenges facing CSOs in each country, and it reveals issues ripe for further research.

The 66 questions on the survey are divided into four sections. The first section deals with general information on the organization, including its type, vision, breadth and scope of activities and constituency, internal governance, and financial reporting. The second section asks about the legal framework in which the CSO operates. The third section focuses on the CSO's understanding of the role of civil society. The last section addresses the social and political environment in which the CSO operates.

Survey responses to the first section indicate that the respondents work in various fields, including human rights (either broadly or in defense of specific groups, such as women, children, and the disabled), environmental protection, social or sustainable development, and capacity building. Three are registered as foundations, three are civil companies, and the others are associations. Twenty-three identify themselves as non-governmental organizations, and two identify themselves as networks.

Lack of Good Internal Governance Mechanisms as an Obstacle to CSO Development

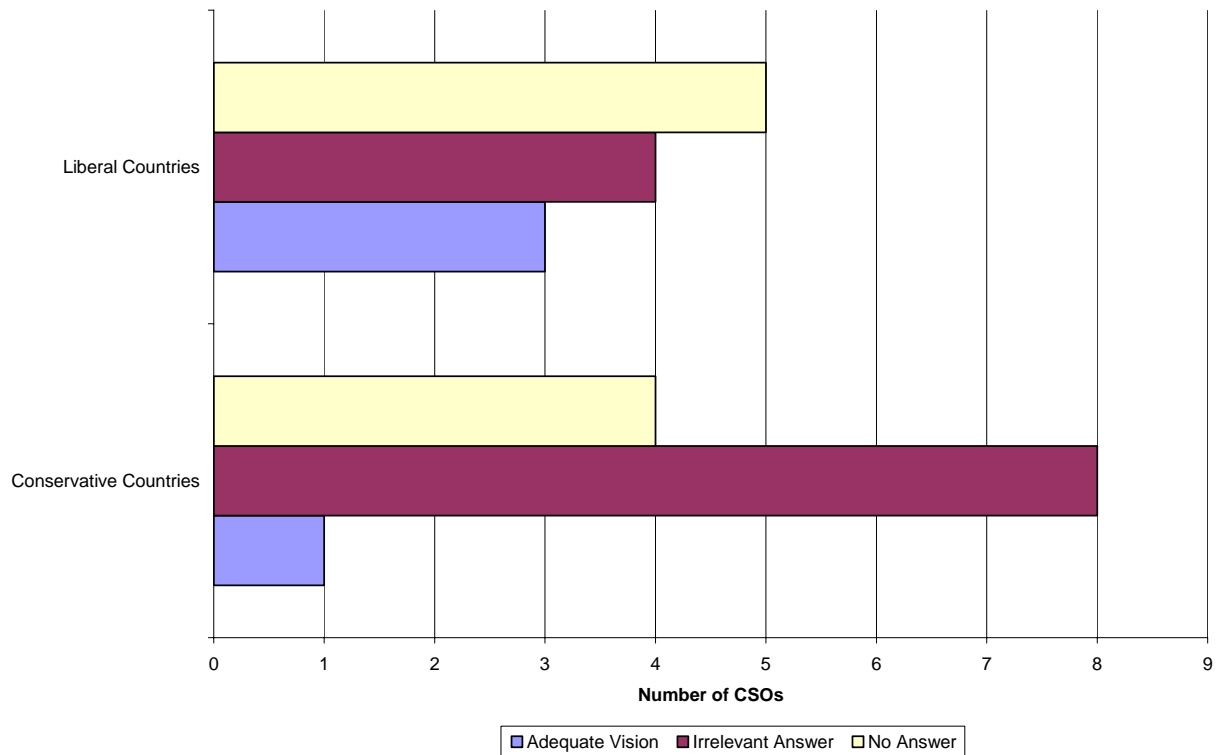
Mission and vision. Responses suggest that the lack of good internal governance practices is a principal obstacle to greater CSO effectiveness in the region. Answers reflect a weak understanding of key components of internal governance, including such matters as a vision and mission statement, an organizational strategy, an organizational structure, and the appropriate divisions in governance and management structures.

Most respondents do not clearly articulate a vision statement. Of the CSOs, 36 percent leave the question blank, and only 17 percent provide a clear vision statement. This problem is especially pronounced in countries with more restrictive laws (see Chart 1). In the three countries with relatively liberal legal environments, 25 percent of respondents state an articulate vision, whereas in the more conservative countries, only 8 percent do so. It appears that a restrictive legal framework can inhibit a CSO's ability to clearly define its vision.

Governing Structures. Inconsistencies appear in replies related to hierarchical relations within the organization – that is, relations among the governing bodies, the

executive level and staff, and representatives of constituencies.⁶ These inconsistencies may stem from an organization's failure to have an effective organizational chart, or from a failure to understand the questions on the survey. It is also likely that responses to questions about decision-making within the organization depend on who answers the questionnaire; a member of the governing board may give a different answer than a member of the staff would. In one case, two people in a single organization returned surveys, and many of their answers differ.

Chart 1: What is Your Organization's Vision?



Internal financial systems. All but one of the respondents have financial auditing systems in place, and the majority issue annual financial reports (84 percent). Of these, 40 percent use external auditing, and 32 percent use both internal and external auditing. The use of external auditing is markedly higher in liberal countries than in conservative ones, 92 percent versus 54 percent (see Chart 2). A possible explanation is that CSOs in more restrictive countries rely on internal audit systems to avoid state interference in their finances.

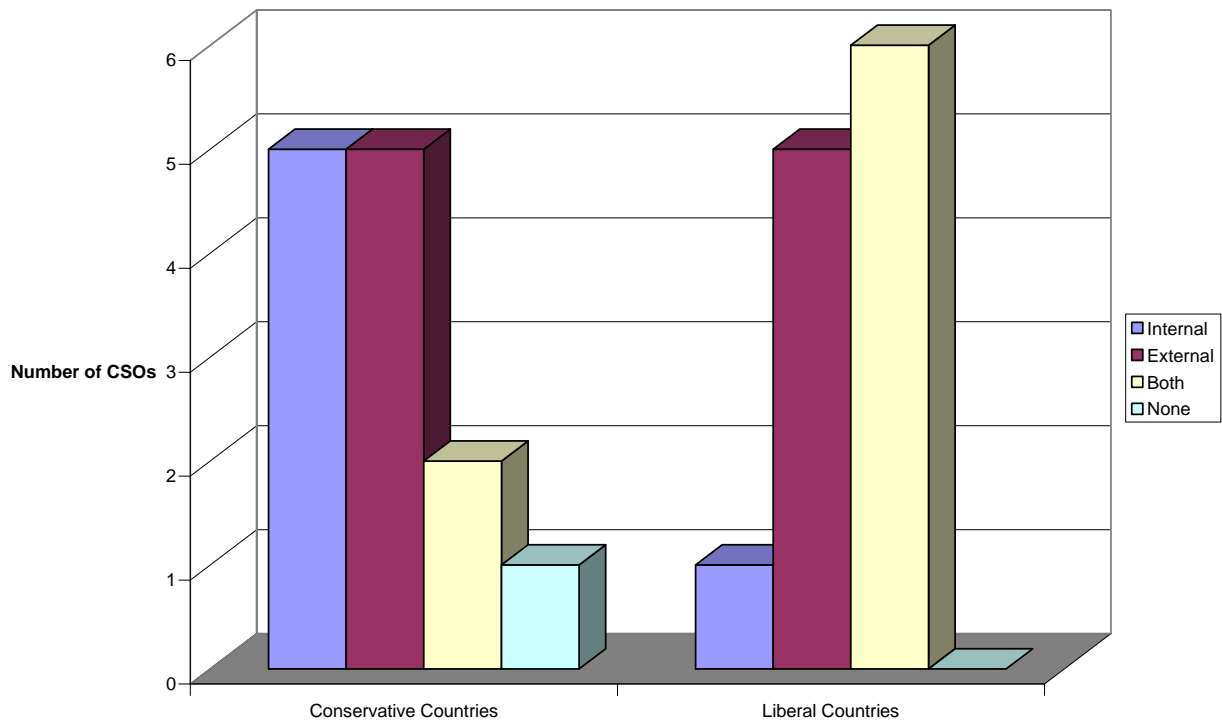
External Obstacles – CSO Relationships with Governments

Three-fifths of responding CSOs express positive views of their relationship with the government, while one fifth report a bad relationship and another fifth report an

⁶ Constituency can be beneficiaries as well as supporters and volunteers.

average one. At the same time, 36 percent of CSOs state that the government has restricted their operations, and a slight majority, 52%, say that the legal framework is an obstacle to their operations. CSOs in conservative countries are slightly likelier to report unfavorable relationships with government than CSOs in liberal countries. More starkly, 69 percent of CSOs in conservative countries view the legal framework as an obstacle, and 62 percent report that the government has restricted their activities.

Chart 2: What Type of Auditing System Does Your CSO Use?



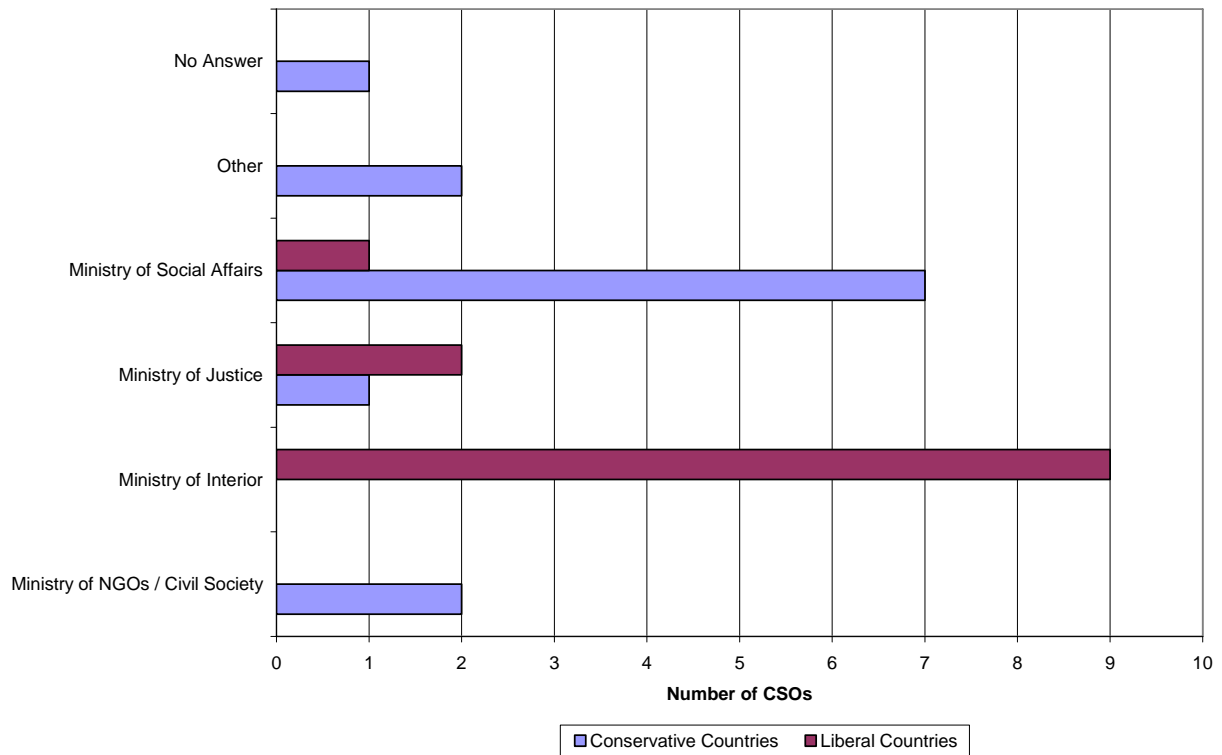
Different answers come from a given country about relations with regulators and experience with government restrictions. The questions are subjective. Moreover, answers are influenced by the type of organization and its strategy. Often, for example, human rights organizations face the heaviest restrictions. Moreover, relations with government for advocacy organizations differ from those of service providers.

In countries with liberal laws, the body that regulates CSO operations is reported as the Ministry of Interior in 75 percent of cases. Countries with more conservative laws generally use a different ministry, such as the Ministry of Social Affairs (54 percent), the Ministry of Justice, or the Ministry of NGOs or its equivalent (see Chart 3). This is surprising, because regulation and oversight by the Ministry of Justice is generally considered more transparent than processes controlled by the Ministry of the Interior; the latter is typically more concerned with security issues (UNDP 2006). These responses suggest that even in liberal countries, the government sees civil society as raising security issues.

External Obstacles – Relationships with Other CSOs

Most respondents depict their relations with other CSOs as positive (88 percent). This result is encouraging; it suggests that CSOs recognize the importance of networking and coordination. It also suggests potential for further formation of social capital – i.e., an aggregate of those features of social organization, such as trust, norms, and networks, that can improve the efficiency of society by facilitating coordinated actions (Putnam, 1993). Increased social capital promises to contribute to the CSO sector’s ability to meet many challenges it faces.

Chart 3: Principal Government Regulator



Responses are also positive with regard to CSO relations with the United Nations; 67 percent of the CSOs believe that UN agencies support their work. This reflects the level of coordination and the potential role of the partnership between the UN agencies and civil society. Support provided by the UN can be not only financial, but also technical and political. Accordingly, UN support appears to be more important to CSOs in conservative countries than to those in liberal countries. In conservative countries, 69 percent of CSOs report a beneficial relationship with the UN, whereas only 58 percent in liberal countries express that view. Thus, UN support can perhaps be considered a source of both protection and legitimacy for CSOs operating in hostile environments.

Overall, 16 percent of the organizations report that they do not refer to international human rights conventions in their work, including all of the CSOs in restrictive countries. This result partly reflects the impact of local culture, as may be seen in the fact that 76

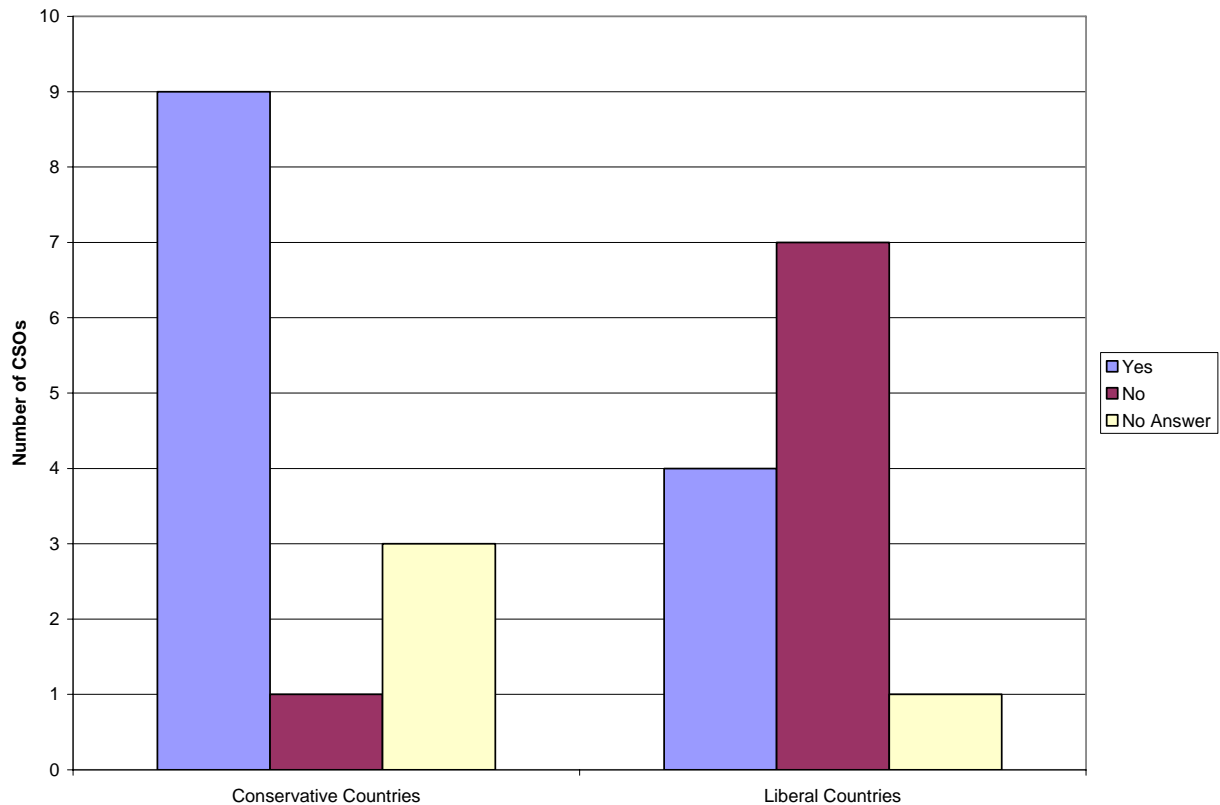
percent of all respondents say that tribal and traditional relations affect their ability to accomplish their work.

Financial Restrictions on CSOs and Donor Relations

When it comes to financial restrictions, 52 percent of respondents overall report no problems.⁷ In conservative countries, however, 64 percent report financial restrictions. Such interference may explain why CSOs in conservative countries generally prefer not to hire external auditors.

Most CSOs, 55 percent, report good relations with donors, while 20 percent report average relations and another 20 percent report poor relations. In setting work plans and agendas, 64 percent report strong donor support, while only 8 percent report poor donor support.

Chart 4: Is the Legal Framework an Obstacle to Your CSO's Development?



These data raise questions about whether CSOs with inadequate visions and weak strategies are building their agendas around local needs as opposed to donors' viewpoints. Many in the Arab region believe foreign donors have a negative impact on the work of civil society because they are thought to impose a foreign agenda and leave organizations unable to respond to local priorities. Under this view, CSOs that receive

⁷ Financial restrictions vary from restrictions on accepting donations from foreign donors to restrictions on dealing with foreign currency. CSOs are also seeking tax exemption and reduction of charges for social security in order to release more funding for social services.

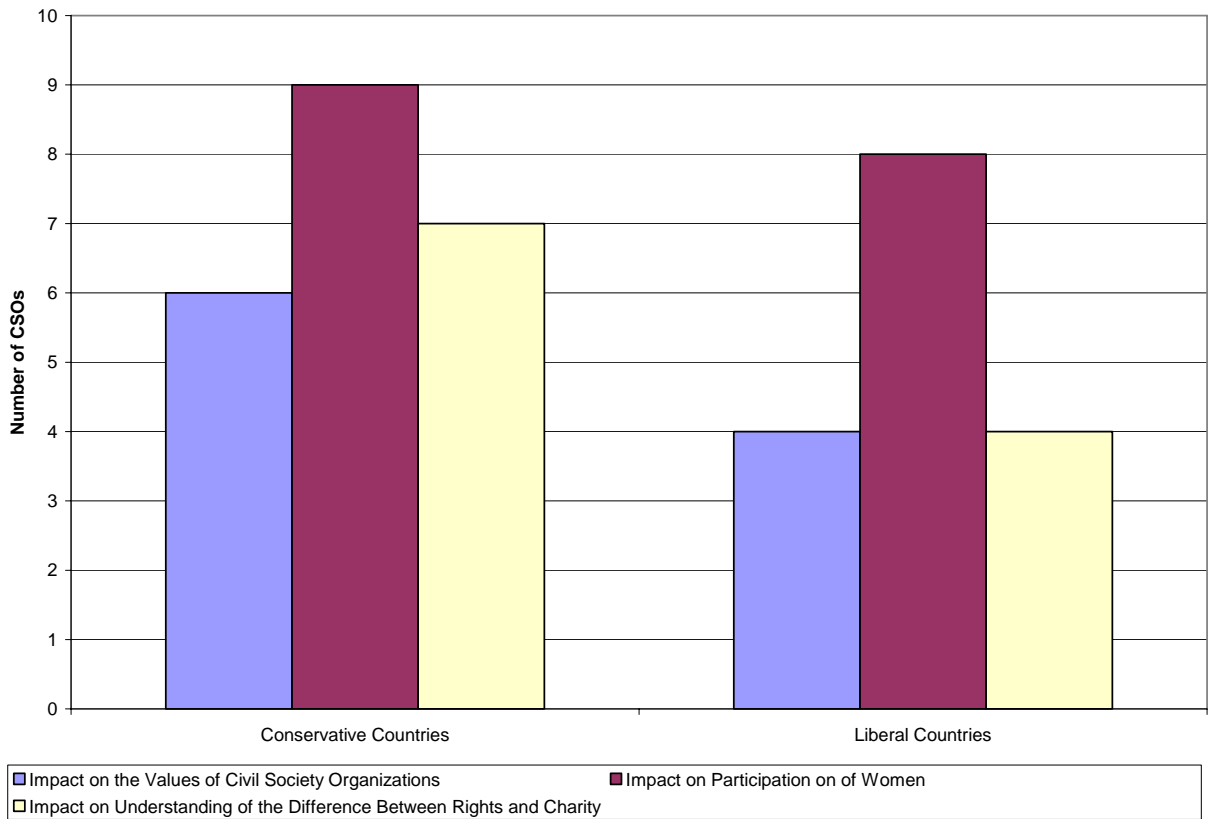
grants from foreign donors are considered collaborators. Combined with poor visions and weak strategies, this factor raises a danger that CSO agendas may diverge dramatically from local needs. One wonders whether sudden withdrawal of foreign funding, further, would leave these weak CSOs with no strategies or agendas at all.

Legal Obstacles to CSO Development

In restrictive countries, 70 percent of CSOs consider the legal framework to be an obstacle to their work, while only 33 percent of CSOs in liberal countries express that view (see Chart 4).

Most respondents, 76 percent, state that tribal and traditional relations affect their ability to accomplish their work. A closer look at these responses reveals some interesting characteristics: 17 of 25 respondents say that traditions (e.g., cultural ties) directly affect women’s participation; 10 state that cultural factors hurt the values of civil society; and 11 claim that cultural factors hinder public understanding of the difference between rights and charity (see Chart 5).

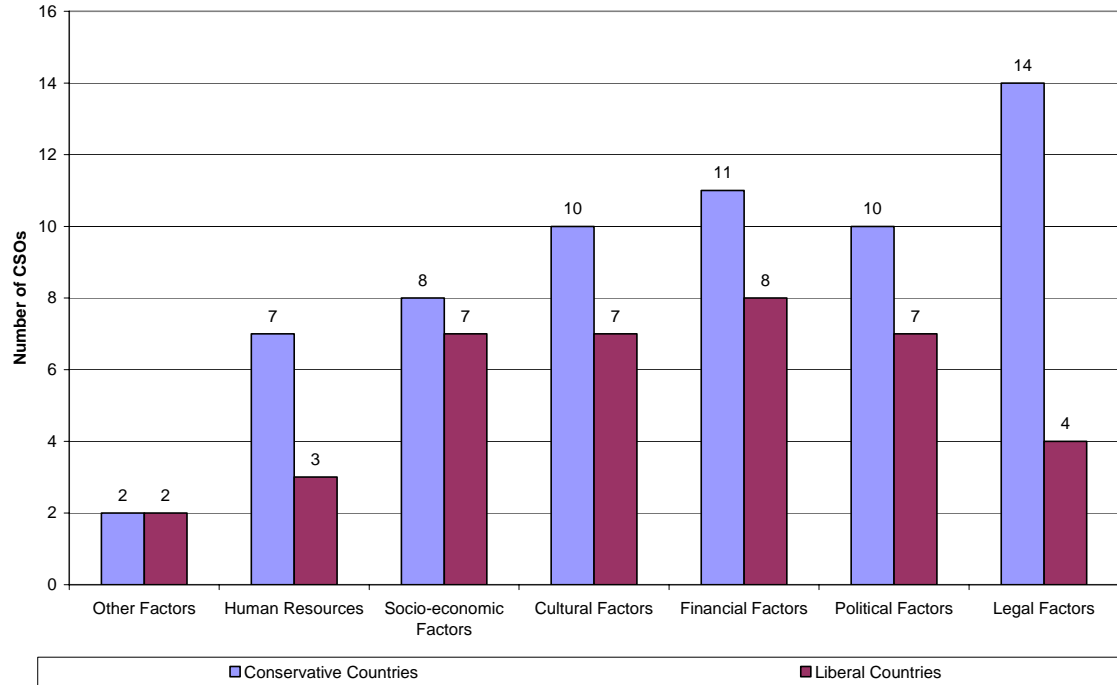
Chart 5: How Does Tradition Negatively Impact the Work of Your CSO?



Regardless of whether an Arab CSO is in a conservative or liberal country, the external obstacles of political, socioeconomic, cultural, and financial factors are problematic to similar degrees (see Chart 6). Socioeconomic obstacles are reported somewhat less frequently in conservative countries; however, human resources are proportionately less a problem in liberal countries. Although legal factors represent an

obstacle in both types of countries, they are much more widespread in conservative countries, which is no surprise but does invite further dialogue.

Chart 6: Summary of Self-Identified Obstacles



IV. Case Studies – Lebanon and Palestine

To place the survey findings in context, this article will now examine two case studies – Lebanon and Palestine. Both countries can be considered “liberal” for our purposes. Data and analysis are drawn from the *Civil Society Index* (also called the *Civil Society Diamond*, or CSD) developed by CIVICUS and Dr. Helmut Anheier of the University of California, Los Angeles. The CSD measures four dimensions: structure, impact, environment, and ethics (values and culture).⁸

Surveys on the CSD were implemented in Lebanon and Palestine. In Lebanon, the survey was conducted by the International Management and Training Institute, and in Palestine it was conducted by the Bisan Center for Research and Development.⁹

⁸ The CSD is a tool for many tasks, starting with the assessment of core facets of civil society; it thus can help identify strengths and weaknesses in order to develop and implement an optimal policy. It can also assess the impact and the potential contributions of civil society on the wellbeing of the society, economically, socially, and even in terms of human rights. In addition, the CSD can evaluate performance in selected fields, such as health care, education, and the environment.

The four dimensions, when clearly defined in a systematic and structured way, can help in creating or amending a legal system. This will produce a law that better responds to the needs of CSOs and protects them from threats and challenges.

⁹ A third survey was conducted in Egypt by Center for Developmental Studies (CDS), but the results were not available at the time this article was written.

Lebanon

The Lebanese experience reflects many of the obstacles to the development of civil society, both internal and external, that have been examined in this article.

The legal framework is considered fairly good, and is not for the most part considered an obstacle, despite issues with its implementation by the Ministry of the Interior. Nonprofits in Lebanon are still governed by the Ottoman Law of 1909, which was inspired by the 1901 French Law of Associations. The Lebanese Third Sector faces problems with the governmental body charged with regulating it, the Ministry of the Interior. The Ministry exerts substantial pressure on CSOs, violating the rights secured by the Law of Associations. The law, for example, stipulates that the founders need only provide the Ministry (or regional authority) with a "notification of establishment," containing copies of the constitution, bylaws, and founders' identification. Consecutive Interior Ministers, however, have imposed a registration procedure requiring, among other things, a template version of bylaws,¹⁰ contrary to the law, under the pretext that the requirements are merely "administrative procedures." The Ministry cannot exert pressure on an existing association, though, except through the articles in the association's bylaws. For this reason, the Lebanese environment for CSOs is considered the best in the region.

Although this legal framework is fairly good, civil society in Lebanon faces many challenges that shape its character and impede its effectiveness. One is conflict. The most recent example is the July 2006 war and the political developments that followed. Earlier, Lebanon endured fifteen years of civil war, which ended only in 1990.¹¹ During the civil war, religious groups fought one another, creating mistrust and threatening national unity. The civil war continues to haunt Lebanon. The CSD survey reports that 86 percent of respondents have a negative perception of the social and cultural fabric of society, and shows distrust between various groups. Lebanese civil society, like Lebanese society as a whole, is thus highly polarized and affected by the political structure based on the confessional distribution of power and wealth.

Similarly, respondents report high mistrust toward government. Corruption in Lebanon impinges on the performance of the public sector. For example, several public institutions in Lebanon still lack transparent financial procedures, suggesting that they may pose a significant fiduciary risk to the government (CFAA 2006).

By ten to one, respondents prefer to receive services from the nonprofit sector rather than the public sector. Such findings reflect widespread acknowledgment of the effectiveness of Lebanese CSOs. The organizations have been particularly successful in implementing poverty eradication policies, providing health and education services, and protecting the environment. Nevertheless, most respondents, 73 percent, deem the nonprofit sector corrupt, demonstrating that mistrust extends beyond the public sector to society as a whole.

¹⁰ The State Shoura Council ruled that the procedures imposed by the ministry are illegal (ADDL vs. State of Lebanon, 2004).

¹¹ The Civil Society Diamond report unfortunately begins with the false assertion that Lebanon has not witnessed ethnic or religious conflicts or political or social troubles. While Lebanon did not experience major conflict when the CSD was applied, 1993 to 2003, violent conflict has shaped the political environment. The CSD draft report was also prepared before the July 2006 conflict in Lebanon.

The CSD survey also identifies limited public participation in Third Sector activities. Moreover, the effectiveness of that participation is debatable. This is due to the obstacles cited above, especially lack of participation due to political, economic, and social obstacles; lack of good governance; and inability to participate in the decision-making process.

The Lebanese case also illustrates how internal obstacles, particularly those relating to the organizational and structural aspects of CSOs, can undermine development of the sector. CSD survey respondents express mistrust toward organizational charts as well as administration and financial performance of CSOs. The lack of proper organizational structures and internal governance also affect networking and coordination among CSOs, for networking requires clear visions and mission statements on the part of involved groups, as well as mutual trust among them. The CSD survey concluded that umbrella organizations and networks fall short in efficiency and internal governance. Finally, the CSD survey concludes that Lebanese CSOs lack the human, financial, and technical resources needed in order to fulfill their objectives.

Palestine

The legal system in Palestine is also considered among the best in the region, and civil society there enjoys a fairly large degree of independence. It is worth noting that the law adopted in Palestine resulted from a campaign conducted by Palestinian CSOs seeking greater space and recognition. Although Palestine has one of the most active civil societies in the Arab region, the Palestinian Authority restricts CSOs with regard to both interpretation and implementation of the law.

Palestinian CSOs provide what are essentially public services in many sectors, due to the absence of the state – particularly in health, education, rural development, and agriculture. Even so, the results of the survey show that civil society in Palestine faces many challenges and obstacles.

Two issues in particular have a strong impact on CSOs in Palestine. First, the foreign occupation of the society strongly affects the role, the objectives, and the performance of civil society organizations. Second, Palestine is a state under construction, with limited sovereignty, independence, capacity for social services.

Moreover, recent legislative elections show widespread mistrust in the Palestinian Authority as well as in other political parties. This is the result of the prevalent corruption and the lack of meaningful democratic and participatory processes in ruling the country. This environment affects the role and the performance of CSOs.¹²

Palestinian civil society also faces funding constraints. It is difficult to estimate the volume of charitable donations, since most of them go directly to philanthropic

¹² A quarter of respondents indicate administrative obstacles. “Obstacles include several issues and matters such as: weakness in good governance principles especially the absence of a clear and agreed upon vision within the organization, the absence of a clear and agreed upon vision within the organization, the absence of clear administrative and financial regulations, the absence of a clear organizational and administrative structure for decision making process, the weak relationship between the governing recourses (general assemblies, board of trustees and board of directors) and the executive administration, and finally the absence of clear and transparent working rules and regulations.” (Abdul-Hadi, Izzat. August 2000, p. 40.)

associations. Furthermore, the socioeconomic reality in Palestine limits the capacity for organizations to solicit local donations and affects the ability of individuals to volunteer or to join CSOs. At the same time, the sanctions imposed on the nation create a shortage in funding.

Available data make it difficult to reach detailed conclusions, particularly concerning the extent of CSO membership and voluntarism, and the effectiveness and impact of civil society. However, data from the CSO survey does highlight the challenges facing Palestinian CSOs. For example, more than 90 percent of respondents indicate that they do not volunteer for a CSO, with little difference between the West Bank and Gaza Strip. As in Lebanon, finally, internal obstacles confront Palestinian NGOs, including weak governing bodies, poor control over finances, and limited participation in organizational decision-making.

As for the internal governance of NGOs, a study of more than 60 Palestinian NGOs found that beside the marginal role played by their boards, most of their employees do not participate in the decision-making due to “their passivity or their lack of competence” (Shalabi, 2001: 152). The ‘target’ groups do not participate in decision-making or drawing up policy either. In many women’s NGOs, the staff had nothing to do with the general budget of their organisation, and do not know how it is distributed. According to Shalabi, the internal governance of the surveyed NGOs was “a mirror reflection of the Palestinian political system based on individual decision-making, patronage and clientelism,” and the lack of rules organising internal relations in the organisation. In some cases a union dispute erupted, and was settled in a “way very far away from the rule of law” (Shalabi 2001: 154).

Islah Jad; 2006

These two case studies confirm what the survey results reported above suggest – namely, that reforming the legal system alone will not adequately strengthen CSOs in the Arab world. Even though Lebanon and Palestine have laws of associations that rank among the best in the region, the CSD study does not depict a healthy and independent nonprofit sector. On the contrary, the results reflect weaknesses and challenges that CSOs face apart from to the legal framework.

V. Recommendations

Strengthening the CSO sector and improving its effectiveness depends on several interrelated factors: legal systems, national reforms, and tools for overcoming internal obstacles.

Legal systems should be developed in accordance with international declarations of human rights and in dialogue with local civil society. The legal system’s primary goal should be to regulate the relation of CSOs with the state. When drafting a law and lobbying for a better legal framework, reformers must take into consideration external factors affecting the sector, such as those described here. The law should protect the Third Sector from the tendencies of the state to seek to control CSOs, while restraining CSOs from abusing any advantages of their status, such as access to power or, where applicable, tax-exemption. The nonprofit legal framework should also take account of the

varieties among CSOs. For example, laws governing registration should consider the structural definition, including the five characteristics: voluntary, self-governing, private, institutional, and non-profit. Additional elements meriting consideration when designing civil society's legal framework are the structure of a typical organization, its relationship to the government, its financial structure, its governance and operation, and its contribution to enhancing social capital. The "Arab Initiative for the Freedom of Association," for example, was launched by a group of CSO leaders from various Arab countries to promote adequate legal frameworks and laws of associations in the region. It is now supported by many institutions, including the World Bank's Department of Social Development in the MENA Region, Banian, and the Association for the Defense of Rights and Freedom in Lebanon.

Although legal systems governing the CSO sector need reform, reform alone will not sufficiently strengthen CSOs in the Arab region. This is particularly evidenced by the CSD reports in Lebanon and Palestine. In spite of the fact that the laws of associations in both nations are the best among the region, the results of the surveys do not reflect healthy and independent nonprofit sectors. On the contrary, the results reflect weaknesses and challenges unrelated to the legal framework.

For CSOs to face external challenges, comprehensive national strategies and policies are important. These should result from a participatory process in which the various stakeholders (the state, the business sector, and the Third Sector) take part. The strategies should focus on two dimensions: the need to reform political institutions, and the introduction of serious economic, social, and cultural reforms. Any national plan must take all of these into consideration.

Confronting internal challenges strengthens civil society organizations; enhancing their capacities, accountability, and transparency helps them influence external factors and create change. The following recommendations would support the sector's efforts to overcome its internal obstacles:

- Implement special programs and adopt rules and regulations (codes of conduct) to improve governance inside civil society organizations. Internal governance should lead to the adoption of democratic, transparent, and accountable structures.
- Support civil society organizations in refining their vision, mission, and strategies in a participatory way (i.e., with the involvement of members and constituencies).
- Develop the organizational capacities of civil society organizations in terms of administrative and financial management. This will improve transparency and accountability.
- Educate CSOs in advocacy, lobbying, and dialogue techniques.
- Support networking among CSOs at the local, regional, and international levels to elaborate common visions, share information, exchange experiences, and so forth.

Conclusion

This article provides an overview of the obstacles faced by CSOs, both external and internal. Research helped provide an understanding of Arab CSOs' legal status, governance, and self-identified obstacles. These results were followed by a discussion of

legal frameworks of Arab countries, both as they are and as they might be. Finally, specific recommendations were made for legal frameworks governing CSOs, for responding to external obstacles, and for overcoming internal ones.

The results of the survey provide some interesting insights about the experiences of real-world CSOs in the Arab region, their strengths and weaknesses, and their perspectives on the obstacles that they face. The research reported here can prove useful in setting priorities for interventions aimed at empowering CSOs and increasing their effectiveness and efficiency. However, this survey is only one step and should provide inspiration for additional research. Further research might increase the number of surveys sent, send surveys to more of the states in the 22-member Arab League, conduct follow-up surveys, survey by phone as well as mail, and compare groups of survey responses from Western, Asian, and African regions. An expanded evaluation, such as a broader scope or the inclusion of time-series data, would permit a more precise understanding of the CSO sector in the Arab region, as well as more finely tuned recommendations to support the growth and efficiency of the sector.

To answer the question posed at the beginning of the article, there are several reasons why civil society is not stronger than it is in Arab society today. External obstacles such as repressive regimes, militarization, international pressures, and occupations conspire to create a response where family, clan, and tribal relations strengthen as people protect themselves. Another result is that CSOs and individuals lack access to information and do not proactively create a clear, strong vision about the transformative role that they can play.

In sum, legal reform is essential to develop a CSO sector that can respond creatively to contemporary challenges – but even the optimal legal framework will not, by itself, address all the challenges facing the Third Sector.

References

1. Lester M. Salamon and Helmut K. Anheier, *Defining the Nonprofit Sector: A Cross National Analysis*; John Hopkins Nonprofit Sector Series 4, 2004.
2. Lester M. Salamon, Helmut K. Anheier, et al., *Global Civil Society: Dimensions of the Nonprofit Sector*; John Hopkins Comparative Nonprofit Sector Project, 1999
3. *Citizens, Strengthening Global Civil Society*: CIVICUS, 1997
4. Helmut Anheier: Civil Society: Measurement, Evaluation, Policy; Earth scan UK and USA, 2004
5. civil society 2004/2005, Sage publications, center for study of global civil society, London school of economy.
6. The World Bank: Executive summary of the Country Financial Accountability Assessment (CFAA); Beirut on 25th of June 2006
7. Assessing and strengthening civil society worldwide; a project description of CIVICUS civil society index: A participatory needs assessment & Action planning tool for Civil society; Volkart Finn Heinrich. CIVICUS civil society index paper series, Volume 2, Issue 1; March 2004
8. CSI index country report: Bisan Center for research and development, Palestine (Draft not for distribution)
9. <http://www.undp-pogar.org/themes/civil.asp>, accessed October 4, 2006.

12. تنظيم الجمعيات في الدول العربية، جمعية الدفاع عن الحقوق والحريات (عدل)، لبنان (لا تاريخ، الا ان الكتاب هو نتاج اعمال اربعة ورش عمل عقدت بين العامين 1997-1998
13. الجمعيات في لبنان بين الحرية والقانون والممارسة، جمعية الدفاع عن الحقوق والحريات (عدل)، لبنان (لا تاريخ، الا ان الكتاب هو نتاج اعمال ورشه عمل عقدت في بيروت في العام 1999
14. دليل قياس حالة المجتمع المدني في لبنان، ملخص تنفيذي عن تقرير حالة المجتمع المدني في لبنان، المعهد الدولي للتدريب، سيفكوس، 2006 (مسودة اولى غير قابلة للتوزيع)

THE MIDDLE EAST: SENIOR RESEARCH FELLOW PAPERS

**Civil Society in the Arab World:
The Missing Concept**

Sa'ed Karajah¹

Introduction

Civil society² has recently gained importance. Its legal as well as material influence has increased, and much Arab study and research have been devoted to understanding the nature of this society and identifying its characteristics. Although some have reacted with skepticism to the sudden increase in Arab interest in this sector,³ most researchers agree that the civil society has an important and active role to play in the Arab world.⁴ Some studies even have introduced definitions of civil society from outside the Arab world. These studies evaluate the elements and characteristics of civil society in the Arab world as they measure up to western standards and ideals.

This article follows a different path. It argues that Western and Arab notions of civil society are quite different, and to enable a vibrant civil society in Arab countries, one must approach the task with historical and cultural sensitivity. The article questions whether civil society is actually gaining importance in the Arab world and, indeed, whether it can be said to exist at all. This inquiry necessitates a search for the meaning of the term in the Arabic language, and the concept as it is applicable to the Arab society.

The article contains five sections. The first section addresses the definition of civil society and its elements. The second section tackles the emergence of civil society and its relation with the state. The third section discusses civil society in Islamic states. The fourth looks at the relationship between civil society in the Arab world and democracy. The fifth, finally, examines the development of civil society.

Section One: The Definition of Civil Society, Its Concept, and Its Elements

Does Arab civil society actually exist? Is the increase in the number of registered civil society organizations (CSOs) an adequate indication of its existence? Does the increased attention on civil society in the last two decades reflect an internal mobilization

¹ Sa'ed Karajah is Senior Partner at Karajah & Associates Law Firm, based in Amman, Jordan. Mr. Karajah was a Middle East Senior Research Fellow during summer 2006 at the International Center for Not-for-Profit Law (ICNL). This article was edited by ICNL staff.

² Terms such as *civil society*, *people's organizations* – as in Egypt – and sometimes *the third sector* are used as if they are synonymous. I think that this research will reveal that these terms are not the same and that they carry different interpretations and meanings.

³ See Azmi Bsharah, *Civil Society*, Center of Arab Unity Studies, Beirut, 1998. Azmi Bsharah relates the doubts raised regarding the sudden interest in civil society to the relaxation of the political elites who found themselves living in a state of political unemployment after the collapse of the communist and socialist bloc. He considers civil society as a process of dissolving the political struggle for democracy and forming an alternative to it. In this sense he considers it a process of political abortion.

⁴ Indeed, some researchers have called this century the “civil society century.” See Dr. Abdul-Aziz Bin Naser, Deputy Minister of Social Affairs, *Ahlan Wa Sahlan Magazine*, January 2006.

(belief in the cause) or an external one (market interest)? Is the increase in social organizations and conferences a result of funding from the World Bank and external donors, or a result of a historical accumulation of social organizations that after previous struggles are now finally gaining momentum?

These are legitimate questions that arise when talking about civil society. These questions also underscore the importance of searching for civil society's concept and definition not within the Western and European contexts but within the Arab social environment. Reference to the European model can be useful for comparison, to highlight similarities and differences between the Western and Arab notions of civil society, in both their theoretical definition and their historical existence. Such a comparison is a necessity, as it gives the Arabs a further understanding about where they stand and can help provide a new framework that is culturally sensitive and is applicable.

Many Arab researchers have proposed definitions of civil society.⁵ These definitions, in context, indicate a misunderstanding of the concept. The definitions rest on a compilation of elements and concepts of civil society as they exist outside the Arab world. That is, they do not seek to find the origin of the concept in the society itself. To do so, we must examine its meaning in the Arabic language and, more importantly, how the concept has been applied.

Civil Society in the Arabic Language⁶

⁵ There are many definitions of civil society. See Mansour Al-Jamari, *Lessons of Political Concepts*, Arab Press Freedom Watch, May 2003 (defining civil society as “a wide range structure of labor unions, nongovernmental organizations, religious groups and societal institutions and organizations in the civil society”). See also Jamil Hilal, *The Complexities of Civil Society Concept*, April 10, 2004, Nusus (defining civil society as “a group of civil and social institutions and a series of channels and means by which the modern society expresses its interests and purposes and is able to defend itself when opposed to the authoritarian rule of the political institution represented by the state”). The United Nations Food and Agriculture Organization, *Cooperation of Civil Society*, www.fao.org, defines civil society as “[a]ll groups working outside the framework of governments such as societal groups, nongovernmental organizations, labor unions and organizations that express the interests of social groups and raise awareness on major issues in order to influence public policies and decisions.” See also Amani Kandil, *Middle East Transparency*, June 22, 2004 (defining civil society as “any entity that is nongovernmental, not an extension of the family and not an extension of the state”); Mohamad Hilmi, *The Role of Civil Society in the Democratic Development*, Civilized Discussions, No. 1496, March 21, 2006 (defining civil society as a “group of free voluntary organizations filling the public space between the individual and the state. Its aim is to provide citizens with services or to achieve their interests or to practice different humanitarian activities.”); Lary Daymond, *Iraq Center for Democratic Information*, Middle East Senior Research Fellow Conference Papers, No 2, June 2005 (defining civil society as “a space of organized social life characterized by voluntary, self motivated work independent from the state and governed by a set of laws and common rules”); Farid Basil Al-Shani, *Strengthening Civil Society in the Arab Region: Model for Legal Reform*, www.icnl.org/programs/location/mena/beirut_conference/Beirut_Papers_English.pdf, Beirut 2006 (defining civil society as “[a] group of political, social, economic and cultural organizations working in different fields with a relative independence from the state and the profits of companies in the private sector, i.e., civil society is civil institutions that do not practice authority and do not aim at economic profits. They contribute to the formulation of policies outside the political institutions and have professional aims such as the protection of the economic interests, upgrading the level of the profession and expressing the interests of their members. Some have cultural aims such as writers and intellectuals’ associations and cultural societies and clubs that aim at spreading awareness according to the aims specified in the society programmes.”).

⁶ *Almunjid fi l-lugha wal-a’laam*: Arabic Dictionary.

In the phrase civil “al-mujtama,” the word “al-mujtama” stems from “Mujtama,” which refers to the place and time where the meeting “itjima” amongst society members (mujtame) took place. The concept itself, by contrast, alludes to a group of people living under general rules and regulations. What is most notable about this definition is that it does not include any reference to an interaction or interrelation that posits civil society as an intermediary between the individual and the different organizing forces of the society,⁷ as is the case in the Western definition.⁸

Civil “madanee” in Arabic means transformation from the state of primitiveness to a state of familiarity and delight and holding the values of the cities.⁹ Hence, civil society in Arabic refers to assembling in cities, in contrast to Bedouin and rural life. The term does not connote any political function for this assembly. Thus, it does not reflect any political or social mobilization or collective action to organize or influence the life in the city. It is simply a transformation from one cultural stage (Bedouins and rural) to a hypothetically more developed stage.

Both linguistically and conceptually, the Western situation is rather different. “Civil” is not derived from civilization but rather from civic and “civis” and “civitas,” the old city in Latin. In each case, it is a concept related to citizenship, or the individual's legal position in the state as a citizen – an active member of civil life, regardless of whether he lives in the city or in the village. This reflects the development of the concept of civil society in the modern western experience starting with Thomas Hobbes and ending with Gramsci. This evolution has concluded with civil society as a collective political mobilization (civitas) that can influence the state. Scholars have viewed civil society as carrying the values of the society: individual freedom, a state governed by the rule of law, and neutral taxation, among others. Civil society according to humanists promotes a civil style of life.¹⁰

This is spelled out in the social contract theory that starts with the individual, who envisions the community as a society and an intermediate between individuals of free will. Society is a contractual relationship¹¹ between active individuals stemming from the mutual benefits to be achieved, both morally and practically, by ceding some of their rights to government.¹²

Each of the definitions discussed above reflects some dimensions of civil society. Two critical observations, however, can be made about these definitions. First, they are neither conclusive nor precisely accurate. Second, they lack a base of cultural understanding. These definitions are merely adopted from western culture with the assumption that they also apply to the Arab context.

⁷ Dr. Muhamad Abed Al-Jabiri, *Intellectuals of the Arab Civilization*, Center of Arab Unity Studies, Beirut 1995, 35.

⁸ I.e., a society that depends in its formation and development on civilization and, based on that, conducts collective practical, social, cultural, and economic relations, based on initiatives and individual activities through organizations of a certain historical context.

⁹ *Almunjid fi l-lugha wal-a'laam: Arabic Dictionary*.

¹⁰ *The Columbia Encyclopedia*, Sixth Edition, 2001-05.

¹¹ Dr. Sauod Al-Mawla, on citizenship and civil society and the Lebanese experience, discussion notes, October 2005.

¹² See note 5, above.

Two main elements of the new modern Western society lie in the individual's initiative and his effectiveness as an active citizen. The modern state is built on the elimination of class distinctions, first of the feudalists and later of the bourgeois, in favor of a state that gains legitimacy by guaranteeing, among other things, equality under the law. Accordingly, the individual stopped looking to the family or class in order to understand his place in society, and started looking instead to the state as the originator and protector of his individual rights and freedoms.¹³

A quick glance reveals that the historical development of the Arab states has not produced an adequate environment for the emergence of civil society as known in the West.¹⁴ The history of Arab states is that of states and inspired leaders. Enhancing the state and the status of the regime is considered more important than providing individual rights and freedoms, and also more important than enhancing the contributions and private initiatives of individuals in political life.

Moreover, even as late as the 1990s, civil society organizations in the Arab world were still mostly charitable organizations in the simplest sense. They provided direct material assistance to the less fortunate, which includes a very wide swath of Arab society. Other CSOs were related to the state and could even be considered semi-official institutions.¹⁵ This further highlights the vast difference of the civil society concept, in both its understanding and its application, between the West and the Arab world. The environment and the activities of these organizations as understood in the West still do not exist in most of the Arab world.

Hence, the Arab notion of civil society in light of the environment in which it functions is compositional and not comprehensive. In other words, the definition specifies the elements that should be present in order to have such organizations, rather than spelling out the elements that actually exist. This is important for two reasons.

First, the definition includes elements that are ideal rather than attainable. If we include voluntarism as an element of the definition, we say this not in the sense that this element already exists. Voluntarism in the Arab society is still at its lowest level. Hence the definition includes social elements that should be created in Arab civil society.

Second, this approach to the concept of a true Arab civil society attempts to move beyond the discussion of whether it is a Western or Arab concept and instead work toward creating a civil society specific to Arab culture and sensitivities. This is not an intellectual effort but a constructive one, drawing on elements known in different environments, yet nonetheless a local process.

Based on the prior discussion, the definition that we seek should include the following compositional elements:

¹² Dr. Burhan Ghalyoun, lecture at the seminar on civil society and democracy, Qatar University 2001, *The Emergence and Development of Civil Society*, www.mafhoum.com/press/495ghal.htm.

¹⁴ Azhar Muhammad Ilan, Al-Naba', *Mechanisms for Building Civil Society in the Arab World: A Model*, Issue Number 671, July 2004.

¹⁴ See Adnan Al-Halfi, *The Establishment of Civil Society*, First Edition, 1997, Al-Barq Publishing House (stating that "there has been a blossoming of non-profit or royal organizations related to the governing families or their members and these usually enjoy huge financial and moral support").

1. Active Individuals

The presence of active individuals is the major element of civil society. This refers to the citizen who is aware of his individuality yet takes active part in organized collective activity. The mere fact of membership in a civil society organization does not imply that the individual is an active member or a supporter. The way the individual perceives and understands his role and the fundamental importance of his participation in a political process – which he considers as part of his basic rights – is the major guarantee of the emergence and development of civil society.

2. Freedom

Freedom is not only the basis for civil society's emergence, but also a pillar for its continuation and stability. Freedom includes the freedoms of association and work. Here it should be emphasized that the institutionalization and activities of civil society are a form of political work par excellence. Although it differs from the work of political parties, which aim for power and authority, civil society's work is the mature expression of the concept of a state based on the rule of law. This work allows individuals to abandon undeveloped political and social structures and to move toward the notion of the state not as sacred entity but as legal guarantor of rights and freedoms.

3. Independence

The establishment of civil society is not an inevitable outcome of the development of the state. It is an autonomous structure independent of the state. It encourages good governance in the modern state and mobilizes the power of democracy, namely public participation in decision making. It is, in sum, a measure of democratization.

4. Volunteerism

Volunteerism means providing moral and financial support by free will and without seeking profit or distributing profit among participants in the civil society organizations.

5. Transparency (Good Governance)

This dimension reflects the commitment of civil society to the principles of good governance and the use of modern management methods. Good governance here refers to the transparency of accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity.¹⁶ Civil society organizations should be accountable to their members and the general public. They should have governing documents that establish the roles and responsibilities of their officers and directors. The governing documents should prohibit conflicts of interest as well as mandate duties of loyalty, diligence, and confidentiality.

6. Legal Status

Civil society is organized pursuant to the rule of law, and an up-to-date legal framework and respect for the rule of law are important to its operation. Civil society must abide by principles of transparency and the rule of law in achieving its aims. The government should provide a legal system that guarantees the freedom of association while at the same time promoting accountability. The law governing civil society should

¹⁶ Camdessus, Michel. 1997. [Address](http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm) to the United Nations Economic and Social Council. <http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>

be clear and unambiguous. It should establish the rules for establishing civil society organizations and the guarantees for their existence and for the rule of law.

Taken together, these elements suggest the following proposed definition of civil society:

Active, organized social structures, seeking, on a voluntary and non-profit basis, to achieve general aims for the group, using good governance methods within legal frameworks that guarantee transparency and freedom of association.

Such a definition is based on the understanding of the context of the civil society concept in the Arab world, the dearth of actual civil society, and the legal framework necessary for civil society to be activated from within.

Section Two: Civil Society and its Relation with the State

Civil society functions to expose the failure of the government to respond to the needs of citizens. Civil society, through its institutions, plays the role of an intermediary between the individual and the state, and performs an organizational task within the society. From this perspective, civil society can be seen as a rational formula to organize the society and its relationship with the state. Liberal values place the society in opposition to the state. The state, however, is neutral with regard to the society. It implements laws that express the will of the society, and protects wide freedoms of the individual. Democratic procedures take place through civil institutions such as political parties, associations, and the like.

In countries with an active civil society sector, CSOs play a vital role in limiting the state's control over society.¹⁷ The state which continuously seeks to enhance its stability and security will seek to restrict opposition groups. Unchecked, this pressure increases and ultimately the state becomes authoritarian – a dictatorship, controlling all social activities.

Hence, civil society seeks to create equilibrium between the authorities of the state and the rights of the society. Civil society organizations play a vital role in maintaining social stability in developed countries. These organizations are independent of the state, with their freedom guaranteed by the country's constitution.¹⁸ Accordingly, developed countries have diversified professional unions, labor unions, charitable societies, religious organizations, free clubs, cultural and technical associations, and neighborhood and area societies. In addition, they have advocacy groups of all kinds, youth and women's organizations, and private-sector trade and industry associations.

¹⁷ Examples can be found in Dwayne Woods, *Civil Society in Europe and Africa: Limiting State Power Through a Public Sphere*, Vol. 35, No. 2 (September 1992), 77-100.

¹⁸ The concept of civil society dates back to the seventeenth and eighteenth centuries. John Locke was probably the first to use this term after the English revolution of 1688. Many philosophers, social scientists, and Western politicians analyzed the concept, including Hobbes, Rousseau, and Hegel. Civil society was born in the midst of a complete transformation that occurred in Europe from the Dark Ages to the age of modern states and systems. It later contributed to the transformation in Eastern Europe, emerging in Poland in 1982, when the Solidarity trade union, a civil society organization, undertook a leading role in the liberation of Poland from communist rule. Political figures in the Arab world, however, did not contemplate the concept of civil society until the 1990s. Arab political leaders then recognized civil society as a force, because of dissatisfaction among the political and intellectual elites with the lack of progress in instituting democratic practices, including wider dispersion of authority and free expression.

Neither the aforementioned groups nor the press is subjected to unreasonable state intrusions.

European nationalism needed three centuries to prove its capability and gain the confidence of Western citizens.¹⁹ It had to demonstrate respect for human rights and the rule of law.²⁰ Only then did citizens begin to abandon their loyalty to their classes and the feudalist system, and to develop loyalty to the nation. The European state became sacred by achieving national loyalty rather than loyalty to the state.

In contrast to the west, Arab countries did not have a history of class loyalty.²¹ What is sacred in the Arab state remained connected to the ruler and the regime. Despite rising Arab nationalism in the 1950s and 1960s, loyalty to the state and regime remained sacred. Citizens' rights were continuously sacrificed for the welfare of the state and the worship of its leader. To counterbalance this force, the Arab state became the model for commitment to tribal and family ties, as they were seen as the only guarantor of protection from the state. Thus, regional nationalism, a major element in the development of Western civil society, was completely absent in the Arab case. Moreover, the Arab state continued to claim omniscience and the capacity to solve all citizens' problems. It continued to position itself as the sole protection against the dangers of European colonization. Hence, any loyalty to other entities was considered to some degree a betrayal of the state. At the same time, sacrificing family and tribal ties was considered a grave risk that only few could undertake. This explains the weakness or absence of civil society in Arab states. Some scholars have argued that the current interest in civil society results from the intellectual bankruptcy of the Arab left wing and the fall of its idol, the Soviet Union.²²

We can summarize the above discussion with the following points.

First, civil society is generally no substitute for the state. Civil society represents an alternative to the state only in one case, when the state becomes authoritarian and

¹⁹ Dr. Burhan Ghalyoun, *The Emergence and Development of Civil Society*, 2001.

²⁰ Azhar Mohammad Elan, *Mechanism for Building Civil Society Organizations in the Arab World*, published on AN Naba'a Website, No. 671, April 2004, www.annabaa.org/nbaa71/aaleyat.htm, states that no political links exist between the individual and the state. There is a war of everybody against everybody. Hence, transformation to civil society represents the outcome of a clash between opposing powers within the natural state over the right to private property, the right to life, and the guarantees of these rights. The members of society agree to organize in a state, where individuals voluntarily (or supposedly) cede their rights to protect their lives and property to a third party, the new sovereign, which can be an individual or an entity.

²¹ The importance of the idea of civil society, from a regional Arab point of view, is not limited to the definition of political life in European societies. It also represents an opportunity for comparing Arab and Western societies. In this context, we could say that the expressions that philosophers and intellectuals employed since the Age of Enlightenment in Europe, and until the prison memoirs of Gramsci, have largely reflected ideological comparison between the East and the West. This expression articulated the common perception that the East historically has embodied the state more than it has the society. In other words, the history of the East is that of the state, and the history of the West is that of the society. The East, according to this theory, lacks intermediary organizations between the individual and the state. The weakness or absence of civil society presented a suitable environment for the rise of authoritarian political rule in the East. This ideological stance that talks about the absence of civil society in the East and its religion, Islam, is unfounded.

²² Azmi Bchara.

stops offering anything in return for the society's support for its agenda. Such is the case in the Arab world.

Second, one cannot talk about democracy without civil society. Hence, there is no democracy without civil society.

Third, civil society is the mediator that enriches the democratization process. Without it, democracy becomes Bediuncracy in tribal societies, sectocracy in ethnic societies.²³

Finally, an active civil society is a major contributor to good citizenship. One who cares for his society without the interference of the state is a good citizen.²⁴

Hence, civil society, as opposed to the state, enjoys the following characteristics.

First, civil society enjoys an independent status with regard to the state. This does not imply weakening the state, but merely limiting its practices within the framework of the constitution and the law. The emergence of civil society will put an end to authoritarianism and give individuals a meaningful role to play.

Second, civil society consists of institutions independent from the political authority, institutions that organize relations among individuals on the one hand and between individuals and the state on the other. These institutions perform an intermediary role between the society and the state. Through these institutions, which are a kind of a societal defense, the individual can express his aims and his ambitions.

Third, under the principle of voluntarism, the individual is not obliged – as is the case with family and hereditary institutions – to affiliate with any institution. Because it is voluntary, his participation becomes more effective. Also, the individual does not feel a top-down relation that limits his aspirations.

Finally, civil society is connected to human rights, political participation, freedom of expression, citizenship, peaceful circulation of authority, and pluralism.

Section Three: Civil Society and the Islamic State

For forty years of Prophet Mohammad's life (peace be upon him) and the rightly guided Khalifas, there was an active and influential Islamic civil society.²⁵ The Prophet Mohammad was practicing his rule through the Quranic verses sent to him through the angel Gabriel. Muslims used to consult Mohammad on issues related to their lives and Quranic verses were sent to him in reply. In some cases he himself was ruling in light of Quranic verses. But what he provided were enlightened religious judgments based on consultation (direct democracy). He consulted with his followers, who would agree with him and give him their consent (popular referendum). Sometimes they disagreed with him (Baya'a – Aqaba consent, as an example). Mohammad even said, "You know more about your worldly affairs." After his death, Muslims practiced real democracy. The civil Islamic society in the Saqifet Bani Saeda selected Abu Bakr to be the prophet Caliphate

²³ Abdul Al Ziz Bin Mohammad Al Khater, Cannot be Imported Literally, Civil Society and State are Extensions not Opposites, in Arab Renewal, May 2, 2006.

²⁴ Peace and Hope website, *What Is Civil Society?* www.qantara.de, July 14, 2005.

²⁵ Ahmad Hasan, *Political Islamic Groups and Civil Society*, First Edition, 2000, Al Thaqafiyah Publishing House.

(successor), who declared that he succeeded Mohammad and was not his heir. By this, he declared that heaven will no longer interfere in affairs related to governing.

The same happened with all the four caliphates. Muslims voted and the opinions of all people were accepted, even those of women, as in the case of Ali Bin Abi Taleb. The Islamic democratic honeymoon ended when Muawiyah came to power and transferred the rule into a kingdom to be attained by the sword. He practiced all kinds of political authoritarianism, including that of obliging people to approve the appointment of his son Yazid by the use of the sword. Since then, we have returned to the religious state of the Middle Ages, the state that governs under the shadow of God – a state where the governor is the shadow of God and his will on earth. The same continued in the Abbasi era and in subsequent stages of the Islamic state, or states that claim Islam, even in the Ottoman Empire. Poverty, illness, authoritarianism, and the absence of the rule of people and that of Quran principles have all transformed the Islamic state to an authoritarian model lacking human rights and civil society. The situation grew even worse than before Mohammad's existence, and there was a shift back to allegiance to tribe over allegiance to a larger society.

These historical facts do not deny that the Quran, the book of God, based on justice and charity, contains the most important human principles of good governance, justice, and even democracy in the western sense. When we talk about the presence of civil society in Islam and the Islamic state, the only real model available is the first forty years of Islamic rule. This justifies the saying, "The fault lies not in Islam but in its followers." The reality is that principles of justice, equality, and participation in decision making exist in the Quran but they are still only theoretical. These principles were not applied for an adequate period, given that the modern Islamic state does not represent democracy and human rights under Islam. In the view of some Islamic researchers, Islam is the religion of a nation and not that of a state, and no Islamic ruling system exists in the modern legal and political sense.

The reader should consider the modern Arab state in a historical light, based on the rejection of the Ottoman Islamic State, threatened by the danger of European colonization that represented a contradiction between science (Napoleon's library) and colonial aspirations, the occupation of Egypt, and dividing the Arab countries among colonizing powers. One can readily imagine the consequences in these states that lack civil society and human rights.

Given the above analysis, history suggests that civil society in the Arab world will not emerge until it is supported by a continuous struggle for democracy and the rule of the people. Therefore, the view of civil society as an alternative to democracy reflects a lack of real understanding in the Arab world of civil society's role.

Section Four: Democracy and Civil Society

Whether you call it democracy or popular rule, the fact remains that citizens' participation in government, the peaceful change of rulers, the separation of powers, and the rule of law have become essential for modern civil society. Accordingly, civil society cannot be established if democracy is missing in whole or in part because of the false pretenses of rulers or totalitarian ruling parties. Democracy and civil society are inseparable; apart, both the state and the civil society lose their legitimacy and the state

becomes a tool for dictatorship in class societies, totalitarian regimes, and pseudo-democracies.²⁶

When it comes to democracy, Arab states are on a different level.

Undoubtedly freedom is the essential foundation of any effort to establish a democratic state where the rule of law is respected and the work of civil society interacts with and complements the work of other institutions. Accordingly, civil society is a catalyst, even a building block, for any democratic infrastructure. Some thinkers even see civil society as democracy's lifeline and hence the caring mother that assures the growth and prosperity of democracy, protecting it from obstacles and setbacks. Hence, there is no democracy without civil society and no civil society without democracy.²⁷

Based on the above, building civil society depends on individuals, their awareness and organization, which cannot materialize in a non-democratic authoritarian state. Individuals must have the freedom to express themselves for society to become an organized power. If state authority alone governs and individuals are afraid to pursue their goals, burying their minds and thoughts, they will not organize, and civil society will not be established. To talk of civil society is surely to talk of a developed, civilized, and democratic society.

Hence, preparing the proper political and economic environment for establishing civil society must be the first priority for certain Arab States that are actually or purportedly undergoing political reforms. In my opinion, civil society is the most important vehicle to political reform. Modern countries, including developed countries, have shown their inability to meet citizens' needs, which should pave the way for civil society to represent the interests of the people.²⁸

Section Five: The Development of Civil Society

Urban societies have grown in proportion to rural societies. This has diversified and complicated people's needs, demands, and interests. As we all know, the more developed, modernized, and industrialized a society grows, the more a citizen needs the support of consumer protection, charitable, social, entertainment, cultural, and professional organizations – i.e., organizations built on a collective identity. Diversity in social life leads to diversity in social needs, pushing to the forefront organizational structures built around common interests and aims. Such diversity in social life may be accompanied by an explosion in organizational styles and shapes as well as in scope and depth. With urbanization have come advances in communication technologies, the media, and levels of education. An economic, social, and cultural interdependency has also emerged, resulting in the growth of societal networks that expand and branch out

²⁶ Mustafa Mohammad Gharib, Al-Hiwar Al-Motamad-den, *Civil Dialogue*, No. 585, September 8, 2003, www.rezgar.com/m.asp?i=72.

²⁷ Mohammad Bo 'Azazah, Al-Sharq Al-Qatariah Newspaper, *This Missing Civil Society... Is It the Future Alternative for Political Society*, October 7, 2003.

²⁸ Based on a study conducted by the International Centre of Charity Law, in 2000 the revenue of NGOs reached \$939 billion and their assistance \$2 trillion. International Charity Law Comparative Seminar, Beijing 2004.

according to the diversity of needs and demands on local levels, with their international and global extensions, in the form of organizations, unions, and coalitions.²⁹

An organization establishes rules to meet collective interests. Some organizations aim to respond to people's needs and interests. Hence, the development of organizations should respond to changes in the social structures. They should operate as social units with specific purposes within a wider institutional framework.

Hence, civil society plays an active role by influencing social and political change toward enhancing political awareness, collective work, political skills, and expertise in defending general rights and achieving collective benefits. Developing civil society is a major pillar to inducing change and influencing the level of awareness and the potential of teamwork. It is a major component of the sustainability and the development of the democratic system. Democracy is not a political aim that can be achieved immediately. It is an active process that should be maintained and developed continuously.³⁰

Thus, in order to talk about developing civil society in the Arab world, we must consider the others pillars that should be available. These include the following:

First, as a strong cornerstone operating on cultural knowledge, members of society are entitled to adequate information regarding their rights and duties under the constitution and other laws. This will diminish their uncertainties about their rights and enable them to join associations, unions and parties without fear.

Second, liberties need adequate protection, so that individuals confident in their beliefs have the freedom to express themselves and to seek to persuade others.

Third, the economic environment must permit individuals to meet their basic needs and to seek the financial freedom that allows them to consider issues beyond poverty or economic want. When an individual believes that he can satisfy his basic needs of health, food, and income, he starts developing himself and his ideas.

Fourth, a real democratic society must provide for freedom of expression, regardless of political pressure brought to bear by any governmental body. Individuals must have the intellectual independence to express themselves on social and political questions and to affiliate with any groups.

Fifth, greater participation of civil society in political life at all levels will allow CSOs to participate in making government policies and thereby safeguard the achievement of a democratic society governed by equality and social justice.

Sixth, civil society and the ruling authority must develop an enhanced relationship, characterized by mutual respect and cooperative contributions to progress.

Finally, a sound legal environment is necessary to foster the establishment and development of civil society organizations. These laws are the constitutional umbrella for CSOs. The laws protect the organizations' legal status, institutional structure, and insulation from the government. Law is the main principle in developing civil society.

²⁹ Dr. Ahmad Bo 'Ajilah, Afkar: "Civil Society in the Social Project for Change: Perspectives...Outcomes and Future."

³⁰ Farid Basil Al-Shani.

Conclusion

Throughout the previous five sections, this article has aimed to provide components for a framework that is culturally sensitive, through which civil society in the Arab world can be activated. In order to set up such a framework, we must recognize that the Arabic language defines civil society in a way that differs sharply from the Western definition. Furthermore, civil society in the Arab region differs historically from that in the West. In the Arab region, its development was stifled by the predominance of the rule of the state and people's loyalty to their tribes and family ties. Nowadays, interest in civil society has dramatically increased, as a result of the rise of CSOs, which have helped publicize the concept, and the failure of the state to provide for its citizens. Civil society can achieve its promise as a revolutionary force toward democracy in the Arab world, but only if we understand the social and cultural dynamics that will shape its application.

THE MIDDLE EAST: SENIOR RESEARCH FELLOW PAPERS

**The Algerian Law on Associations
Within Its Historical Context**

Chafika Kahina Bouagache¹

Part I: The State of Algeria – A Short Legal History

Introduction

Written laws are the results of different processes within the culture, society, and history of a region or a country. Full understanding of Algeria's law on associations requires taking all these processes into account. This may be a difficult task, and it is surely all the more difficult when one deals with a country that is as complex as my home country, Algeria.

Algeria has had a very difficult past. It is still suffering from the aftereffects of the French occupation and from having been at the mercy of various world powers at one point or another. Since its independence in 1962, Algeria's domestic situation has not become any less difficult. Tensions and injustices within the society eventually brought about a very bloody and cruel civil war that nearly ripped the country apart. These events have left their mark on the laws and regulations that make up the legal framework of the country.

In the history of Algeria – whether during the fight for independence, the formative years of the republic, or the late 1980s – political and religious movements, associations, and organizations have always played a major role. The movement of Algerian nationalists had its beginnings in France during the 1930s with the creation of the “North African Star” (ENA) and the “Algeria People's Party” (PPA). These were the first parties to cause thousands of Algerian expatriates to rally and to fight for a common cause.

During the war for independence, these political organizations would be succeeded by the paramilitary “Algerian National Movement” (MNA) and the “National Liberation Front” (FLN), which would later rule Algeria as a one-party state in accordance with its ideological model, the Soviet Union. The 1980s saw a new wave of independent movements, which opposed the secular Soviet-type state and promoted free

¹ Chafika Kahina Bouagache is an Algerian citizen and Staff Attorney and Program Chief of the American Bar Association, Rabat, Morocco. Ms. Bouagache was a Middle East Senior Research Fellow during summer 2006 at the International Center for Not-for-Profit Law (ICNL). This article was edited by ICNL staff.

I dedicate this essay to the memory of my dear brother, without whom my life would have turned out differently. You have died for your principles; rest in peace, my dear Said.

I also dedicate it to my dear parents, who always supported me, regardless of the difficulties that stood in my way.

elections. From these movements, political parties reemerged, including the “Socialist Forces Front” (FFS), which had until then been forced to operate clandestinely, and the “Islamic Salvation Front” (FIS), the first major Algerian political party with a strong religious basis.

All of these organizations were and are mass movements. Their histories underscore the importance of social, cultural, and political grass-roots movements and associations to the history of Algeria as a whole. It is within this context that I analyze the “Law on Associations,” which was passed on December 4, 1990, as well as its predecessor dating from July 21, 1987. The Law on Associations was passed one year after the adoption of a new constitution for Algeria, which allowed for the first time in modern Algerian history parties other than the ruling FLN. But it was also just one year before the fateful national elections of December 1991, whose aftermath would later result in the long and bloody civil war.

In order to understand the meaning of the Law on Associations, it is crucial to understand the very complex time period in Algeria’s history between 1962 and the present. I therefore begin with a description of the relevant historical facts, especially those related to the civil war of 1992-2000, a war of almost endless suffering for all who resided in the country. Any discussion about the past or future of Algerian society and its laws must include that tragic chapter.

I hope that my essay will give the reader not only an understanding of the Law on Associations but also a better comprehension of the history of my home country and of the conditions under which we have had to live in all those years.

The Formative Years of the Republic

Algeria, like much of the Arab world, has a long history of being occupied by foreign forces. The first was the Roman Empire, which annexed the fertile lands of the region to their empire. After the Romans disappeared, the Ottomans came and annexed the region into their empire. In 1830, French troops landed on the coastal area of Algiers and Algeria became a French colony. The French would stay for 130 years, until the war for independence began in 1954.

The war lasted eight long years, from 1954 until March 18, 1962, when France under the leadership of Charles de Gaulle and representatives of the Algerian FLN signed the “Evian Agreements.” The Agreements proclaimed a cease-fire between the French troops and FLN forces and guaranteed the Algerian people the right to choose their national destiny.

On July 1, 1962, Algerians and French residing in Algeria were called to vote on the future of Algeria. On July 3 the results were published. The voters were overwhelmingly in favor of a new independent state: six million voters said yes, and only 16,500 wanted to preserve the status quo of Algeria as a French colony. After 130 years as a French colony and a war that caused approximately 500,000 casualties, Algeria was finally reborn as a new and independent country.

In August 1962, one month after independence was declared, the provisional government of Algeria transferred its powers to the FLN. Another month later, the National Assembly was elected, consisting solely of candidates from the FLN. The Algerian Republic was proclaimed and a new government was formed with Ahmed ben Bella as its first leader. He became the President of Algeria on September 15, 1963.

The new government moved quickly to nationalize Algeria's agriculture and industry. The objective behind the nationalization and collectivization effort was to "catch up with the backwardness caused by 130 years of colonialism"² and to align the country and its population with the socialist course of Gamal Abdel Nasser, the then-president of Egypt and one of the foreign mentors of the Algerian revolution.

Drafting of the Algerian Constitution began on August 28, 1963. The following month, the first constitution was passed by referendum.

Although the war for independence was fought by many different parties, groups, and individuals, at the end there had to be only one declared winner: the National Liberation Front. And so there was not much room for other parties or organizations to form in the social and political landscape of the young republic.

The new republic's leaders refused to accept and allow political diversity, a decision that would have long-term negative effects on the country. It would later lead to the ultimate catastrophe, when once more Algerians would fight Algerians, as occurred during the war for independence. Article 19 of the Constitution "guarantees freedom of the press and of other means of information, freedom of association, freedom of speech and public intervention, and freedom of assembly," but Article 22 makes it clear that freedom ends where the interests and powers of the FLN are concerned:

No one may make use of the rights and liberties enumerated above in order to threaten the independence of the nation, the integrity of its territory, national unity, the institutions of the Republic, the socialist aspirations of the people, or the principle of the unity of the National Liberation Front.

In due time, all autonomous political parties, organizations, associations and unions either came under the control of the state (i.e., the FLN) or were forbidden and dissolved. The only exceptions to this rule were sports clubs and some religious organizations, but even the Algerian Boy Scouts were placed under the control of the FLN.

During the following year, internal crises arose within the FLN over the correct "socialist" course for the country. These were followed by the first serious economic crisis, as thousands of Algerians left the rural areas, causing severe housing problems in the metropolitan areas. A staggering unemployment rate forced thousands to leave the country in search of work. By 1965, 450,000 Algerian immigrants were living in France.

Ben Bella did not survive the crisis as President. On June 19, 1965, he was arrested at the initiative of Defense Minister Houari Boumédiène, who implied that Ben Bella had, among other things, promoted a "personality cult," "liquidat[ed]... revolutionaries," and suffered from a "confusion [of] ideologies."³ Ben Bella was imprisoned without trial and remained under detention until 1980, when he was set free by Boumédiène's successor, Chadli Bendjedid.

² Benjamin Stora, *Histoire de l'Algérie depuis l'indépendance*, Paris 2004, 19.

³ *Algérie - La transition de l'après-indépendance (1962-1965)*, Encyclopaedia Universalis, 2000.

The Boumédiène Era

Boumédiène swiftly turned the state into a one-man dictatorship, which he would manage through a so-called “council of the revolution” and the only party that was left, the FLN. He defended these changes officially by telling the Algerian people:

We have to protect the socialist system; to do that, we cannot rely solely upon the enthusiasm of the people and their noble feelings. We have to provide for our people a tool, which serves them to triumph over their internal enemies, to defend the integrity of the territory and the current socialist development.... Socialism means nothing other than a radical transformation of the Algerian society, which implies the elimination of opposing interests that are in conflict with the higher interests of the Algerian people.⁴

To be sure that the FLN executed his wishes, Boumédiène controlled all matters of state through the Algerian army, which he trusted over the FLN.

Boumédiène continued the nationalization process which Ben Bella had initiated by “de-colonizing” the oil and gas industry. At that time, the sector was still dominated by French companies. Boumédiène hoped to increase state revenue by seizing the oil and gas industries, but that objective was not finally achieved until 1973, when that year’s oil crisis tripled income stemming from hydrocarbons.

Boumédiène primarily concentrated his efforts on Algeria’s oil and heavy industries, but a simultaneous “agricultural revolution” and nationalization ended in a long series of administrative failures and catastrophic results. While the agricultural sector produced 31% of the gross domestic product in 1963, its output fell to 18% of GDP in 1965 and to 13% in 1970. At the same time the agricultural sector only received 12% of the state’s investments from 1970 until 1973, and a mere 7.4% from 1974 until 1977.

It was therefore no wonder that the stream of Algerian emigrants continued to flow toward France and the rest of Europe. By 1975, 710,000 Algerians had settled in France. The inability to develop a healthy economic infrastructure that would actually serve the needs of the population was one of the major causes of the disastrous social conditions that would cause the later turmoil of the 1980s.

Despite these setbacks, at least some progress was made in the field of education. In 1978, four million first-graders were enrolled in school – four times the number of pupils in 1963. During those years, Boumédiène also launched a campaign to promote the thorough integration of Islam and the Arabic language within the system of the state and the social infrastructure. As an example, the Sunday bank holiday was moved to Friday. Islam was also proposed for recognition as the official religion of the state.

These proposals were set in stone through a new National Charter and a Constitution. The National Charter was approved in June 1976 by 98.5% of the votes cast, and on November 19 the new Constitution, which integrated the principles of the charter, was adopted as well. In December of the same year Boumédiène was confirmed as President of the Algeria with 99.38% of the votes.

⁴ Houari Boumédiène, 1st meeting of the presidents of the People’s community assemblies, February 27, 1967.

The new Constitution in its first article defined Algeria as a socialist state, which had been left ambiguous in the first Constitution. It also pronounced Islam the state's official religion without according respect to the beliefs of others, as the 1963 constitution had done.

The FLN's unique position in the constitution was unchanged and consequently the FLN remained the only party allowed to govern, though in reality Algeria was effectively ruled by one man. Not surprisingly, the theoretically guaranteed right for Algerian citizens to associate and form organizations remained only vague and consisted of two short, ambiguous sentences in Article 56: "The freedom of association is recognized. It is exercised within the framework of the law."

Boumédiène died on December 27, 1978, and was succeeded by Colonel Chadli Bendjedid, an FLN veteran and Defense Minister at the time of Boumédiène's death. Bendjedid obtained his position upon the army's recommendation. He took office on February 7, 1979, but was soon confronted with serious economic and social problems that shattered the country.

The Blockade of the System

The years between 1980 and 1988 were later called the era of the "blockade of the system."⁵ A number of reform processes were initiated to solve the country's immense economic problems and to restructure the enormous party apparatus of the FLN. But in the end only slight improvements were attained and the inflexible state system remained impervious to change.

Public displays of any form of cultural diversity were efficiently suppressed during the era of Boumédiène. This was especially true for the Berber or Tamazight culture and language, which had not been included and acknowledged as part of the Algerian culture in the Charter of 1976, despite the fact that large portions of the northeastern part of Algeria were dominated by Berber communities. The suppression of the Berber culture continued under Bendjedid.

On March 19, 1980, the government prohibited a conference on the use of the Berber or Tamazight language in literature, which was organized by the writer Mouloud Mammeri at the University of Tizi-Ouzou. Students quickly occupied the university in protest, and a regional strike was announced in Berber-dominated areas in Algeria. The government crushed the protests with military force.

Meanwhile, as a first step of his internal reform efforts, Bendjedid tried to gain more control over the party apparatus. Since the independence, the FLN's unique position had led to widespread corruption, bureaucracy, and nepotism at all levels of the government. On May 3, 1980, at the Third Session of the Central Committee of the FLN, Bendjedid was given a free hand and the powers necessary to restructure the party. His reform and anti-corruption efforts had few effective results, though individual FLN officials and ex-ministers were found guilty of fraud and sentenced to prison during the 1980s.

In 1980 it was clear that economic catastrophe loomed, due to earlier ill-founded industrialization programs. The neglected agriculture sector lay in shambles, and by 1984 the country was forced to import 40% of its cereal, 50% of dairy products, 70% of animal

⁵ Benjamin Stora, *Histoire de l'Algérie depuis l'indépendance*, Paris 2004, p. 77

or vegetable-based fat, and a staggering 90% of sugar. As a consequence, the government undertook first steps to allow privatization to a limited degree and to stop the industrialization process.⁶

As a result of a meeting of the FLN's Central Committee, a "Charter on Habitat" was published, which guaranteed the right of families to private property. Other steps followed, including allowing private entrepreneurs and farmers to access state credits and restoring state-owned farmland to private owners. Through these measures, 700,000 hectares of land passed from public to private hands. Unfortunately, the effects were limited, in part due to the continued growth of the Algerian population. During the first years of the land and industry reform, only 280,000 new jobs were created, yet millions remained without work and 200,000 young Algerians entered the job market each year. The younger generation was hit hardest by the crisis: 72% of all unemployed persons were under 25, and this group represented 65% of the whole population.

The government's reform efforts were further stymied by the oil crises of 1983 and 1986. Oil and gas had been Algeria's major exports and therefore the country's major source of income. Between 1975 and 1982, the sale of hydrocarbons to other countries represented 92% of total export income and more than a third of the gross domestic product (37.5% in 1980). The drop of oil prices therefore had dire consequences for Algeria's economy, and by 1981 external debt represented 35.5% of the gross domestic product. In 1992, shortly before the outbreak of the civil war, Algeria's debt reached an astonishing 68% of GDP.

Meanwhile the state continued with its campaign of Islamization. Religious Affairs Ministry Decree No. 80-17 (February 9, 1980) stated that "Islam represents the Algerian identity and blossoms within the socialist system." Islamic activists saw the chance to propagate their ideas, and trouble soon arose.

On May 19, 1981, secular and Islamic student groups began fighting at the campus of the Ben Aknoun University in Algiers. Shortly afterward, violent confrontations began between the Algerian police and Islamic groups at other universities. Incidents continued until 1988; hundreds of Islamic activists were arrested and several people were killed.

The government tried simultaneously to control the upheaval and to appease the Islamic activists. The Ministry of Religious Affairs on August 6, 1983, decreed the nominations of individual imams, hoping to centralize the religious education of mosque leaders. A University of Islamic Science was built and opened in September 1984 in Constantine. The construction of mosques was also expanded, so that by 1986 Algeria had 6,000 mosques.

To respond to the calls by conservative Islamic activists for stricter adherence to the teachings of the Koran, the National Assembly adopted on May 29, 1984, the so-called "Code of the Family," which led to Law No. 84-11 on June 9. The Code integrated large parts of Islamic jurisprudence, or sharia, into the legal system, with severe consequences for the legal and economic situation of Algerian women. The new law effectively classified women as minors, taking away rights and liberties and reducing them to submissive housewives who stay at home and are at the mercy of their husbands.

⁶ Benjamin Stora, *Histoire de l'Algérie depuis l'indépendance*, Paris 2004, 84-87.

Despite reform efforts, the situation for the average Algerian citizen remained grim. The government largely ignored the actual needs of the population, and it reacted to problems only when they grew big enough to threaten the power of FLN officials and the top brass of the Algerian army (ALN). It was just a matter of time before the powder keg would explode.

The 1987 Law of Associations

A little-known reform effort of the Bendjedid era was the promulgation of the first law on associations on July 21, 1987. At that time, associations other than sport clubs practically did not exist and had no legal standing within Algerian society. But the law had little effect. Although it cited article 56 of the 1976 Constitution, it proved to be nothing but an instrument to protect the government's power, providing only the illusion that the country and society had become more open.

The 1987 Law of Associations consisted mostly of restrictions and penalties for violating them, rather than a guarantee of the people's freedom of association. The law gave the administrative authority strict control over the associations' activities. Any slight deviation from the regulated objectives was punished by dissolving the association, closing its offices, and seizing its assets. In addition to having their associations dissolved, the heads of associations were threatened with jail and stiff fines.

No legal recourse was provided for an association in the case of dissolution. The association was completely at the mercy of the administrative authorities, and it had no legal tools at its disposal to respond to arbitrariness or despotism by the authorities.

The October Events and Their Aftermath

On October 5, 1988, several areas in downtown Algiers were ransacked and pillaged by hundreds of young adults, adolescents, and even children, protesting the living conditions in the poorer neighborhoods of the capital. During the following day, more demonstrations erupted all over the capital. Demonstrators set fire to government buildings. The government responded by declaring a state of emergency and imposing a curfew, but the demonstrations continued and spread all over the country. Protesters demanded individual freedoms and meaningful reforms to reverse the country's economic downfall. Bloodshed soon followed. On October 8, the army fired on demonstrators in the city of Kouba. This was only the beginning. Ultimately, 600 civilians were killed, and the government crushed the uprising.

The government's brutality left the population stunned and devastated. President Bendjedid quickly proposed amendments to the existing constitution, and his proposals were approved by referendum in November 1988. On February 23, 1989, the third constitution of Algeria was passed. Unlike its forbear, this constitution represented a dramatic departure from the first constitution. For the first time in Algeria's history, the constitution allowed citizens to elect their representatives and to form parties.

The one-party rule of the FLN was abolished and all references to it were erased from the constitution, except for a mention of its importance during the war of independence and the formative years of the republic. The new constitution in fact legitimized political opposition parties that already existed but had been forced to operate clandestinely. The constitution's provision for the rights of free association and free expression remained as slim as in the previous two versions: "The liberty of [free] expression, association and assembly are guaranteed to the citizen[s]" (Art. 39).

Following the adoption of the constitution, new political parties such as the Islamic-based “Islamic Salvation Front” (FIS) were created, while others, such as the “Socialist Forces Front” (FFS), reentered public life after having operated secretly under the one-party rule of the FLN. It was the FIS that would be the major force during the campaign for local elections that were set for June 12, 1990.

The Second Law of Associations

On December 4, 1990, a new “Law of Associations” was passed, overriding the previous Law 87-15. What was said above about Law 87-15 can be repeated for the 1990 law, with certain reservations.

Despite the freedom and liberties guaranteed by the constitution, the fundamental rights of free association and expression remained largely empty and hollow. This of course was the intention of the law's drafters: ambiguous phrasing left room for interpretation by the authorities, who then could control and stifle the activities of associations. This was true even though the law allowed judicial review in case of the involuntary dissolution of a domestic association, though not for a foreign one.

So how was the law actually applied by the Algerian authorities? Consider a hypothetical foreign association with a branch in Algeria. It applies for registration to the appropriate agencies, sending minutes, letters, and other documents to various ministries (Ministry of Justice, Ministry of Interior, Ministry of Foreign Affairs) and even to the President of the Republic. The application is then transferred to the Office of Associations at the Ministry of Interior. The organization's representative makes appointments with the pertinent official to discuss the registration process. Repeatedly the official demands additional documentation. Finally, the official directs the organization representative to await the final decision – which never comes. The organization now must decide whether to operate without authorization or to wait forever for approval. If it operates without approval, the authorities can shut it down without the possibility of legal recourse, as the association was never properly registered.

The law's provisions for establishing foreign associations prove to be, in practice, a meaningless façade. This remains as true now as it did when the second Law of Associations was written.

The First Free Elections and the Coup d'État

The FIS was founded and headed by two men: Abbasi Madani, a veteran from the war for independence with a doctorate from the University of London, and Ali Belhadj, a young and charismatic speaker who would attract the masses with his radical views and strong rhetoric against the government. Soon the FIS could count on a massive following. Many FIS supporters were poor and young; at the time 75% of the population was under 30 years old.⁷ Both the young and the poor had long been disillusioned with the government and were all too open to radical ideas.

It was therefore no surprise that the FIS prevailed in the local elections of May 1991, drawing 54% of the vote. Severely alarmed, the government tried to manipulate the election results by redrawing the electoral districts. The FIS countered with mass demonstrations and calls for a general strike.

⁷ Habib Souaïdia, *La sale guerre*, Paris 2001, 41.

Soon after, Madani, Belhadj, and other FIS party officials were arrested for conspiring against the state, on the grounds that after an FIS gathering, Belhadj had instructed party followers to arm themselves. The FIS continued to exist under the new leadership of Abdelkader Hachani, and the arrests of its leaders did not diminish its popularity, but rather increased it.

When the first round of the national elections arrived, the FIS won 48% of the votes and a government under the leadership of the FIS seemed inevitable. But on January 11, 1992, five days before the second round of elections, the military called a halt and declared the results of the earlier elections null and void. Pressured by the army, President Bendjedid resigned; as was the case during the 1965 putsch, military tanks rolled into the capital of Algiers and surrounded several government buildings. During the following days, the military sought to consolidate its power by eliminating opponents and creating a scrim of legitimacy for its actions. As hundreds if not thousands of FIS members and officials were arrested, a so-called “High Committee of the State” (HCE) was created.

The HCE in turn created the so-called “National Council” (CCN) to replace the National Assembly. The CCN's members, who were handpicked by the military leaders, were mostly candidates who had lost in the December elections to candidates from the FIS. On January 16, the president of the HCE, and therefore the highest civil authority in the country, was presented to the public: Mohamed Boudiaf.

Boudiaf was one of the original co-founders of the FLN. He had been imprisoned during the early years of the republic due to the FLN's internal struggles, and in 1964 had been sentenced to death while in exile. Although he was politically active during the 1960s and 1970s, he retired from politics and became a businessman in Morocco until 1992 – when he was offered and accepted the post of president. But Boudiaf would not enjoy his presidency for very long.

After the coup d'état, all the political parties in Algeria, including the FFS, the FIS, and even the FLN reacted with storms of protests and called for an immediate return to the constitutional process. Abdelkader Hachani, the leader of the FIS, was arrested after he published a communiqué demanding that the military rulers accept the results of the national elections. The military did not blink – instead, it arrested even more members of the FIS, the party it feared the most.

In the following days, the net of arrests widened and included for the first time journalists who had covered the events. Numerous demonstrations were organized all over the country, and the first bloody clashes between protesters and security forces occurred. Hundreds of civilians were killed when the security forces opened fire on demonstrators in Algiers, Batna, Oran, and other cities.

On February 7, the government announced the creation of seven concentration camps, euphemistically called “security centers,” in the south of Algeria. By the end of the month, 15,000 people had been detained in the camps, many of whom would be tortured and killed.

On February 9, Presidential Decree No. 92-44 was issued by the HCE and signed by Boudiaf. The Decree “pronounced” a nationwide “State of Emergency” (Art. 1), belatedly legitimizing the random arrests, the concentration camps, and the suppression of civil rights that had been guaranteed by the constitution of 1989.

The Republic of Algeria had finally come to an end. The response to the abolition of the constitution would not be long in coming.

The Civil War

While the violent attacks against government and police multiplied, the provisional government set forth on its course to dismantle any remaining political opposition, legislative structures, and institutions. and non-official channels, radical and competing cells splintered off, including the “Armed Islamic Movement” (MIA), the “Movement for an Islamic State” (MEI), and the “Armed Islamic Group” (GIA). These groups largely abandoned the FIS and pledged to wage war on the government and the military.

On March 4, 1992, the Administrative Court of Algiers ordered the dissolution of the FIS. There was little doubt that the decision reflected the wishes of the military government, and not a reasoned judgment by the court. Three weeks later, on March 29, the HCE issued a decree ordering the dissolution of the communal and regional assemblies, most of which had been largely dominated by the FIS.

April and May saw more violence and counter-violence. More concentration camps opened, and the military launched its first major operations to destroy militant and armed opposition groups that had sought refuge in the hinterlands. On May 6, a bomb exploded at the University of Constantine, killing three people. It would be the first of a series of bomb attacks, mostly targeting civilians.

On June 29, the violence finally hit the provisional government and its leader. As President Boudiaf delivered a televised speech, one of his bodyguards threw a grenade and shot Boudiaf in the head with a Barretta

Scenes from the War

1992

February 10: Six policemen are shot and killed in the rue Bouzrina in Algiers.

February 13: Armed men attack Algiers' admiralty. Ten people are killed: seven military, one policeman, and two of the attackers.

February 14: The police station of the Cashbah in Algiers is attacked by armed militants. One policeman is killed.

February 16: Two policemen are wounded following attacks by gunmen.

March 3: The district court of Tlemcen pronounces the death penalty against three citizens for having committed “terrorism.” This is the first in a series of death sentences against Algerian citizens. By June 1992, 26 people have been condemned to death by different summary courts.

1993

March 12: During a military raid on the An Nasr mosque in Bachdjarah, near Algiers, soldiers kill the muezzin of the mosque in cold blood before members of the community.

April 10: Hachemi Cherif, an official of the Algerian Communist Party, escapes an attempt on his life.

August 4: The television journalist Rabah Zenati is killed by armed men in Cherarba, near El Harrach.

August 9: The journalist Abdelhamid Benmenni of the weekly *Algérie Actualité* is killed in Eucalyptus in El Harrach.

September 27: Mohamed Arezki Houmine, imam and member of the FIS, dies as a result of having been tortured by security forces at the detention center in Châteauneuf.

October 2: Ahmed Hambli, Professor of Islamic Law at the University of Tizi-Ouzou, is shot dead in front of the university. His friends accuse the OJAL, the political branch of the police, of having committed the murder. The government in turn accuses the GIA of responsibility for the murder.

9mm handgun, killing the president. Although the bodyguard, Lembarek Boumaarafi, was later sentenced to death (and currently remains incarcerated at the prison in Blida), it is widely believed that the assassination was an inside job, orchestrated by state security officials.

Three days later Defense Minister General Khaled Nezzar convened the HCE. Ali Kafi replaced Boudiaf as HCE chairman and became the new civilian head of state. The political leaders of the FIS, Abbasi Madani and Ali Belhadj, were charged with threatening state security and tried by a military court in Blida. On July 12, 1992, they were found guilty and sentenced to twelve years in prison.

This introductory phase of the civil war destroyed the structural basis of the Algerian state. The first attempt to install a fully democratic government – which would have given the Algerian people the unprecedented capability of directing the political course of the country – was defeated. It was defeated by national power players, who mercilessly defended their turf and their interests against real and imagined opponents. Violence would continue to grip the country as long-suppressed frustrations and aggressions burst free.

During the rest of 1992, members of the now-illegal FIS began to consolidate their positions after being effectively banned from public and political life. While the FIS still tried to establish a dialogue with the HCE and the government through both official and non-official channels, radical and competing cells splintered off, including the "Armed Islamic Movement" (MIA), the "Movement for an Islamic State" (MEI), and the "Armed Islamic Group" (GIA). These groups largely abandoned the FIS and pledged to wage war on the government and the military.

The list of targets soon was enlarged to include any individuals perceived as "anti-Islamic." Among the new targets were journalists, writers, high school professors, feminists, musicians, and foreigners. Although the splinter groups committed many of the murders, some may have been committed by forces of the security and military apparatus, exploiting the disorder of civil war to eliminate critics and opponents.

An analysis of the role of the military during the civil war, including detailed descriptions of individual cases in which government troops killed civilians or "suspected terrorists," was later provided by the former Algerian officer Habib Souaïdia in his book *The Dirty War* and in several public accounts of his experiences.

Scenes from the War

January 19, 1998, a typical day in Algeria....

- A bus in the region of Bouira is attacked by machine gun fire, and thirteen civilians are killed.
- Three members of a family in Bouira are found dead, their throats slit.
- Five young men are found dead, their throats slit, in Frenda.
- Six civilians are killed by two bombs in a café in the region of Médéa.
- Four citizens from the region of Aïn Defla are killed with their throats slit.
- Six members of a family are massacred by an armed group in the region of Djelfa.
- Seven members of a family are massacred by unknown armed men on a farm near Saïda.
- Two civilians from Zouabria are killed by armed men.
- The vice-president of the office of the mayor of Aomar is gunned down near his home.
- Violent clashes occur between armed militants and the militia of the village of M'Chedallah.

Source: Algeria-Watch

The civil war reached new levels of brutality in 1993, with more sectors of the society exposed to violence. The melee went on through 1994, even though the military and its puppet civilian head, Liamine Zérroual, had cautiously sought dialogue with the militants in an effort to achieve “national reconciliation.” In October the government declared the negotiations a failure and announced elections for 1995.

At the same time, the armed groups and the FIS published their alternative plans for Algeria. The GIA, the biggest militant group at the time, with an estimated 27,000 men under arms, proposed a strict Islamic state – a caliphate. But several other groups publicly embraced the goals of the FIS, not the GIA. Opposition groups and political parties, including the FLN and the FFS, met in Rome. On January 13, 1995, they pledged to respect the principles of nonviolence, human rights, democracy, and a multiparty system.

The attempts of the FIS to regain its legal status and to reintroduce the party into the political process created a further split between, on one side, the GIA, and, on the other side, the FIS and the other armed groups, which had now combined under the name “Islamic Salvation Army” (AIS). The tensions would later lead to still more bloodshed.

On November 16, 1995, elections took place despite the GIA's numerous threats against candidates and voters, and despite calls from all the major political parties, including the FLN, FIS, and FFS, to abstain from voting. In the end, 75% of those entitled to vote participated, according to the government, and returned Zérroual to the presidency. This result was contested by all opposition parties and groups.

As the violence continued in 1996, Zérroual initiated a new series of discussions about national reconciliation, culminating in an attempt to redraft the constitution. On November 28, 79.8% of those entitled to vote participated in a referendum, in which 84.6% voted in favor of adopting a new constitution.

The new constitution introduced three unprecedented changes into Algerian culture and politics: it recognized the Tamazight or Berber culture as an integral part of Algerian society (Preamble), provided for free trade within the country as a pillar of the economy (Art. 37), and guaranteed the right to form associations (Art. 43).

Unfortunately, the new constitution had little impact on the daily lives of Algerians. Violence reached new heights in 1997. Massacres of civilians, peasants, women, children, and the elderly were now common. Especially in the countryside, many villagers were at risk of being targeted by either armed groups or the security forces. Often it was not clear who was responsible for attacks. GIA militants would occasionally wear ALN or police uniforms during their operations; and it was rumored that security forces would stage attacks disguised as Islamic radicals. By this point, shock and fear dominated much of the society. For a large part of the population, Algeria had become a living hell.

Legislative elections took place on June 5, 1997. They were dominated by the newly created pro-government party “National Democratic Assembly” (RND), which obtained 156 seats out of a total of 380. The RND then formed a coalition with the FLN and the new “Movement for the Society of Peace” (HMS/MSP). Ahmed Ouyahia of the RND became the prime minister. As was the case after the presidential elections, opposition groups protested the results because of apparent massive manipulations in the election process. After the elections, FIS founders Abdelkader Hachani and Abbassi Madani were freed from prison and placed under house arrest instead. While the elections

might have seemed to confer legitimacy on the newly formed government, the killings kept going.

The continuing massacres of civilians shocked the world. International human rights organizations and foreign governments continued to denounce the killings by the militant armed groups and the rampant violations of human rights by the government – but by this point, Algeria was at the brink of a total collapse because of its inability to deal with the violence.

The year 1998 saw the height of the violence, but luckily it was also the year in which the violence finally destroyed the structure of the organization which had propagated it the most, the GIA. After internal disputes prompted by the massacres of civilians, a splinter group formed on September 14, 1998, called the “Salafist Group for Preaching and Combat” (GSPC), which concentrated its actions against police and military institutions and representatives. Due to its policy of killing civilians, the GIA slowly lost support among the militants and was decimated in the years to come by more effective government military operations. Today it is still disputed to what degree the GIA was manipulated and infiltrated by state security forces – which raises the question of the government’s involvement in the massacres that terrorized the country.

On September 11, 1998, Zérroual resigned from the presidency of the HCE, which opened the way for new presidential elections. The only candidate to emerge was chosen by the military: Abdelaziz Bouteflika, a veteran from the war of independence. He received 74% of the vote. Opposition groups, declaring that they suspected fraud in the election process, did not field a candidate.

Shortly after his election, Bouteflika initiated negotiations with the AIS and introduced amnesty for Islamic militants who had committed minor crimes. The amnesty was adopted as law by a referendum on September 16. The AIS finally moved to dissolve itself, an act that was officially proclaimed on January 1, 2000. With the AIS dissolved, the GIA severely weakened, and the GSPC isolated, the level of violence dropped continuously. After the killings of at least 200,000 civilians, and the incarceration and torture of thousands of individuals in the state’s concentration camps, the country finally calmed down. But this, too, would not last.

The “Black Spring” and Algeria Today

New trouble arose on March 18, 2001, when the young Berber Massinissa Guermah from the city of Beni Douala was gunned down by local police. This was the final assault in a series of attacks by the police against the younger generation of the local Berber community in Kabylia. Four days after the shooting, the Ministry of Interior declared that Guermah had been a 26-year-old delinquent, when he had actually been sixteen. That declaration was the beginning of the “Black Spring.”

The killing led to demonstrations and marches, mostly by young adults and adolescents in the Kabylia region. The government reacted with repression and violence. Police shot at demonstrators, killing dozens of civilians. More protests ensued, including a mass peace march to Algiers, where a letter of demand was presented to President Bouteflika. The government responded with even more suppression. Villages in Kabylia were raided, and businesses and houses were destroyed. Berber officials and spokespersons were arrested, tortured, and killed.

The government-sanctioned violence continued until 2003. Then, after more than 5,000 people had been wounded and at least 132 civilians killed, the new Prime Minister Ahmed Ouyahia reopened a dialogue with Berber associations and notables. Thereafter, the Berber language was officially adopted as a second Algerian language, next to Arabic.

Aftereffects of the “Black Spring” remained visible during the 2004 presidential elections, in which 90% of the Berber population refused to vote. Bouteflika was reelected as president with 85% of the votes cast. Turnout was significantly lower than during the 1999 elections, with only 58.1% of the population voting.

One thing was clear after the presidential election of 2004 and the legislative elections of 2002: the old political and military power players had successfully consolidated their positions after the violent upheaval of the civil war. Today their power remains uncontested.

The civil war and subsequent revolts left their marks on the Algerian society and economy. At the end of 1996, the unemployment rate was 28.3%. Of those, 80% were under 30 years old. Today, ten years later, the economic situation has significantly improved – for the state, but not necessarily for the population. The unemployment rate is down to about 15%, but 23% of the population still lives under the poverty level. External debt stands at 4% of GDP.

In a move to end the civil war, the Algerian cabinet under President Bouteflika adopted on February 27, 2006, the “Decree Implementing the Charter for Peace and National Reconciliation,” which implemented Bouteflika’s “Charter for Peace and National Reconciliation,” a document adopted by referendum on September 29, 2005. The decree was immediately criticized, as it bypassed the parliament and was not discussed in open session. The government publicly praised the decree, which offered a general amnesty to the armed groups still operating in exchange for a surrender of their weapons.

Human rights organizations and surviving victims of the civil war were shocked by the decree, which extinguished the right to pursue legal remedies for crimes committed by the government and military forces. The government under Bouteflika effectively gave the military and the security forces an after-the-fact *carte blanche* for the numerous murders, detentions, and tortures committed between 1992 and 2005.

As if this was not enough, article 45 of the decree prohibited public debate about the government’s role in the civil war. Having corrupted the state and committed horrible crimes, Algerian leaders finally did what they knew best: forced their critics into silence.

Part II: The Algerian Law on Associations

A Legal Analysis

Algeria was long ostracized in the international community for its terrorism and civil war, but as early as the mid-1980s, major development programs were instituted. Local and national associations multiplied. In addition, international organizations grew increasingly interested in the country, despite adverse legislation and politics, not to mention the risk of violence.

For all categories and groups, including those seeking political and judicial reform, a genuine growth spurt occurred, and the government initiated reforms due to the

outside pressure. But the modest reforms represented no threat to the country's powerbrokers.

The results of such half-hearted attempts to “open up the society” are well known, and they have imposed a high price on the country in general and its people in particular. But the government and the military still have not effectively abandoned their policy of “blocking the system.” The Law on Associations is a good example of the government's attempts to placate the masses without implementing major changes.

Law 90-31, the Law on Associations, is largely empty. Some parts are vague and leave room for speculation, while other parts demonstrate a fondness for penalties and restrictions. All this suggests that the law was drawn up by people who had no intent of providing a safe and useful legal platform upon which associations could prosper and contribute to the general cultural progress of society.

What follows is my analysis of chapters of the law.

Title 1: It is unusual and very revealing for the introduction to a national law on associations to lack any mention of the importance of associations to the society. Furthermore, the introduction does not even specify what the law provides for associations; instead, it says merely that that law “determines the modalities.”

Article 5 describes what an association is *not*, rather than providing a thorough definition of what an association is.

Article 6 concerning registration sets the minimum number of founding members at fifteen, a restriction clearly designed to discourage people from setting up associations.

Further, the law gives administrative agencies substantial discretion to deny any organization's application. Agencies can deny a license to any association whose founders have “demonstrated conduct contrary to the interests of the fight for national liberation,” a phrase that is not further defined. If the organization is deemed to have been “founded for a purpose contrary to the established institutional system ... public order... or public decency,” registration can also be denied. All of these terms are so vague as to give government officials the power to prevent any organization whatsoever from operating legally in Algeria.

Articles 7 through 10 describe registration procedures for an association. These procedures effectively put the organization and its legal status at the mercy of the Ministry of Interior, which is responsible for deciding whether the organization's statutes conform to the constitution from the Algerian Constitutional Council. The Constitutional Council, a special administrative court, delivers the final refusal of legal recognition, though the Council seems to be nothing more than a bearer of decisions made by the almighty Ministry.

At first glance, the registration process does not seem much different from those in other countries. Associations must file a “Declaration of Incorporation” that includes the name, profession, and address of each founding member, along with two certified copies of the statutes and the minutes from the association's founding meeting. These documents must be filed with the governor of the province in which the association is headquartered (the “wali” of the “wilaya”), and, if the association operates in more than one wilaya, with the Ministry of the Interior as well. The local agency, and, if applicable, the Interior Ministry, has sixty days to rule on the application. If no answer is received within that time period, the application is considered approved, at least theoretically.

Chapter 2 and in particular Article 8 bars associations from participating in the political process – clearly an attempt to block any extra-parliamentary opposition to the ruling class, for fear of exerting influence in a direction other than that desired by the government. Associations thus cannot voice their opinions on political or state matters, or else they face the possibility of dissolution for having “interfered” in the political process.

If the relationship between the association and the Ministry of Interior is not clear up to this point, then Articles 17 and 18 establish the hierarchy: the association must submit all relevant information about its activities, personnel, membership, and finances to the government, opening the way for abuse and intimidation based on the information.

More restrictions appear in Articles 19 and 21: the association cannot publish its major newsletter in a language other than Arabic, despite the facts, first, that French is still used in government, schools, universities, and enterprises, and, second, that Tamazigh is recognized as an official Algerian language by the constitution.

Given the attitude of the government, it is not surprising that it seeks to stifle contact and cooperation between domestic associations and foreign ones. Article 21 strictly limits local associations' cooperation with both national and international ones. Any proposed activity requires the approval of the Ministry of Interior himself.

While the law is somewhat specific about the prohibitions on associations, it is very vague and noncommittal with regard to the responsibilities of the government. Article 30 states that associations regarded as “beneficial to the public interest” *can* receive financial aid from the government. But the law never refers to rules or procedures that gauge the “public benefit” of an association. In other words, the association again finds itself at the mercy of the government. Indeed, the law seems to suggest that only associations whose activities conform to the administration's agenda are eligible for state subsidies in one form or another. The weekly national publication *Le Jeune Indépendant* reported on October 23, 2001, a clear message from government officials the night before an important election: “There will be no governmental financial aid to associations who do not support the government.”

More detailed than the section on government financing is the section on dissolution of associations. Again, it is up to the “public authority” to close down an association. In reality, the courts merely follow the wishes of the administration.

Title IV of the law deals with foreign associations. Needless to say, they operate in a hostile climate. Registration of a foreign association must be approved by the Minister of Interior himself, and any modification of the organization or its activities “must be agreed upon beforehand by the concerned public authorities under the penalty of suspension or the withdrawal of the registration.”

Finally, the law ends with penalties. Articles 45 to 47 again raise the stakes for founding or joining an association. In the event that an association is dissolved or even suspended, the founding members, directors, and even simple members face fines and prison sentences of up to three years. There is no mention of any criminal law that provides a legal foundation for the penal provisions.

What is left to say? The law on associations is a perfect example of an ill-founded, ill-intentioned, and sloppy legal attempt by an administration to quash the popular demands for more democracy without actually surrendering any power.

How the Law is Applied

For a government like Algeria's, enacting a law that grants rights and freedoms is one thing; enforcing it is another thing completely. The few but essential rights and privileges that the Law on Associations grants are not respected by the administration or other parts of the government.

Unfortunately, it is not possible to conduct a representative field study on this subject among the directors of associations operating in Northern Algeria, because most of them will not discuss their experiences for fear of reprisals by the government. For this reason, I cannot be very specific in describing the five associations whose directors were willing to discuss this issue.

None of the five associations ever received a written confirmation of its registration, from either the local province or the Ministry of Interior. None of the associations was given any reason for the refusal to confirm registration. One director of a national association made more than ten visits to the Ministry of Interior to obtain the confirmation. She never received an explanation for the delay, but was continually promised that an official answer from the Ministry would arrive the following week. She is still waiting today – seven years after she filed the application.

The refusal to provide written confirmation naturally puts the concerned associations and their directors and members at a serious legal risk, as they effectively operate outside the law and can be shut down by the government at any minute. This is especially true for two associations that operate in the human rights area. Not only were they refused confirmation of registration by the provincial government; they also experienced government interference when they tried to organize demonstrations and reunions. One association was continuously threatened with dissolution, but fought back somewhat successfully by threatening a press campaign in the event of a government-ordered shutdown. This organization has been waiting for more than three years for its official recognition as an association.

Foreign associations often bring substantial funds into Algeria without any guarantee that they will be able to work on issues of their choice. To this day not a single foreign association working in Algeria has been able to register under Algerian law, despite having sent all required documents to the Ministry of the Interior. The interminable procedures and outright lies hamper associations fighting to implement major projects or even trying to conduct minor business, such as organizing a seminar or conference. In order to organize and function, consequently, a foreign association must call on another association or a local partner to speak on its behalf, because the foreign organization cannot produce any official papers that would prove its legal status.

Associations dealing with the government confront enormous delays, without any explanation or any reliable information: life is an uncertain silence instead of a direct “no.” The government makes decisions without justification, and it can suddenly ban associations operating in the country for years because they lack documentation of their registration. Indeed, many associations have been forced to cancel important events at the last minute on totally unreasonable grounds.

As if that was not enough, the outdated pretext of security is again and again invoked as an excuse. The current Minister of the Interior told the Associated Press in March 2006 that “as long as there are a few acting terrorists, we have to maintain” the state of emergency, because it “allows us to coordinate the action of security services.”

He went on to say that “the state of emergency has had until today no effect on public freedom and on individual and collective freedom and will not in the future,” and added that political parties “function normally and it is even allowed for them to organize meetings in gathering rooms.” In reality, no assembly is allowed without prior approval from the relevant authority: the governor (wali) for local and regional assemblies, the wali of Algiers, or the Minister himself for assemblies in the capital. This of course makes spontaneous activity almost impossible.

Petitions for assembly are often rejected through silence. “Temporize” seems to be the Algerian administration’s motto; stalling is a crucial procedure for keeping associations in their place. Of course, the ultimate weapon is the dissolution of an association – which can be ordered without any explanation.

A New Law on Associations for Algeria

According to official statements, Algeria is experiencing major growth thanks to a policy that promotes openness. Unfortunately, the institutions and texts of government do not reflect the openness of free speech or assembly. The government’s claims that Algeria has a true place in the family of free nations, unfortunately, have no basis in reality.

How can a society evolve without a real social contract – especially in a state dominated by the government and the military, with the same inadequate systems and procedures in place since independence, with a president who lacks any meaningful vision for the society? Most important, how can a society evolve in a state that closes its ears to criticism, whether it comes from inside or outside the country?

In December 2006, I organized a seminar with several human and civil rights activists to discuss and to draft a new law on associations for Algeria. The final product reflects the basic principals that guide the laws of a true democracy: legal security, regulations that are based on the constitution and commonsense, and rules and procedures designed to give law-abiding associations the chance to flourish and prosper.

Naturally the proposed law differs greatly from the present law:

- The proposal emphasizes the value of associations and their functions for the progress of Algerian society.
- The proposal effectively removes the government’s power to control the activities of associations and to harass them.
- The registration procedure is transferred to the administrative courts, and to guard against arbitrary judicial rulings, the courts can only judge the legality of the bylaws and the operations from a formal viewpoint.
- While the draft law safeguards associations from government abuse by placing them under the supervision of the courts, including the criminal and finance courts in the case of claims of improper or illegal conduct, it also provides the government with the opportunity to defend society against abuse by seeking relief from the judicial system, the final arbiter.
- The proposed law integrates associations and their legal status as vital and particular elements of the Algerian constitution, the civil code, and the administrative, finance, and criminal laws.

- Foreign associations are treated just like their domestic counterparts, letting them operate freely under the protection of the law for the first time in Algerian history.

The proposed law on associations would greatly benefit Algerian society. We sincerely hope that we will see it adopted and implemented, and working hard to bring it to the attention of the appropriate government officials.

Conclusion

This may seem difficult to understand, but being Algerian makes it hard to discuss an individual law such as the Law on Associations. One can easily get lost in chronicling the abyss of human nature that was on public display during the 1990s. There is so much to say, and so little time to put everything into the context it deserves.

Nevertheless, it is necessary to comprehend the legal history, the atrocities, and the suppression that we Algerians had to endure in order to survive. It is necessary to know about the actions of those who wrote and passed the laws, not only the laws on associations but also the decree for a state of emergency. I hope the reader will understand.

What is left to say? I have cited many demands voiced by groups and individuals over the past 40 years. Here are my own demands:

The government can no longer pursue goals that profit only a select few, far up the hierarchy of the civil administration or the military.

Algeria must absolutely adapt its policies, domestic as well foreign, to international standards. These policies include civil and penal laws.

The laws in general can no longer be used as a façade. It must be enforced by the administration and the courts.

Laws that protect those who committed crimes in the name of patriotism and state security must be abolished – namely, the decree for the state of emergency and the general amnesty from 2006, which effectively bar the victims of the civil war from obtaining legal recourse.

In short, law exists to protect the people, not the state's administration. If this point is understood and accepted by those in power, Algeria may finally develop a true civil society.

THE MIDDLE EAST: SENIOR RESEARCH FELLOW PAPERS

**Undermining Standards of Good Governance:
Egypt's NGO Law and Its Impact on
the Transparency and Accountability of CSOs**

By Mohamed Agati¹

I. Introduction

In Egypt, government restrictions on the activities of civil society organizations (CSOs) have stifled their ability to advocate. Organizations are not permitted to fulfill their missions openly without risking government interference. Government suppression of CSO activities has undermined both government's and CSOs' efforts to institute good governance practices among CSOs.

This article considers the effects of Law No. 84/2002 on Non-Governmental Organizations (hereinafter "Egypt's NGO Law" or "Law No. 84") on Egypt's civil society from two perspectives. First is the ability of CSOs to advocate and conduct activities pursuant to their missions. Second is the law's influence on good governance practices among CSOs.

There is a direct tension between an organization's ability to adopt good governance procedures in compliance with the Egyptian NGO Law and the organization's ability to advocate. The NGO law commingles provisions that allow the government to interfere directly in an organization's activities with rules about the internal governance and accountability of an organization. Egyptian CSOs are therefore in the unfortunate position of having to decide between being effective advocates, vigorously pursuing their missions, or acting accountably according to the law.

The background research for this article is derived from interviews with civil society figures and experts, as well as advocates and activists working in Egyptian CSOs. Each of the organizations chosen for the study is engaged in advocacy or lobbying and is confronting changes and challenges in implementing good governance practices. An overview of these organizations follows.

The Association for Health and Environment Development (AHED) is a non-governmental organization founded and registered in the Ministry of Social Affairs in November 1987, and reregistered as a nationwide organization in 1998. AHED's general assembly includes about 100 members from diverse backgrounds. AHED's mission is the development and application of proper systems in the fields of health, environment, and

¹ Mohamed Agati is Executive Manager of the Development Support Center for Consultancy and Training, based in Cairo, Egypt. Mr. Agati was a Middle East Senior Research Fellow during summer 2006 at the International Center for Not-for-Profit Law (ICNL). This article was edited by ICNL staff.

disability. The association is competent to respond to community needs and to defend the rights of the community, either as a whole or focusing on its most deprived and marginalized groups.

The New Woman Research Center (NWRC) began as a group without official legal status, until it was registered as a civil non-profit company in 1991. It subsequently changed its legal position to an institution registered with the Ministry of Social Affairs. NWRC advocates for the feminist movement in Egypt, seeking to raise the priority of women's issues on the social and political agendas. NWRC networks with a number of Egyptian and Arab feminist groups in order to coordinate messages on women's issues. NWRC also coordinates with the global feminist movement on common issues. In addition to its work on advocacy for democracy and civil society values and principles, NWRC supports marginalized women, empowers women through knowledge, forms lobbying groups, and raises awareness of women's issues.²

A third form of organization that plays an important role in Egypt's civil society is the human rights center, which registers in a foreign country but operates in Egypt as a civil for-profit company. The Cairo Institute for Human Rights Studies is an example. Most human rights centers choose to register as civil companies because the laws governing businesses are less restrictive than the laws governing CSOs. Human rights centers often choose to register as branch offices of international organizations (e.g., Cairo Institute for Human Rights Studies) or as law firms (e.g., Hisham Mubarak Law Center).

The study uses interviews with Hisham Mubarak Law Center members to represent these forms. Hisham Mubarak Law Center is a human rights center that is registered as a civil company. Its objective is to improve human rights conditions in Egypt. The Center provides legal aid, conducts legal research, and offers advice on human rights issues. In addition, the Center publishes studies and reports. The Center works to raise the awareness of lawyers, judges, and the public of human rights violations. Further, the Center seeks to integrate international human rights law into the Egyptian Constitution.³

The first part of this article describes the historical context within which Law No. 84 was passed. It describes the social and political circumstances surrounding the legislative process. The second part of the article provides an analysis of the provisions of Law No. 84 that govern the powers of the regulatory authority and the internal governance of CSOs. Third, the article explores good governance and advocacy in the Egyptian context, as well as the key obstructions to their full implementation. The final section makes recommendations for enabling the advocacy and good governance of CSOs in Egypt.

² For more information, see <http://www.dscegypt.org/ar/partnersprofile.shtml#NWF>.

³ *Id.*

II. Historical Context of Law No. 84

When considering the difficulties that civil society organizations experience as a result of government policies, it is important to understand the legal and political context in which CSOs have developed.

A. The Evolution of Civil Society Organizations

The current composition of civil society in Egypt – a sector that includes advocacy, social service, philanthropic, and human rights organizations – is relatively recent. Egyptian civil society has witnessed three major stages of development.

The first stage of civil society development dates from the late 19th century until the end of World War II. During this stage, civil society consisted primarily of philanthropic organizations that were under the auspices of royal family members. Therefore, there was no need for a public code, only individual laws to facilitate the fundraising campaigns of these organizations as needed, such as the 1905 Lottery Law and the Sport Clubs Law of 1929. At the end of World War II, on July 12, 1945, the government issued the first Charities and Social Institutions Code. The aim of this law was to coordinate the efforts of charities, whose objectives were merely philanthropic, with the work of social institutions that were providing humanitarian services.⁴

The second stage of civil society development began under the rule of President Gamal Abdel Nasser and continued until the early 1980s. Nasser, who was in power from 1954 until 1970, was especially noted for his Arab nationalist and anti-colonial foreign policy. During this stage, the state exerted totalitarian control over society in a way that might be described as a “social pact of development.” As long as the state was developing economically and providing for its citizens in a basic way, citizens did not demand democracy. Neither open political opposition nor an independent sector existed in Egypt during this time. This is reflected in the Civic Association Code, Law No. 32/1964, which gave government officials the authority to reject the formation of organizations. In addition, the government had discretion to amalgamate or dissolve groups at any time.⁵

Egyptians have been living under an Emergency Law (Law No. 162/1958) since 1967, except for an 18-month break in 1980. The emergency was imposed during the 1967 Arab-Israeli War, and reimposed following the assassination of President Anwar Sadat. The law has been continuously extended every three years since 1981. Under the law, police powers are expanded, constitutional rights suspended, and censorship legalized.⁶ The law sharply circumscribes any non-governmental political activity: street demonstrations, non-approved political organizations, and unregistered financial donations are formally banned. Some 17,000 people are detained under the law, and

⁴ Amir Salem, *Legal Framework of Civil Society, Egypt as a Case Study*, Organizing Association in Arab States, Benian program/ WB, Lebanon, 172.

⁵ “Egypt, Margins of Repression: State Limits on Non-Governmental Organization Activism,” Human Rights Watch, volume 17, no. 8 (E), available at <http://hrw.org/reports/2005/egypt0705>.

⁶ Farid Zahran, “New Civil Associations Law and the Current Political Times,” *Al-Ahram Newspaper* (July 23, 2002).

estimates of political prisoners run as high as 30,000.⁷ In 2005, the Emergency Law was extended two more years or “until anti-terrorism measures are passed and enacted,” according to Egypt’s upper house, a stipulation giving the state the right to renew the law beyond the two-year period suggested by President Hosni Mubarak.⁸

The most recent stage of civil society development started at the beginning of the 1980s,⁹ with the emergence of a new role for civil society as a participant in the processes of development and democratic evolution.¹⁰ During this stage, the Egyptian government has focused on economic development. To achieve economic progress, the government has made strides in instituting liberal, market-oriented economic reforms, but not similar political or democratic reforms. Laws did not change to allow explicitly more freedoms for civil society organizations and democratic political activity. Rather, there was a gradual and selective recognition of certain political rights. For example, certain groups regularly demonstrate in opposition to the government’s relationship with Israel without disruption. Egyptians experience fewer restrictions on their freedom of speech than ever before. Nevertheless, Egypt has continued to renew the Emergency Laws, described above.

During the past five years, Egypt has adopted and amended a series of laws in order to liberalize the rules on trade and labor, and has even amended certain constitutional provisions, such as Art. 76.¹¹ It has also passed a new law governing civil society organizations, Law No. 84, issued on October 23, 2002. While this law allows greater recognition of civil society than any previous law, it also severely restricts civil society. Law No. 84 has been the subject of many critical legal studies and work papers.

Since the middle of the 1980s, during President Mubarak’s rule, several types of civil society organizations have evolved in Egypt: charities, service providers, environmental, and human rights organizations.¹² This development represents a part of what the government has propagated as “step-by-step democracy.” At the same time, President Mubarak has instituted a policy allowing his regime to exert control over any organized group that might express opposition to his policies.¹³ For example, the President controlled the press by appointing newspaper chairmen who were willing to censor heavily the reporting of their publications.¹⁴ Trade unions, labor syndicates, and

⁷ Amira Howeidy, *Enough is Still Enough*, Al-Ahram Weekly On-Line (September 8-14, 2005), available at <http://weekly.ahram.org.eg/2005/759/eg8.htm>.

⁸ Pakinam Amer, *Brotherhood Speaks Out on Renewal of Emergency Laws*, The Daily Star Egypt (May 4, 2006), available at <http://www.dailystaregypt.com/article.aspx?ArticleID=1372>.

⁹ Alaa Shokrallah, Mohamed Agati, *Current Problems in Civil Association Work in Egypt, Civil Society’s Future*, Medhat Al-Zahed, 58 (Development Support Center/ Al-Fostat Center, Cairo, 2003).

¹⁰ See Alvin Toffler, “The Third Wave” (William Morrow & Co., 1980).

¹¹ Many papers have been written on these developments; see, e.g., the works of Amir Salem, Ahmed Seif, and the Egyptian Organization for Human Rights.

¹² Amany Qandil, *Modernizing Associations and Modernizing Egypt*, Al-Ahram (December 26, 2002).

¹³ Basma Kodmani, *The Dangers of Political Exclusion: Egypt’s Islamist Problem* (Carnegie Papers, 2005), 9.

¹⁴ *Id.*

universities were under similar control. With the exception of Islamic groups, the Mubarak regime successfully managed to squelch most forms of dissent. Entities that might have voiced opposition simply ceased to exist in Egypt. Though not all of them presented viable alternatives, faith-based organizations were the only type of CSO that remained and played any sort of significant role.¹⁵

B. Law No 153: The Precursor to Law No. 84

In 1999, the Egyptian government invited civil society organizations to discuss a new NGO law, Law No. 153. The Civil Society Development Forum was convened to form a coalition that would collaborate with the government to achieve the best possible draft law. However, this attempt failed when the government sent its own copy of the draft law to the Parliament, one that was different from the draft agreed on with the Forum. The Association for Health and Environmental Development (AHED) published a book, “The Development of Civil Society and the New Civil Associations Law,” exposing the government’s conduct and revealing the documents and details of the meetings between the government and the civil society representatives.¹⁶

The government did not consult with civil society in drafting subsequent laws, including those that govern their work. Moreover, the government retaliated against NGOs that participated with human rights agencies in the Forum. For example, the government restrained funds to AHED, threatening the survival of the association. The government also replaced some members of the board of the Upper Egypt Association with others whose vision for civil society is religious charity work—an example of the government’s tendency to use religious groups to neutralize democratic opposition groups.

The law was widely criticized as unconstitutional for both procedural and substantive reasons. In 2000, the Supreme Constitutional Court declared Law No. 153 unconstitutional for procedural reasons, on the grounds that it was not discussed and voted on in both houses of the parliament.¹⁷

C. Issuance of Law No. 84

Law No. 84 is very similar in content to Law 153. It was quietly issued and very quickly discussed and passed by both houses of Parliament. There was no coverage in the press, unlike similar laws often used as indicators of democracy and respect for human rights in Egypt.¹⁸ In contrast to the earlier law, civil associations and institutions were not consulted.¹⁹ In fact, civil society representatives first learned of the subject from

¹⁵ *Id.* at 18.

¹⁶ Interview with AHED. Notes on file with the author.

¹⁷ See, e.g., “Egyptian Court Strikes Down Controversial Law,” *International Journal of Not-for-Profit Law* (Vol. 2, Iss. 4, July 2004), available at http://www.icnl.org/journal/vol2iss4/cr_mideast.htm.

¹⁸ For example, the Law on Media and the Election Law received wide local and international press coverage.

¹⁹ In first preparing Law No 153, the government entered a prolonged debate with the CSOs, in which several joint committees were formed. To the CSOs' surprise, though, a different law was submitted to the people’s assembly.

individual members of Parliament after the draft was scheduled to be discussed in the Parliament.²⁰

Law No. 84 did not emerge from a dialogue between the government and society. Rather, it is seen as a tool for the governing elite to control CSOs.²¹ The law was justified in the parliament, despite its deficiencies, on the grounds that it “balances freedom and social peace.”²² This argument echoes those of other leaders seeking to evade their earlier promises for democracy to their citizens and the international community. In Russia, for example, money laundering and terrorism are used as pretexts to fetter civil society.²³

Nevertheless, it is not unusual for such laws to appear before elections, with the hope of hindering CSOs from challenging the ruling regime.²⁴ The parliament passed Law No. 84 two years prior to the presidential and parliamentary elections. The law was opposed by human rights organizations and political parties, which issued a joint statement titled “Civil Associations Law Assassinates the Voluntary Civil Society.”²⁵ NGOs and political parties demanded more discussions about the law with all segments of society involved, and identified certain articles as “freedom restraining” and unconstitutional.²⁶

Surprisingly, the law was preceded by a meeting held by the Ministry of Social Affairs, in which NGOs and donor institutions were invited to discuss the draft law. Soon after, the Minister of Social Affairs met with the American Ambassador and the European Union representative in Cairo and urged them, as the biggest funders, to increase donations to NGOs. This is inconsistent with parliament’s suggestion that foreign funding threatens national security.

D. Palestinian Influence

It is useful to consider the political situation facing the Egyptian government when Law No. 84 was adopted, particularly the complicated situation created by the Palestinian Uprising (Intifada) and the brutal Israeli escalation in response. It appeared, at least in theory, as if the Israeli reaction would unite the Egyptian government and people against these threats. In time, it became clear that the situation was more complicated, and that the increasing activism of the committees supporting the Intifada and opposing normalization of relations with Israel was creating a political impasse. Popular solidarity with the Palestinian people stood in the face of government restraint on popular political activities.

²⁰ Interview with AHED. Notes on file with the author.

²¹ This is confirmed by the author’s interviews with Egyptian CSOs, all of which confirmed that they were unaware of many of the details of the law.

²² Interview with the Minister of Social Affairs, *Al-Ahram Newspaper* (12 June 2002).

²³ Reporters without Borders, *Putin Promulgates Controversial Law on NGOs* (January 17, 2006) available at http://www.rsf.org/article.php3?id_article=15871.

²⁴ Interview with the Minister of Social Affairs, *Al-Ahram Newspaper* (12 June 2002).

²⁵ “The Situation of Human Rights in Egypt: Annual Report 2003,” *The Egyptian Organization for Human Rights* (2003), available at www.eohr.org/ar/report/2003/report2003.shtml.

²⁶ “The Minister of Social Affairs Approves the New Law for NGOs,” *Al-Ahram Newspaper* (6 March 2002).

The impasse resulted from the Egyptian government's treatment of democratic development for the last two decades. Over that time a partial "social contract" arose, in which the state provided a relative margin of freedoms, and a promise to widen them, if only terrorism could be fought successfully. This social contract was accepted by political activists and intellectuals, given the insecurity caused by the threat of terrorism as well as the economic crisis. Political activists and intellectuals accepted the need to postpone integrated democratic development until the fears of terrorism and economic crisis could be allayed, as it was thought that "excessive democracy" might strengthen fanatic and violent groups.

From the official point of view, popular activism in solidarity with the Palestinian people exceeded the government's margin of tolerance for freedoms, and, for the first time in two decades, led the government to question the appropriate limits on peaceful expression and association. The adoption of Law No. 84 was clearly intended to reduce the margin of freedom of association and expression. While some thought that the political environment would create an opportunity to widen the margin of freedoms, in order to mobilize society against the threats of terrorism and economic crisis, the enactment of the Law affirmed the continuation of a social contract that provides little space for individual freedoms.

The social contract became censured and doubted due to the domestic and regional situations, particularly after the Iraq Occupation. Egyptian society increasingly developed a strong faith in more democracy as a means of fighting terrorism and solving the economic crisis. The government's increasing dependence on state security bodies to limit freedoms, and its disregard for civil society and the political parties, have not only failed to eliminate extremism, but also have brought the political impasse to a climax.

Some argue that policies based on genuine democracy, government transparency, the elimination of corruption, and a reasonable level of social justice are the only way to face and overcome the crisis.¹³ Current political developments in Egypt, such as bombings over the past two years, the protest of the Egyptian judges' club, the violent responses of the regime and its harassment and detention of activists who supported the judges, and the renewal of the emergency law through 2008, suggest this may be true. Western governments overlook these actions to give the Arab regimes the authority to face the growing Islamic role in the Arab political scene. In fact, however, this approach has proven misguided, as attempts to build the regime's authority at the expense of democratic freedoms have only increased the influence of fundamentalism.

III. Legal Analysis of Law No. 84

The Egyptian NGO law establishes a system of government interference that undermines the freedom of association guaranteed in the Egyptian Constitution²⁷ and in international human rights instruments to which Egypt is a signatory.²⁸

²⁷ Article 55 of the Constitution of the Republic of Egypt guarantees the "right to form societies" and Article 56 guarantees the "right to form syndicates and unions."

²⁸ Egypt is a signatory to the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

A. Power of the Regulatory Authority

Law No. 84 grants the state regulatory authority a great deal of power and discretion to grant or deny registration, interfere in the operations and fundraising of an organization, and order its dissolution.²⁹

1. Mandatory Registration

Law No. 84 refers to an “Administrative Authority” responsible for registration and oversight of NGOs. Article 2 of the Introduction to the Law designates the Ministry of Social Affairs as the Administrative Authority. The Office of State Security maintains a presence within the Ministry of Social Affairs and plays a significant role in CSO oversight. The Office of State Security sees itself as responsible for preserving social peace and general security of the state, which provides its pretext for interfering substantially with civil society in Egypt.

Registration is mandatory under Law No. 84 for all groups with at least ten members that form “for a purpose other than gaining a physical profit” (Article 1). The Ministry of Social Affairs has 60 days to process requests for registration. The Ministry will deny registration if it determines that the association’s purposes constitute an activity prohibited under Article 11 of the Law. Among the prohibited activities are forming military groups, threatening national unity, violating public order or morals, and undertaking any political actions. These terms are not defined in the law, leaving the Ministry of Social Affairs full discretion to decide whether an association’s activities fall into a prohibited category. For example, the Ministry denied the Land Center for Human Rights’ application for registration. A note from the Office of State Security was attached to the rejection letter—demonstrating clearly that the decision was made by State Security rather than Ministry officials, in clear contravention of the law.

The Ministry of Social Affairs can object to any provisions in an association’s articles of incorporation that it determines violate the law, and it can also object to the organization’s founders (Article 8). The law does not provide clear criteria for approving or rejecting founders. The only guideline in the law is that a founder may be disqualified for having been convicted of a crime of “moral turpitude and dishonesty ... unless ... rehabilitated” (Article 2).

NGOs have commented that during registration, they dealt with the Office of State Security more than with the Ministry of Social Affairs. In some cases, the State Security tried to convince NGOs, including the Hisham Mubarak Law Center, to register as *associations* under the law, so that they could be monitored and controlled. In other cases the security apparatus refused to register NGOs unless they agreed to register as *institutions*; one example is the NWRC.³⁰

²⁹ For more information, see Farid Zahran, *New Civil Associations Law and the Current Political Times*, Al-Ahram, July 23, 2002.

³⁰ For more information, see Hisham Mubarak Law Center, *Facts of Shutting Down New Woman Institution* (2004).

2. Government Interference in the Operations of Associations

Even after an organization is registered, the Ministry of Social Affairs has the authority to interfere in its operations. The Ministry can send representatives to an organization's meetings and even call a meeting of the general assembly (Article 25(d)). Moreover, an organization must provide the Ministry with a copy of the minutes of the general assembly within thirty days of the meeting.

Law No. 84 requires associations to have a board of directors made up of an odd number, between five and fifteen, as determined in the articles of incorporation. The board of directors must provide a list of board nominees to the Ministry of Social Affairs within a day of their nomination and sixty days before the election. The Ministry has the authority to remove a board nominee for "non-fulfillment of nomination requirements" (Article 34). These "requirements" are not defined, allowing the Ministry unfettered discretion to remove potential board members. The Ministry removed two political activists from the board of directors of Bashayer for Integrated Development.

The Ministry also exercises control over the affiliation and activities of associations. Article 16 of the NGO Law states that an association may join or affiliate with an international organization, and conduct activities consistent with its purposes, provided that it notifies the Ministry at least sixty days in advance and does not receive a written objection from the Ministry. This requires planning activities at least sixty days in advance, making it virtually impossible under the law to react quickly to events. Pursuant to this authority, the Ministry directly banned a celebration of the World Day for Women's Rights organized by the Egyptian Center for Women's Rights. Similarly, the celebration of the World Day for Habitats organized by Egyptian Center for Housing Rights was stopped when the State Security ordered the Upper Egypt Association to refuse to host the celebration in 2005.³¹

Although the NGO Law does not vest the State Security with legal authority to regulate CSOs, it nevertheless remains the key player. Surprisingly, the role played by the State Security is not authorized in the law or constitution, either. The NGO Law designates the executive authority (the Ministry of Social Affairs, not the State Security), the right to refuse an NGO registration *only* if it included in its activities one that is banned by Article 11 of the law.³²

As noted above, State Security has directly issued denials of registration. Other times, rather than explicitly issuing orders, State Security influences the Ministry to delay approvals.³³ At best, such tactics result in an interruption of activities. At worst, they slowly starve an organization out of existence. For example, the second installment of funding for one of AHED's programs was purposefully delayed for more than five months, an entire year after the launch of the program. This strategy also aims to distract NGOs with procedural and bureaucratic matters. Nawla Darwish, one of the founders of

³¹ The author was a participant in both of these events and knows firsthand that the activities were halted by the government.

³² Democracy Defense Committee Report, Al-Ahaly (February 7, 2003).

³³ Negad Al-Bora'ai, *The Guillotine and The Pit, Freedom of Expression in Egypt 2002-2003: Problems and Solutions* (United Groups, Cairo, 2004), 265.

NWRC, says, “We are busy addressing the procedures planned by the Egyptian government to fetter the human rights movement. This distracts us from addressing the real problems in society.... For example, when we were discussing the Civil Associations Law No. 153 we forget to discuss issues at the heart of our interest in NWRC such as the *Khola* law (divorce at the instance of the wife).”³⁴

The 2005 Human Rights Watch report describes cases in which the Office of State Security rejected registration applications from NGOs, refused candidates for boards of directors, harassed their activists, and blocked their funding. The report reaffirmed that organizations in Egypt suffer from difficult constraints under the NGO Law, and stressed the involvement of the security forces in investigating and harassing civil society activists, more often than not with no legal basis.³⁵

3. Financing

Associations may not accept foreign funding without explicit authorization from the Ministry of Social Affairs (Article 17). All other contributions are governed by executive regulations. This provision undermines the sustainability of many organizations. Foreign funding is the most essential financial source for civil human rights and development associations, especially because financing from Egypt's private sector for such organizations does not exist. In addition, associations must provide a detailed report of expenditures and revenues, including donations and their sources, to the Accounting Auditors Register. Acquiring or distributing funds in violation of Article 17 is cause for involuntary dissolution of an association and criminal penalties of up to six months' imprisonment and up to 2,000 pounds in fines (Articles 42, 76).

Unlike associations, charities are able to accept donations without prior approval. “The new civil associations law has no impact on the charity’s activities, as it is meant only for human rights organizations.... Our charity receives about 30,000 EGP [about \$5,200 USD] monthly in donations, and we are not obliged to obtain approval from the administrative bodies,” declared Dr. Mohammad Al-Fangary, the Chairman of the Islamic Charity Association in Al-Ahrar on June 13, 2002. In contrast, AHED must obtain approval from the Ministry of Social Affairs before receiving funds from United Nations bodies, even though these international bodies have agreements with the government.

4. Penalties

As indicated above, violation of the law can result in criminal penalties, including imprisonment, fines, and the involuntary dissolution of the association. Setting up an association whose activities are determined to be “clandestine” is punishable by up to a year in prison and up to 10,000 pounds in fines. As mentioned above, activities that are prohibited in Article 11 are ill-defined, leaving the government full discretion to determine whether a violation has occurred. For example, activities are prohibited if they are deemed to threaten national unity or violate the public order or *morals*. All political activities are prohibited as well.

³⁴ “Interview with a Feminist Activist,” *Sot Al-Ommah*, March 17, 2003.

³⁵ Human Rights Watch, *Margin of Repression – State Limits on NGO Activism*, July 2005.

An association may face involuntary dissolution as a result of an Article 11 violation, affiliation with a foreign organization without prior approval, or accepting donations without following the requisite approval procedures. The law seems to allow the government to dissolve an association based on the actions of an individual, even if he or she was acting without the authority of the board of directors.

Similarly, the law imposes collective punishment on general assembly members by permitting dissolution of an association based on transgressions of a single member. Collective punishment to the whole organization is applied in cases of individual and personal infringement of the law, such as individual wrongdoing.³⁶ The policy of punishing all members of an association for the transgressions of one member appears to be aimed at deterring citizen participation in CSOs.³⁷

Moreover, the imposition of criminal penalties has directly undermined participatory governance practices by influencing some heads of associations to monopolize authority. Expanding democracy within an association, including delegation of authority, increases the risk that someone will act improperly, thus exposing the organization to penalties. The threat of penalties also causes some associations to keep certain activities secret or unpublicized. Harsh penalties represent a real obstruction to transparency, accountability, and participation as a component of good governance.

B. Internal Governance

The Egyptian NGO Law closely regulates the internal governance of civil society organizations. The law intermingles proper transparency and accountability measures with overreaching controls and modes of interference.

Some provisions of Law 84 conform to international standards for regulating internal governance practices. For example, associations should have a general assembly and board of directors (Articles 24, 32). These bodies must have regular meetings and provide proper notice of meetings in advance (Articles 27, 38).

However, other provisions in the law provide excessive controls and opportunities for government interference. For example, the law requires that the association submit the agenda for a meeting of its general assembly to the Ministry of Social Affairs fifteen days in advance of the meeting, and provide minutes of the meeting to the Ministry within thirty days after the meeting (Article 26). The Ministry must be notified of candidates for an association's board of directors, and it can remove candidates from consideration (Article 34).

C. Egyptian Law and International Standards

The trend toward restricting civil society organizations is not unique to Egypt. Over the past year, nineteen countries have introduced restrictive legislation aimed at

³⁶ "The Situation of Human Rights in Egypt: Annual Report 2003," *The Egyptian Organization for Human Rights* (2003), available at www.eohr.org/ar/report/2003/report2003.shtml.

³⁷ Similar deterrents to citizen participation exist in the Political Parties Law passed in June 2005.

weakening civil society.³⁸ These countries join more than thirty others with existing laws, policies, and practices that stifle the work of CSOs.³⁹ The International Center for Not-for-Profit Law (ICNL), an organization dedicated to promoting freedom of association, civil society, and citizen participation worldwide, presented a study which set out a typology of nine legal barriers used by government to constrain civil society and the challenges that these barriers pose to CSOs.⁴⁰ As described below, Egypt employs seven out of these nine constraints.⁴¹

1. Inability to register and insure the advantage of legal personality

Repressive governments often closely guard the process by which an organization can register and thereby gain legal personality. Governments may require all organizations to register, ensuring the ability to keep a close watch on a group's activities, while making registration difficult and limiting the ability of certain groups to exist.⁴² In Egypt, the government limits freedom of association by requiring registration of all groups, no matter their size or purposes, and by giving both the Ministry of Social Affairs and the Office of State Security substantial discretion over whether to grant registration applications.

2. Inability to receive foreign funding or to raise domestic funding

One of the most common tactics used by governments to restrain civil society is to restrict the access of CSOs to foreign funding.⁴³ The Egyptian NGO Law requires the approval of the Ministry of Social Affairs for the receipt of any foreign funding. The executive authority uses this condition to pressure associations and hamper their activities. The government can cause the closure of an organization dependent on foreign funds, simply by withholding approval for foreign funding. This gives the government the power to dissolve arbitrarily organizations that depend on foreign funding by starving them of resources.

3. Arbitrary or discretionary termination and dissolution

Some countries retain substantial discretion to shut down CSOs, and use that discretion to quash opposition groups.⁴⁴ Egyptian law vests the Ministry of Social Affairs with the power to dissolve an association after consulting the Federation of Civil

³⁸ International Center for Not-for-Profit Law, *Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations*, 8 *International Journal of Not-for-Profit Law* 4 (August 2006), available at http://www.icnl.org/knowledge/ijnl/vol8iss4/art_1.htm.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ ICNL based its typology of the nine legal obstacles on a survey of country practices from around the world. The study considers practices as obstacles to freedom of association to the extent they violate established international norms, including the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. *Id.* Egypt is a signatory to both of these treaties.

⁴² *Id.* at §2(A)(1).

⁴³ *Id.* at §2(B).

⁴⁴ *Id.* at §2(C).

Associations and the association itself. The ability to dissolve an association gives the Ministry added leverage over associations, especially because grounds for termination are ambiguous in the law. The Ministry also has the right to instruct the executive authority (represented in the governors) to dissolve associations located in governorates.

4. Inability to advocate for certain issues

The NGO law prohibits associations from engaging in political activities and activities usually conducted by labor unions. The accompanying regulations to Law No. 84 indicate that prohibited political activities include advocating the program of one of the political parties, contributing to electoral campaigns, and putting forth candidates for office (Article 25). The government could thus prevent a CSO from advocating for issues within its mandate if those issues match the program of a political party. Moreover, associations are prevented from advocating for labor issues, since the government may consider these issues to be under the exclusive purview of unions. Further, and as discussed throughout this article, the Law allows the government broad authority and discretion to implement ambiguous provisions, which makes organizations likely to avoid advocating issues that might trigger an oppressive government response.

5. Authoritative and restricted monitoring

Even after an NGO has been formed and registered with the proper authorities, the government may continue to restrict its activities through unchecked oversight authority and interference in its activities. The Egyptian NGO Law gives the Ministry of Social Affairs the right to examine an association's records at any time, allows for government representatives to attend an organization's meetings, and even allows the government to add items to the agenda of a meeting. This allows the government to continuously monitor any organization. The same is true of cumbersome requirements for authorizations and approvals of directors, activities, and financial transactions.

6. Foundation of "parallel" associations

Restrictive governments have sometimes sought to undermine the CSO sector by establishing captive CSOs. Governments use these organizations to channel government funding to preferred causes and away from opposition groups, to discredit opposition groups by claiming that its captive organizations are the only "legitimate" civil society, or to appear supportive of at least some portion of civil society.⁴⁵ The government has created such associations in Egypt that work in the same field or in the same area as independent CSOs and receive government funding.

7. Imposing criminal penalties against founders and members of the associations

Individuals who are found responsible for certain NGO activities can be held criminally liable and fined or imprisoned. Such penalties have a chilling effect on the right of association.⁴⁶ Under Egyptian law, such penalties may include a year in prison and a fine of 10,000 EGP (about \$2,000 USD) for a founder of an association that is deemed to threaten the national unity or the "public order." Individuals are subject to six

⁴⁵ *Id.* at §2(G).

⁴⁶ *Id.* at §2(H).

months in prison and a fine of 2,000 EGP (about \$400 USD) for conducting activities without following the prescribed procedures (e.g., registration, approvals).

IV. The Ability of Organizations to Advocate While Maintaining Good Governance Practices

Working outside the law hinders the internal administration of an organization. Absence of governing rules turns organizations into individual initiatives, reliant on the good intentions of their founders.

A. The Concept of Good Governance

Some believe that the concept of "good governance" arose as a result of pressure from international funders, and therefore equate the concept with foreign pressure.⁴⁷ Though it might have been coined by the World Bank, the phrase grew out of the need to transform civil society in the Arab region. Arab NGOs were for the most part the initiatives of individuals or a few activists. Good governance practices, including the adoption of transparent and democratic mechanisms that balance executive power and institutional accountability, were introduced in attempt to make such organizations into sustainable institutions, free of corruption and integrated into society.

It is difficult to define "good governance" in a way that applies in practice to both civil society and the state. The Arab Group for Good Governance tried to introduce a definition tailored to civil society: "Governing/Good Governing in different institutions is an authorization made by a group to smaller representative bodies, with the latter being held accountable. It involves effective participation of the group in making decisions, and empowering the larger marginalized segments in participating, by making the needed information, tools, and means, therefore available."⁴⁸ This definition specifies the basic elements of good governance – namely, authorization, transparency, accountability, participation, and empowerment.

The elements of good governance have not been well integrated into the work of Arab NGOs. "Field work indicators unveil limited democracy and a lack of transparency and accountability inside some civil society institutions. This sometimes leads to the personalization of the institute (being known by the name of its founder, manager, or head of the board), making the circulation of power almost impossible, and affecting authorization, participation and empowerment. In other cases, decision making is limited to a few members."⁴⁹ At times it is difficult to apply transparency principles, even if good intentions exist, because of the lack of institutional mechanisms for documentation.

The 2002 UNDP Human Rights Development Report observes many deficiencies in Arab NGOs, such as lack of democracy (reflected in the slow circulation of power), inadequate representation of youth and women on the boards of directors, and the

⁴⁷ Gordon Crawford, *Foreign Aid Political Conditionality: Issues of Effectiveness and Consistency*, vol. 4, No. 3 (1997), 69.

⁴⁸ Alaa Shokrallah, *Leadership and Good Governance in Civil Society, A Training Manual*, Development Support Center and the Arab Group for Good Governance, p.21 (Cairo, 2005).

⁴⁹ Amany Qandil, *Modernizing Associations and Modernizing Egypt*, Al-Ahram, December 26, 2002.

personalization of these institutions. In terms of transparency, the report finds a lack of clear administrative and decision making rules, which leads to weak accountability.⁵⁰ The report, however, admits that these problems are not exclusive to Arab NGOs, but characteristic of Arab institutions in general, including governments and private organizations.⁵¹

Rather than justify the absence of good governance in civil society by pointing to a similar lack of accountability in the public sector, it is important to address the root of deficient governance practices. For NGOs to adopt good governance practices, they must first overcome the misconception that they are bending to foreign pressures. Good governance can help advance their primary missions – causing positive changes in the lives of beneficiaries – and improve the policies determining their fate.

Concededly, though, the legal and regulatory umbrella under which NGOs work makes it difficult for them to implement good governance practices while pursuing their objectives. The new law does not foster accountability and participation, let alone the legitimacy of representation and the limits of powers. Although some NGOs have tried to enforce these principles by widening the scope of participation and accountability in the targeted group at large, by establishing consultative councils, cases of corruption and misuse of power have severely damaged the reputation of civil society. In other words, even though some organizations have made strides toward good governance by widening member participation and decision making, corruption and misuse of power among other CSOs that lacked such reforms have harmed the reputation of civil society as a whole.

The deficiency of good governance among NGOs stems partly from the legal and regulatory atmosphere in which they operate. The main problem is the requirement that an NGO obtain permission from the Ministry of Social Affairs to do its work, rather than simply notifying this body, working freely, and being held accountable by its members, the judiciary, and public opinion. Many other challenges limit the freedom of NGOs.

Furthermore, some articles in the law seem to hinder hamper the application of good governance, such as the article providing that the administrative bodies *agree to* (not merely *be notified of*) the establishment of an NGO. This article hampers empowerment, an integral part of good governance. Similarly, Article 17's restrictions on sending money abroad or receiving money from abroad without prior approval make operating by the letter of the law all the more cumbersome.

B. Advocacy and Lobbying Campaigns

Historically, policy initiatives in Egypt came from within the government. CSOs functioned as service providers and charitable institutions. The first type of CSO in Egypt to take on a different role was the human rights organization. Human rights organizations launched organized advocacy and lobbying campaigns to influence government change. Advocacy and lobbying were at first considered a methodology exclusive to human rights organizations, but other CSOs gradually caught on and began to develop their own advocacy and lobbying activities. Today, of course, CSOs all over the world have made

⁵⁰ United Nations Development Program, Arab Human Development Report 2002, 105.

⁵¹ *Id.* at 107.

substantial strides in campaigning to eliminate or reduce poverty, protect against HIV/AIDS and other diseases, defend the environment, and so on.

The term “campaign” as defined by Action Aid Organization is the process of seeking to influence decision makers and movers of public opinion (individuals and organizations) to change policies and practices.⁵² The main components of the concept are planning, advocacy, networking, and lobbying. The term “campaign” in Arabic, however, is still understood as competing for office. The concept of a human rights *campaign* is a modern understanding of the word that has not caught on in Arabic, such that the English word is substituted when referring to an organized set of activities meant to effectuate change.⁵³

However, the Egyptian government does not differentiate between a political campaign for office and an advocacy campaign. Both types of conduct are considered *political activity* prohibited by Article 11 of the NGO Law. One example is that of the State Delegates Authority in the case of the Egyptian Association Against Torture. The Administrative Judiciary Court refused to register the association on December 15, 2005. The reason was that the group aimed to pressure the government to eliminate torture in police stations and prisons, which the judiciary considered to be political activity. Consequently, the association was prohibited from launching its activities.⁵⁴

C. Civil Society Campaigning and Egyptian Law

Law No. 84 does not explicitly address campaigning. This reflects the drafters' ignorance about the nature of civil society and social movements. In reading the entire law, only one article seems somewhat relevant to the idea of creating issue-oriented campaigns: Article 65 allows non-governmental organizations and associations to establish specific and regional unions to support networking. However, Article 68 restricts such a union to seven tasks, thus preventing the full development of networks and unions among civil society organizations.

At the root of most campaigns in Egypt is the authoritarian regime – the government stands on one side and the forces of democracy and reform on the other. The more the latter dominate, the broader the change that advocacy groups and individuals can make. In turn, civil society becomes more sophisticated and capable of campaigning.

Article 11(2) of Law 84, prohibiting political activity, poses the most important restriction on civil society's campaigning initiatives. As discussed above, campaigning may be deemed a political activity. The regulations define political activity in a clause concluding with “or any activity leading to this.” With such broad language, it is easy for the government to deem almost any activity it wishes to prevent as something that might lead to prohibited political activity. As a result, registered organizations avoid such words as *campaigning*, *advocacy*, and *lobbying* in their reports to the Ministry of Social Affairs.

⁵² See *Action Aid International*, available at <http://www.actionaid.org>.

⁵³ Dr. Amany Qandil, *Civil Society and Social Change*, Al-Ahram Center for Political and Strategic Studies (Cairo 1998), 67.

⁵⁴ A Verdict by the Administrative Cause Court, 2nd Circle, in case No 9585 Judicial Year No 58, December 25, 2005.

However, the organizations use such words in other spheres, such as issuing books, printing stickers, and otherwise seeking to “raise awareness.”

The ban on political activities has restricted the activities of many civil society organizations and kept them from participating in major events crucial to their missions. For example, the government prohibited the New Woman Foundation from campaigning in support of female nominees in the 2005 parliamentary elections.⁵⁵

One method of campaigning for change in an authoritarian regime is networking with individuals in foreign countries. Such communications can be an effective way of collaborating with individuals involved in similar causes (e.g., women’s coalitions) or encouraging the international community to advance an issue (e.g., environmental regulations). International collaboration and networking is chilled by Article 76 §3(B), which bars an NGO’s board of directors, members, and managers from participating, contributing to, or affiliating with any club, association, organization, or authority outside the Arabic Republic of Egypt, without notifying the administrative authority or despite its refusal. Violators face the possibility of being sentenced to prison.

Based on the provisions of the law and examples of their implementation, it is concluded that campaigning is at best barely permitted by Law No. 84. Subjecting associations to the supervision of administrative authorities restricts their ability to advocate or lobby, especially if such campaigns oppose governmental policies. The open-ended interpretations of the law give the government the opportunity to stifle any campaign or even to dissolve the association.

Furthermore, networking activities continue to be restricted by laws and regulations. The introduction of criminal penalties is a significant deterrent to those who might otherwise consider not complying with the law, or attempting to change it through campaigning. Participants in the human rights and women’s rights organizations’ campaign to amend Article 17 of the Penal Code on “clemency in harassment cases” mentioned that unregistered associations had substantial freedom and consequently were much more effective than registered organizations.⁵⁶

D. The Choice between Good Governance and Effective Advocacy

Good governance practices are essential to CSOs’ ability to conduct successful advocacy campaigns. Transparency is vital to earn credibility, and participation is necessary for successful networking. In addition, individual empowerment, as a principal component of good governance, is a goal of campaigning. Good governance lends credibility and efficacy to any campaign. However, when organizations institute transparency and accountability measures, they become vulnerable to the interference and control of government authorities and bureaus.

This presents CSOs with a difficult dilemma. The first option is to abide by all laws and regulations, and campaign within the limits stipulated by the executive authority. Such campaigns rarely produce results. The second option is to avoid good

⁵⁵ Interview with employees of the New Women Foundation. Notes on file with the author.

⁵⁶ Interviews with the New Woman Foundation and the Hisham Mubarak Law Center. Notes on file with the author.

governance procedures or to avoid forming an NGO altogether. This option permits advocates to campaign in an effective way. However, it may weaken the credibility of the organization's advocacy campaign and subject activists to criminal penalties.

The introduction of internal governance practices in Law No. 84 became a tool for government control rather than a means of strengthening the management and governance of NGOs. This produced an inverse relationship between the application of good governance practices and the ability to launch effective advocacy campaigns. Legislating internal governance practices, particularly to the extent of Law No. 84, is not appropriate in a regime that suppresses organized dissent. The rules that purport to promote good governance are bound to stifle political activity.

It should be noted that some people praise aspects of Law No. 84, including the ability to found human rights organizations and the lack of mandatory minimum criminal sentences. Some drafters in fact would have preferred harsher criminal penalties.

Nevertheless, the law should be revised to eliminate the three main features that impede NGOs: the excessive power of the regulatory authority, the ambiguities in the law, and the criminal penalties. To achieve democracy, Egypt needs more legislative changes in the political realm that parallel its economic liberalizations.⁵⁷

There is a national demand to change the civil society law in Egypt, but CSOs are generally avoiding the topic. They are not bringing legal challenges to Law No. 84 or any of its articles, forming assemblies to work on changing the law, or proposing alternative legislation. CSOs will be all the more successful at advocating for their individual causes once they take on the task of modifying Egypt's NGO law.

V. Findings and Recommendations

Based on the foregoing analysis, we conclude the following.

1. Egyptian CSOs should campaign for an improved NGO law, one that will allow organizations to advocate effectively while maintaining good internal governance procedures. A new civil society law should provide a balance between appropriate oversight and freedom of association. Such a law should include provisions that accomplish the following objectives:

- **Permit NGOs to receive donations and grants from abroad without prior permission from the government.** The government may still wish to monitor foreign funding through oversight and reporting procedures, but it no longer would have the discretion to interrupt CSO activities.
- **Remove government intrusion into internal governance procedures of organizations.** Officers and directors of associations should be free to adopt good governance practices that make them accountable to their members. The government should not interfere in the internal governance of associations by attending meetings, reviewing agendas, reading minutes, or approving board candidates.

⁵⁷ Basma Kodmani, 21.

- **Leave room for CSOs to create and adopt their own internal governance and accountability procedures.** If the government takes a step back, organizations are likely to institute procedures on their own that enhance their credibility with their members, without subjecting themselves to government retribution. Moreover, organizations should have the freedom to amend internal statutes without the state attempting to influence how they operate.
- **Assign the judiciary as a mediator between the supervising authority and civil society.** No party may take final legal action against the other unless through the judicial authority. The Ministry of Social Affairs could not deny registration, restrict board members, block activities or funding, or impose criminal penalties unilaterally. Civil society groups would be free to appeal decisions of the Ministry to an impartial court of law.
- **Clearly define concepts, terms, and procedures to be followed by civil society.** Ambiguity allows for unfettered government discretion in interpreting the law and vests too much power in the regulatory authority. Moreover, the law must be clearly written so that it cannot be manipulated to stifle views that are unpopular with the government.
- **Allow for penalties in proportion with violations and attributed to the wrongdoer.** Penalties for violations of the law should not deter participation in civil society organizations.

2. The state uses NGOs as a façade, to create a false image. Egypt talks of 15,000 NGOs working freely inside its borders, to demonstrate that it has taken large steps towards democracy and progressed on human rights issues. In reality, organizations function only to the extent that they fit within a plan set by the state. NGOs cannot escape this plan, whether they were founded by individuals or collective initiatives to serve communities. Egypt should be true to its promises to promote democracy and allow CSOs the freedom to operate regardless of their political views.

3. The international community has a role to play in improving civil society in Egypt and other Arab countries. At a 1999 a workshop of legal experts and Arab civil activists in Amman, participants established a set of principles.⁵⁸ Advancing the following principles would improve the climate for civil society in Egypt:

- **The international community should create a global body to enforce the freedom of association.** When bilateral relationships are used to pressure the Egyptian government and others on human rights issues, the influence is often perceived as inappropriate political pressure and causes great sensitivity. This intrusion allows regressive forces (religious or governmental) to position themselves as defenders of the home country against external interference,⁵⁹ while civil society is portrayed as an agent of foreigners. It would be far more effective for pressure to come from an international, multi-party framework, without the dominance of any particular countries, and with its own decision-

⁵⁸ Civil Association Regulation in Arab World, 9.

⁵⁹ Bassma Kodmani, at FN 9, p. 20.

making procedures – in other words, globalizing the freedom of civil society and human rights.

- **The international community should support a social welfare agenda in which CSOs are central.** International society must show more encouragement and interest in developing a meaningful social welfare agenda, including creating more independent, non-governmental funding sources for CSOs. This would enhance the credibility of CSOs and help protect individuals hurt during economic transition.
- **CSOs should not be grouped with terrorists and money launderers.** The international community should not buy into government propaganda that portrays civil society as an opaque sector, a haven for terrorism and money laundering, or a mouthpiece for foreign governments.
- **Donors must not punish CSOs for unfavorable political developments in their countries.** Rather, the CSOs should be treated as partners with constructive roles to play. The international community should perceive the separation of civil society and government, recognizing that the two often pursue different agendas. Relationships between donor institutions and recipients should be insulated from political developments. The most prominent example is the decision of many donors to cut financial aid to civil society organizations in Palestine after the Hamas Movement won the election. The withholding of funds was perceived as a mass punishment, which will have dramatic and long-lasting influence on civil society all over the world. This action undermines the credibility of civil society and weakens it relative to other groups, including extremists. In such circumstances, civil society organizations are in a dire need for support.
- **In the midst of global threats of terrorism and violence, governments must stay true to their democratic principles and their commitments to uphold individual rights.** Countries all over the world are backsliding. In developing countries, this can take the form of mass arrests, as have occurred in Egypt. Developed countries as well have failed to uphold individual rights. Economic and social rights, as in the French Labor Law, have been abridged. So have civil liberties in the United States. The two realms are interdependent. Without a democratic, liberal society, no meaningful, influential civil society can develop. Without an active civil society, democratic gains will be modest and fragile.

ARTICLE

Association Law in Finland

Matti Muukkonen¹

When an individual is weak, one can associate with others to accomplish the aim set collegially – Veli Merikoski (1935)²

This free-form translation from the late Professor Merikoski's dissertation *An Administrative Study of the Freedom of Association* describes the true idea of the association activity. It also shows that research into Finnish association law dates back at least to the 1930s. Unfortunately, such research has not grown widespread; nowadays, it amounts to little more than a hobby for a few researchers. International discussions likewise neglect Finnish association law. This article aims to summarize Finnish association law, in the hope that it may receive greater attention in Finland and elsewhere.

1 Freedom of association as a basic right

Finland can truly be called a promised land of associations. There are more than 123,000 associations, and individuals often join several. Thus, in a country with 5 million inhabitants,³ the membership of all associations totals more than 15 million.⁴ Club activities concern almost every Finn, because civil society is involved in almost all fields of life. In addition, the trade unions, the student unions (*ylioppilaskunta*),⁵ and many others handle public tasks given to them by law. Associations in that way serve as part of the intermediate public administration (*välillinen julkishallinto*).

Finnish association law is based on the freedom of association secured in international human rights agreements such as the United Nations' International Covenant on Civil and Political Rights (CP Treaty) and the European Council's Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), both ratified by Finland.⁶ Free association is also secured as a part of basic rights and freedoms. Under section 13(2) of the Constitution of Finland (No. 731/1999), everybody has the right to form an association, join or refuse to join one, and take part in activities organized by associations.

¹ Matti Muukkonen is Senior Assistant (Professor) in the Department of Law, University of Joensuu, Finland.

² Merikoski 1935 p. 1.

³ See National Board of Patents and Registration of Finland (NBPR) <http://www.prh.fi/en/yhdistysrekisteri.html>, and *Halila – Tarasti* 2006 p. 25.

⁴ Customers' magazine of the NBPR 2004 no. 1 p. 8, and *Halila – Tarasti* 2006 p. 27.

⁵ See Muukkonen 2007.

⁶ Ratified by acts in collection of treaties 7-8/1976 (CP Treaty) and 18-19/1990 (ECHR).

Freedom of association can so be seen as a fundamental or classic political right alongside, for example, the freedom of speech. It is also a basic concept for cooperation within civil society. The individual can better advance his or her aims, whether ideological or otherwise, by associating with likeminded others. Freedom of association and freedom of speech, in this way, are inextricably intertwined.

Finnish law views freedom of association as essentially a basic right of individuals. As mentioned, section 13(2) of the constitution guarantees the freedom to establish an association without permission. However, military-organized associations are forbidden,⁷ and firearm clubs, except hunting ones, are subject to license (Association Act, No. 503/1989, sections 3 and 4).

The constitutional provision also includes norms concerning membership in an association. Both positive and negative freedoms are guaranteed: the right to join and the right not to join. But these rights, too, have limitations. Nobody has a right to become a member of an association unless the right is secured in the association's own code.⁸ In addition, lawmakers can make membership in some public associations obligatory. One example is the public student union prescribed in the University Act (No. 645/1997, section 40); membership is automatic and compulsory. Students studying for a degree cannot resign from the student union.⁹

Finally, the constitution allows people to participate in activities organized by associations. This provision guarantees *actual* freedom of association. The rights to found an organization and sign up members are meaningless without the right to take action together.¹⁰ Section 13(3) of the Constitution also provides that freedom of association can be applied to particular circumstances by an act. "Act" here does not refer only to the Association Act: provisions concerning public associations are scattered throughout special laws, as with the student unions.

Freedom of association as a basic right is guaranteed to *everybody*. The system is based on equality between Finns and others. Here too, though, a small exception exists: section 10(2) of the Association Act provides that foreigners cannot be members of societies founded to influence state affairs. Otherwise the law does not distinguish between Finns and others.

2 Founding an association

Under section 1 of the Association Act, an association can be founded for a set of ideological or non-profit purposes.¹¹ This purpose cannot be averse to the Finnish jurisprudential concept of "good manners," or collegially accepted good practices. The

⁷ See Hämeenlinna's Administrative Court decision 22.12.2004 04/0780/1, which states that *Suomen Suojeluskunta ry* (Finnish civil guard) cannot be registered because of its connections to the former civil guard organization that was part of the Finnish Army. The Administrative Court also states that provisions of the organization's bylaws violate the Association Act.

⁸ Toiviainen 1982 pp. 63–73.

⁹ See Muukkonen 2007 pp. 2 and 42–60.

¹⁰ Bill no. 309/1993 p. 60.

¹¹ For examples of purposes and activities, see NBPR, http://www.prh.fi/en/yhdistysrekisteri/perustaminen/tarkoitus_toiminta.html.

ideological purpose usually relates to either social events or occupations. For example, trade unions play a huge role in Finland. Labor organizations participate in, *inter alia*, the preparation of social welfare and labor legislation during negotiations over collective labor agreements. Commonly this is known as tripartite cooperation.

An association is founded in a constitutive meeting. According to section 7 of the Association Act, an agreement must be prepared, including the founding charter and the constitution of the society accepted in the meeting, and signed by at least three founding members. The signatories can be natural persons, societies, or foundations. (To form a foundation, the signatories must be over 15 years old, but this provision does not apply to associations.) After the association forms, its membership can fall below three qualified signatories.¹² However, board members must be over 15 years old, and the chairperson must legally hold full powers to operate the organization.

Persons elected to positions of trust must operate within the limits set forth in the bylaws of the association. Under section 7 of the Association Act, bylaws must contain at least the following:

- 1) the name of the association;
- 2) the domicile municipality;
- 3) the purpose of the association;
- 4) the grounds for membership and fees;
- 5) the minimum and maximum number of board members and auditors;
- 6) the accounting period of the association;
- 7) the times for electing the executive board and auditors, auditing, and discharging from liability for the accounts;
- 8) the manner and the period in which the association shall meet; and
- 9) the manner in which the assets of the society shall be used if the association is dissolved or terminated.

In addition, several other provisions specify the content of the bylaws. Section 9, for example, includes the language provisions. It should be remembered that not all pertinent regulations are in the Association Act. For example, the Auditing Act, No. 936/1994, defines the minimum number of auditors and their qualifications.

As seen, the Association Act does not significantly restrict the autonomy of association, which is considered part of the general doctrine of association law.¹³ The idea is that freedom of association includes a certain extent of sovereignty as a functional society. It can be stated that the autonomy of association does not belong as a fundamental right to the association, but to the members.¹⁴ This means that the freedom to organize an association almost always rises from the rights of individuals. Further, the autonomy of

¹² Underage members might have to have permission from their caretakers; see Halila – Tarasti 2006 pp. 151–152.

¹³ Halila 1/1994 p. 7.

¹⁴ Ks. Hidén – Saraviita 1994 p. 276 and Tuori 2005/III/10.2.5.

association is generally very wide in Finnish association law. For example, a court must accept an association's interpretation of its own bylaws.¹⁵

After founding it is optional to register the association. Only registered associations, however, have legal personality under sections 58 and 59 of the Association Act. For unregistered associations, actions made in the name of the association are in fact legally actions of the members involved in the decision-making. Liability is thereby individual and shared. Registered ones, by contrast, have their own legal capacity.

Registration is made at the register office, from which the registration documents are delivered to the NBPR. Registration of a new association costs 60 euros, if the bylaws are not preliminarily checked for legality. Finally, the registration officer adds the listing if no grounds exist for dismissal. The association then appears in the association register, which is public (Association Act, section 47). After registration, an association is fully functioning.

3 Administration in associations and share of powers

The key institution in the association's administration is the general meeting. This is where the members exercise their power (Association Act, section 17). The fundamental premise is that all power belongs to the members, under the democracy principle (section 16). Bylaws can, however, delegate powers to the association's council (section 16 and 18). If this model is selected, the council shall be nominated either in the general meeting or in separate mail voting.

The Association Act regulates grounds for arranging meetings. If a general meeting is not called within the time limit set in the bylaws, every member has the right to seek the meeting (section 20). This right is not confined to these situations only. Under the law, a society must include legal remedies for its members in the bylaws, including the right to convene a meeting. According to the Association Act section 20(2), a meeting must be called if at least 10 percent of the members request it. If an extraordinary general meeting is requested, the claim shall be made in writing.

The Association Act lists certain actions that cannot be taken until they have been discussed at the general meeting (section 23):

- 1) changing the bylaws;
- 2) mortgaging or alienating real estate or property that is significant in relation to the association's activities;
- 3) voting and election orders cited in section 30 of the Association Act;
- 4) nominating or dismissing executive board members or auditors;
- 5) approving the financial statements and deciding on any release from responsibility; and
- 6) dissolving the association.

¹⁵ Halila – Tarasti 2006 p. 18.

The second requirement can be bypassed: bylaws can delegate selling, mortgaging, and alienating properties to the board.

In the general meeting, every member over 15 years old ordinarily has the right to vote (section 25). The default for the voting franchise, thus, is equal and singular. The bylaws, however, can prescribe otherwise. If the franchise can be suspended because of unpaid dues, for example, it must be mentioned in the bylaws. Indeed, without specific authorization in the bylaws, an association cannot require members to pay any fees, though voluntary payments are of course possible. This is a consequence of section 80 of the Constitution, which states that “the principles governing the rights and obligations of private individuals – shall be governed by Acts.” Statutory authority for associations is given in the Association Act. Certainly the requirement to include this provision in bylaws can be called into question: Does this provision compromise the principle of the autonomy of association? Obligations due from members should not involve public authorities. If the bylaws permit fees, the amount and form is decided by the general meeting.

Collection of the fees and other executive powers belong to the board selected either in the general or the council meeting as set forth in the bylaws. The executive board can be seen as the soul of the association. Its role is to organize activities as well as to handle administrative tasks. In political associations, board members can offer suggestions, even though it is common for the chairman of the board to have the right to reach decisions alone. Also, the board approves new members unless the bylaws stipulate otherwise (Association Act, section 12).

4 Public associations and the freedom of association

So-called public associations are unique. According to section 2(2) of the Association Act, the Act does not apply to an association organized by law for a special purpose.¹⁶ Such an organization is known as a public association.¹⁷ Autonomy of association can suffer in these organizations,¹⁸ particularly the freedom not to join the association as well as the proprietary right secured in section 15 of the Constitution.

When the constitutional basic rights and freedoms were reformed, it was stated that the rights and freedoms can be limited under particular conditions. According to the preliminary bill, several criteria must be met.¹⁹

First, any restriction must be made by an act, not a decree or administrative order.

Second, the restriction must be strict, specific, and clear from the language of the act.

Third, any restrictions must be minimal as well as proportional to the objectives pursued. This means that restriction should be the last resort. Government officials’ duty to protect basic rights (Constitution, section 22) obligates legislators to seek alternatives wherever possible.

¹⁶ See also the presentation by Halila 2004 concerning associations organized by law.

¹⁷ Halila – Tarasti 2006 pp. 22–23 and 88–91.

¹⁸ Muukkonen 2007 p. 1.

¹⁹ See Report of the Constitutional Committee (RCC) 25/1994 p. 5 and Bill 309/1993 pp. 29–32. Also see Viljanen 2001.

Fourth, the restrictions cannot conflict with international human rights agreements.²⁰

Finally, even if these conditions are met, the restriction cannot impinge upon the core of the basic right.

The last condition is troublesome, because the boundaries of the core remain unclear. For example, the freedom not to join an association – the negative form of freedom of association – can be restricted in public associations. From my point of view, this negative freedom should be recognized as central to freedom of association.²¹

Public associations have five types of memberships. First, *voluntary* membership is comparable to membership in a private association. Second, some public associations use *contract-based* membership. Third is a type described by van Veen: *de facto* membership, such that even though membership is formally optional, other factors make it obligatory in practice.²² Fourth, *automatic* membership allows the member to resign. The final form, by contrast, *automatic and compulsory* membership, does not permit resignation.²³

The negative freedom of association is most restricted in the last two types of membership. Under section 6 of the Association of Forest Owners Act, for example, all forest owners belong to the society unless they are refused membership. They can resign from the association – yet resignation does not extinguish their duty to pay the forestry levy due under section 6(3).

In university student unions, membership is both automatic and obligatory. The European Court of Human Rights (ECtHR) in *Association x. v. Sweden* found a similar system with automatic and compulsory membership acceptable. The decision rests on the following grounds: 1) The societies are not private associations, but, given a university's administration tasks, public institutions which the ECHR does not cover. 2) Student unions do have democratically organized organs, and they respect freedom of speech. 3) The students who appealed were not expelled.²⁴ Later European Commission of Human Rights (ECmHR) have reaffirmed this interpretation.²⁵

When dissecting the prejudicial effect of these cases on Finnish Association law, one must remember the influence of the basic rights reformation. The negative freedom of association was for the first time written in the Constitution. My opinion is that these precedents no longer apply to the automatic-membership system. More suitable ECtHR cases are *Chassagnou and others*²⁶ and *Köll*.²⁷ In *Chassagnou*, whose facts are analogous to those raised by the Finnish student unions, the court held that membership in an ideological

²⁰ See RCC 25/1994 p. 5.

²¹ Muukkonen 2007 p. 59.

²² Van Veen IJNL 2000 p. 3.

²³ Muukkonen 2007 pp. 54-58.

²⁴ See ECtHR 6094/73 *Association x. v. Sweden* 6.7.1977.

²⁵ See ECmHR 16501/90 *Halfon v. United Kingdom* 12.4.1991 and ECmHR 32721/96 *M.A. v. Sweden* 14.1.1998.

²⁶ See ECtHR 25088/94, 28331/95 and 28443/95 *Chassagnou and others* 29.4.1999.

²⁷ See ECtHR 43311/98 *Köll* 4.7.2002.

public association could not be obligatory. The court also said that such terms as *public association* and *institution* have universal meanings, and a legislature cannot attempt to redefine them for its own purposes. Interpretation of ECHR is the duty of ECtHR, which means that a government cannot adopt domestic legislation that narrows the application of the articles.²⁸ Under these circumstances, it is unclear what stand ECtHR would take on the matter of coverage with regard to Finnish student unions. The ideological dimension defends the stand expressed in *Chassagnou and others*, but the long-term view favors a less human-rights-based interpretation.

5 State of association law in Finland

Overall, freedom of association is well secured in Finland. The Constitution provides far more protection than international agreements do. For example, the Constitution explicitly recognizes the negative freedom of association.

However, the Finnish legal system has countenanced some exceptions to the negative freedom of association, including in the student unions in universities as well as the similar unions in high and vocational schools. In the future these errors may be fixed.

Beyond infringements of the negative freedom of association, I cannot see any problems in Finnish association law. Of course it is always possible to debate how much public authorities ought to intervene in civil society. When third sector organizations perform outsourced municipal tasks, regulation may be essential to ensure that the associations are functioning legally. Fortunately this is addressed by the good administration provisions in the Constitution (sections 21 and 124) and general administration law. For example, according to section 2(2) of the Administrative Act (434/2003), the Act applies to associations exercising public administrative tasks. Accountability, thus, remains even when government privatizes public tasks.

REFERENCES

(translations by the author)

Bill 309/1993: Reformation of the basic rights and freedoms in the constitutions.

Customers' magazine of the National Board of Patents and Registration of Finland (NBPR) 2004 no. 1

Halila, Heikki (1994). *Yhdistysoikeus tutkimuksen kohteena* (Association law as a target to research). *Lakimies* 1/1994 pp. 3–7.

Halila, Heikki (2004). *Lainsäädäntötoimin järjestetyt yhdistykset* (Associations organized by law). *Juhlajulkaisu Pekka Hallberg. Suomalainen lakimiesyhdistys, Vammala* pp. 36–48.

Halila, Heikki – Tarasti, Lauri (2006). *Yhdistysoikeus* (Association law). Talentum, Helsinki.

Hidén, Mikael – Saraviita, Ilkka (1994). *Valtiosääntöoikeuden pääpiirteet* (Basics of constitutional law). Lakimiesliiton kustannus, Jyväskylä.

²⁸ Ibid.

- Merikoski, Veli (1935). *Hallinto-oikeudellinen tutkimus yhdistymisvapaudesta* (An administrative study concerning freedom of association). Otava, Helsinki.
- Muukkonen, Matti (2007). *Ylioppilaskunta oikeusjärjestyksessä* (The student union in the judicial system). Unpublished licentiate thesis. University of Joensuu.
- Report of the Constitutional Committee 25/1994 concerning Bill 309/1993.
- Toiviainen, Heikki (1982). *Yhdenvertaisuus yhdistyksissä* (Equality in associations). Lakimiesliiton kustannus, Vaasa.
- Tuori, Kaarlo (2006). *Yhdistymisvapaus* (Freedom of association), in Hallberg et al. (eds.), *Perusoikeudet* (Basic rights and freedoms). WSOYpro, Helsinki, www.wsoypro.fi.
- Viljanen, Veli-Pekka (2001). *Perusoikeuksien rajoitusedellytykset* (Restriction prerequisites of the basic rights and liberties). Werner Söderström, Vantaa.
- Van Veen, Wino J.M. (2000). Negative Freedom of Association: Article 11 of the European Convention for the Protection of Human Rights. *International Journal of Not-for-Profit Law*, vol. 3, issue 1, September 2000, http://www.icnl.org/JOURNAL/vol3iss1/ar_wv1.htm.

ARTICLE

Social Change and the Connected Age

Allison H. Fine¹

The women of Kuwait successfully won the right to vote in 2005 by secretly using their personal digital assistants beneath their burqas to send e-mail messages to Kuwait's all-male legislature. Last fall, Rock the Vote and Facebook teamed up to enable young people to register to vote through Facebook, the leading online social-networking site.

In myriad ways, by stealth or sunlight, people around the world are creatively using new digital media to connect with one another, influence their communities, and catalyze social-change efforts. The interactions that people have with one another through websites, cell phones, chat rooms, personal digital assistants, iPods, and other gadgets and gizmos have transformed society from the information age to the connected age.

These digital tools, called social media, are important not for their wizardry, but because they are inexpensive and easy to use and they allow individuals and small groups to bring about big changes. Connectedness does not come from technology but is facilitated and strengthened by it.

The greatest challenge for nonprofit organizations and their leaders in the connected age is recognizing that using social-media tools is easy compared with adopting a new mindset for social change.

Today, nonprofit groups are part of a larger network or ecosystem of people, organizations, resources, and information. Relying on old-fashioned, top-down management approaches for setting activist agendas and designing fund-raising and volunteering efforts will lead inevitably to disappointing results.

Power is shifting from institutions to individuals throughout society. We have seen what happens when people can barter and sell goods without a middleperson on eBay, and when we can watch what we want, when we want, through YouTube.

The same sorts of shifts are happening quietly in the nonprofit world. Anyone can create and post a video of what they think their congressional representatives do as part of the "Congress in :30 Secs" campaign organized by the Sunlight Foundation. Volunteers can document the connections between campaign contributions and legislation as part of the Genocide Intervention Network. Donors can pick a school and a specific project to support as part of the DonorsChoose website.

Successful connected-age organizations are those that facilitate broadly representative networks of social activists — not necessarily organizations with the

¹ Allison H. Fine, <http://afine.us>, is a senior fellow at Demos: A Network for Ideas and Action, a New York group. She is the author of *Momentum: Igniting Social Change in the Connected Age*. This article is reprinted with permission of *The Chronicle of Philanthropy*.

biggest membership lists or the most money in their coffers. These days, young people in particular are not likely to join behemoth membership organizations. Instead, they go online to express their views and instantly connect with individuals and communities interested in their issues and concerns. They also self-organize for social action, as so many did in joining the immigration marches last spring.

The key ingredient in all these efforts is that they spread the workload — no single person or organization is doing everything — and all the participants are given meaningful things to do. And unlike traditional tools, social media costs almost nothing to use to geometrically increase the number of people who can connect to a cause or an organization. Activists themselves are charting the course for what they think needs to happen, and not passively waiting for institutions to lead the way.

Green Media Toolshed recently unveiled MediaVolunteer.org, a website where volunteers can spend as little as 15 minutes at a time helping to create and maintain a directory of journalists interested in environmental causes.

Volunteers contribute meaningfully on their own schedule, and the grass-roots environmental organizations using the directory have access to an updated resource that they never could have afforded on their own. Time is well spent, power is shared, money is saved, and the organization is accomplishing a key part of its mission.

Too often, nonprofit groups fall into a power trap, where our actions and our deeds suggest that donors who give the big money are more important than the social activists who do the work.

As a nonprofit leader myself, I fell into this trap. Pressure to demonstrate an immediate return to donors leads to a culture where what matters most is pleasing grant makers instead of focusing on how we can involve activists in meaningful and effective ways.

In a connected world, power is defined entirely differently. It comes directly from an organization's supporters; the more numerous and more diffuse they are, the more power they generate. And these supporters, when they are invited to participate in all facets of an organization's work in meaningful ways, can become a loyal network of donors as well.

Care2 is an online site that connects more than six million people, hundreds of environmentally friendly businesses, and more than 150 environmental organizations.

The Care2 website offers a wide variety of ways for its members to meet one another, learn more about issues, shop online at stores that provide donations to environmental causes, find environmental jobs — and donate money. As the website states, "We're just here to facilitate and empower all of these amazing, diverse efforts. It's incredible what individuals and organizations can accomplish when they have the right tools."

Meaningful interactions like those on Care2 are what many Americans yearn for. As a result, nonprofit organizations need to examine the way that they are interacting with their volunteers, board members, clients, and donors to offer those kinds of experiences.

The incessant one-way push of broadcasting messages and fundraising that treats donors and board members like passive consumers of information and ATM machines is a vestige of last century's information age. Connected activists strive to overcome the listening deficits that disable so many organizations.

Listening means connecting people to one another, to resources, and even to other organizations. It includes a willingness to change as a result of what is said. This can feel burdensome, but it is, in fact, the heart and soul of social-change work.

Activists need to have authentic two-way conversations with people interested in our work. The reality needs to match the perception that organizations truly want people to participate — not just robotically join their campaign or give a donation, but voice an opinion, ask a question, find a like-minded soul, and even do something heretical in activist circles of recent years: disagree.

Perhaps more than anything else, the key to success in this new era is a shift in control from a few leaders at the center out toward the many people at the edges who want to contribute meaningfully, but who are, for the most part, now locked out of the process.

When power is pushed out to the edges, more people are involved in developing strategy. They can tell people in their own social networks about issues and organizations and become powerful advocates and actors in their own right — if the organization is willing to share the reins.

It feels counterintuitive to suggest that decentralizing decision making will increase rather than decrease the power of nonprofit organizations.

But more progress is made more rapidly when organizations move to facilitating rather than controlling social-change efforts. We must learn to use our leverage more and lift less, to listen better and act smarter, to share and participate, not control and command. If nonprofit groups — with the help of social media — change their approach, they can create a vast power surge for social change. By not doing so, we risk becoming irrelevant and failing the people who count on us to make the world a better place.