PART 1

Associations under scrutiny

The right to form, join and participate in NGOs

"For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
(b) To form, join and participate in non-governmental organizations, associations or groups..."

Article 5 of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly

The case of Tunisia

Strategies and methods used by the Tunisian authorities

The constitution and activities of NGOs in Tunisia are theoretically governed by the Act of 7 November 1959, amended on 2 August 1988 and 2 April 1992. This law does not concern the constitution and activities of political parties and groups, which are governed by the Act of 3 April 1988. In reality, however, the Public Prosecution often uses the law on associations to prosecute members of unauthorised political parties or groups.

The Right to Set Up Associations: The Law versus Reality

Brief summary of the setting up of Tunisian associations, according to the law:
According to the Act of 1959, all associations are private law conventions, governed as to their validity by the general principles of the law, applicable to contracts and obligations.
Unlike the law on political parties, the creation of associations is theoretically submitted to a system of declaration, and not under the authorisation of the Home Office Minister**.**
People who want to set up an association must file the declaration of the association and the list of its founding members with the government or delegation, which depends hierarchically on the Home Office. **A receipt of acknowledgement will be received.**
The association will only be legally constituted after a period of three months, after which it will be able to start its activities. Before that, it is necessary to comply with the formality of having the intention to form an association published in the *Official Gazette*.
If the Home Office wants to oppose the creation of the association, they must, before the end of the three-month time limit, make a **refusal decision that must be motivated and notified to the interested party.** One can lodge an appeal against this decision before the administrative court.

The setting up of Tunisian associations in reality:
In reality, the setting up of independent associations faces different obstacles. In fact, the administration acts as if the creation of associations depended on prior authorisation. All associative activity, without such authorisation imposed de facto by the Home Office, is considered a criminal offence. Here are a few examples:

- Despite an association having followed to the letter all the procedures of the constitutive declaration, the public authorities **refused to give the receipt of acknowledgement** to the interested parties, which make it impossible to fulfil the obligation to publish the intention to create an association in the *Official Gazette*. A recent example is the Gathering for an International Alternative for Development (RAID, or "Rassemblement pour une Alternative Internatio-

nale de Développement"); without the receipt of acknowledgement and the publication in the *Official Gazette*, the association has no legal existence.

• Civil servants have been known to **refuse the deposit of a file**, which only leaves the informant with the option of sending it by mail. This in itself does not constitute a procedure provided for by the law, and puts the members of the association on the wrong side of the law.

• The administration has been known to **send the receipt of acknowledgement very late** (case of the CNLT). Even in this case, the Home Office can oppose the creation of the association. Its decision must be motivated by the violation of one or more dispositions of the law on associations. Please note that in the case of the CNLT, the minister who decided to reject the file was not required to communicate the motives behind his decision.

Article 10 of the Act stipulates that all associations created in violation of the law will be declared non-existent by the competent Court, which will adjudicate on the request of any interested party, the Home Office, or the Public Prosecution. In fact, however, the public authorities never use this procedure so as to not risk a contradictory verdict by the Court that would demonstrate the violation of the law by the Administration.

The Home Office uses the repressive procedures of articles 29 and 30 of the law, which stipulate:

Art 29: Any violation of the provisions of this law will be sentenced to one to six months in prison or a fine of fifty to five hundred Dinars.

The people who favoured the meeting of members of an association recognised as non-existent or dissolved will be subject to the same sentences.

Art 30: Anyone participating in the direct or indirect maintenance or reconstitution of associations which are recognised as non-existent or dissolved will be sentenced to one to five years in prison, and a fine of between 100 and 1 000 Dinars.

On the basis of these two articles, thousands of Tunisian people have been prosecuted, judged and imprisoned as members of unauthorised civil associations or political groups.

The right to join and participate in associations

This right has met a lot of obstacles written into the law or illegally imposed by the Home Office:

A legislation which restricts the freedom of action of the Defenders:

The law (modification of articles 1 and 2 of 2 April 1992) states that associations, according to their activity and their aim, must fall into one of the following categories: feminine association, sports association, scientific association, cultural and artistic association, charity association, development association, association of friends, and finally, association of a general nature. The founders of an association must mention its category in their constitutive declaration.

• An association of a general nature cannot turn down **the application** of any person who accepts its principles and decisions, unless the person does not enjoy all of his civic and political rights, or his activities and practices are incompatible with the aims of the association. In case of a dispute, the applicant may turn to a civil court in order to make the association accept his enrolment.

According to the same provision, the leaders of an association of a general nature cannot be in charge of, or belong to, the executive committee of political parties. This prohibition applies to the management of the association of a general nature, as well as the management of the sections, divisions or related organisations, or secondary groups belonging to the organisation.

In 1992, this provision of the law targeted the Tunisian Human Rights League (LTDH, or "Ligue Tunisienne des Droits de l'Homme"), an independent association created in 1977. The aim was to force the association to issue membership cards to the members of the party in power (the RCD) so as to prevent members who were leaders of political parties, or of democratic political groups, from being elected to the different structures of the LTDH, which would have put it on the wrong side of the law. This is precisely what happened to the LTDH, which refused to obey this law. Between the end of 1992 and mid 1993, it had become unlawful by decision of the Home Office. The magnitude of the reaction to this decision, both nationally and internationally, caused the decision to be quashed by the administrative court, for "non-respect of the rights of the defence" by the Home Office Minister of the time, Mr Abdallah Kallel.

• **Any change of structure or people in charge of an association** must undergo the same formalities as those applied to constitute the association.

A few examples: Any modification to the status of the association while it is active is submitted to the same rules that applied to its initial constitution.

This dissuades independent associations which are legally constituted from ever changing their status so as to not submit themselves again to the Home Office which will have the same powers of intervention as when the association was constituted.

Any association that is legally constituted is legally bound to declare to the Home Office and the concerned governor any modifications made in its administration or management.

Any association must also declare all creations of sections, divisions, establishments or secondary groups functioning under its management, or somehow connected with it.

Any change in the management or addresses of its sections, divisions, establishments or secondary groups, must also be declared.

After the Fifth Congress of the LTDH on 28 and 29 October 2000, the services of the Tunisian government refused to give Mokhtar Trifi, President of the association, the receipt of acknowledgement concerning the declaration of new members of the Executive Committee.

• According to the law, in a case of extreme emergency and so as to avoid disturbance of the public order, the Home Office may pronounce, by a reasoned decision, **the temporary closure of the offices** belonging to or used by an association. It may also **suspend all the activities** of this association, as well as all meetings or gathering of its members. This closure and suspension of the activities of the association must not last longer than 15 days. After this period of time, and for lack of civil legal proceedings for its dissolution, the association recovers all its rights.

Measures which are in reality detrimental to the associations:

• The Home Office has been known to **close down** the offices of associations and to prevent its members from meeting, with no respect for legal procedures.

Example: On 27 November 2000 around 6 p.m., the Home Office closed the offices of the LTDH in Tunisia using considerable police forces, and without any written notice. On the same day, the judge in chambers of Tunisia took a temporary decision - in a civil case started by four members of the LTDH, and in which the Home Office was not represented - according to which, "the attributions and activities of the Executive Committee of the LTDH were temporarily frozen". But no mention was made of this decision in the closing down of the LTDH offices. Following this, the meetings of the Executive Committee in private houses were prevented by strong police forces, even though the temporary judgement cited above did not provide for this.

- It is practically **impossible** for the sections of independent associations **to rent premises**. The owners refuse to sign contracts because of harassment and pressure (economic retortion of different forms, administrative retortion such as the withdrawal of authorisation to perform certain activities, etc.), and fear of being branded an opponent by the political police.

Thus, the LTDH, which has 41 sections, has only one central office in Tunisia, and two offices for its sections (in Bizerte, personal premises put at the disposition of the Vice-President of the section, and in Sfax, an office which the section was recently able to rent). As a consequence, the section, which numbers about one-hundred members on average, is unable to organise meetings for lack of appropriate premises.

- **Private meetings** of independent associations are either prevented through the deployment of police forces, or aborted, cancelled as the result of continuous harassment of the association's militants, or sympathisers and citizens who get in touch with them, or by the permanent presence of police officers outside the offices, which dissuades people from going in.

The meeting of the National Council of the LTDH on 2 December 2000 in Bizerte, for instance, was prevented by putting the whole town under a state of siege.

The meetings of the Executive Committee of the LTDH are still forbidden, even in private premises owned by its members.

On 29 January 2001, the meeting in support of the LTDH organised by the Tunisian Association of Democratic Women (ATFD, or "Association Tunisienne des Femmes Démocrates") was forbidden by police forces.

- **The organisation of public meetings** is very difficult. Harsh methods are used by the public authorities to outlaw or prevent these meetings. They may be prohibited by the use of police force with no explanation or by systematic refusal to rent out public rooms (community arts centres, youth centres, meetings rooms in town halls, etc. are only available to associations close to the public or powers); pressure on the owners of private spaces to dissuade them from making their premises available by forcing them to give fallacious pretexts (leaks, urgent work, etc.)

- The militants and the members of independent associations are systematically **put on file by the political police** as opponents. Many of them are constantly or very often harassed by the police, in their private life or at work. They are subjected to a daily and obvious trailing, which affects their lives and puts them under permanent stress, especially when their children are approached in the street and interrogated about their family life, or when, in the absence of their parents, they are subjected to questioning on the

phone. Family members and close friends are harassed, the Internet is cut off, and mail and faxes are intercepted; they endure economic retortion, are prevented from getting work in the administration or in public companies, and suffer from unfair dismissal, etc.

Anouar Kousri,
Lawyer and Vice-President
of the L.T.D.H.

Freedom to meet and assemble peacefully

"For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
a) To meet or assemble peacefully;"

Article 5 of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly

The case of Burkina Faso

Interview with Halidou Ouedraogo, President of the Burkina Faso Movement for Human and People's Rights

The Observatory: The death of journalist Norbert Zongo on 13 December 1998 moved the country, and caused a massive mobilisation of the entire population to demand clarification of this murder. What is the position today?

Halidou Ouédraogo: The situation has sharply deteriorated.
Thanks to pressure exerted by the international and national community - united within the Collectif d'organisations démocratiques de masse - an independent commission was finally set up in February 1999 to investigate the death of Norbert Zongo. When this commission finished its work at the beginning of May 1999, the authorities decided - "in order to blur the truth" - to create three other commissions. The first would responsible for investigating all the crimes committed over the last few years which had not been resolved, and the other two would look into political reform and national reconciliation respectively, none of which came to very much.
In any case, the Minister for Security tightened the rules on demonstrations which culminated in a ban on demonstrations, meetings, and the right to hold processions anywhere in Burkina Faso on 13 December 2000, according to a decree introduced on 6 December 2000.

The Observatory: What is the purpose of this decree?

Halidou Ouédraogo: To ban collective activities just before the anniversary of the death of Norbert Zongo on 13 December.

The Observatory: Is this the first time such strong-arm repression of demonstrations has been implemented?

Halidou Ouédraogo: It is the first time the authorities have banned the organisation of demonstrations in this way; they have even banned the International Festival for Press Freedom, dedicated to Norbert Zongo and other repressed journalists. Demonstrators have been prevented from approaching the spot where Norbert Zongo was assassinated. In the provinces, some branches of the Burkina Faso Movement for Human and People's Rights (MBDHP) have been set on fire. Some MBDHP activists have received threats.
In the capital, the atmosphere is very tense; the 6 December decree is really creating a "state of emergency" atmosphere. Today, in schools and at the university, rapid reaction forces continue to brutalise students with highly toxic tear gas grenades with a range of 200 to 300 metres.
But what is very encouraging is that the more we regress in terms of freedoms, the more the population gets involved.

The Observatory: What kinds of threats have been made against MBDHP activists?

Halidou Ouédraogo: In ten out of the 45 provinces, activists have been harassed by the gendarmes, the police, and the party security forces, which repeatedly showered them with insults and threats: "You aren't from the province. Go home. You are foreigners, blocking the hospital, the school, the post office and the markets." This kind of language is here now; we seem to have caught the Ivory Coast syndrome.

Faced with this situation, we have organised petitions, solidarity campaigns, etc. For example, in some places, civil servants have rallied behind our activists and have replied: "We will all leave the province". Also, all the services in the province were shut down, and the State was forced to negotiate.

In some cases, repression has been more violent. Some of our officials' homes have been set on fire, telephones are being permanently tapped, people are followed, death threats are given, attempts are made to kidnap the *Collective's* officials and their families, and even their children are being arrested and subjected to inhuman treatment. The daughter of the Secretary-General of the General Federation of Burkina Faso Workers, for example, was arrested, chained to a police gate, and left on a rubbish dump for 48 hours.

We, as officials, have been arrested and beaten up. Eight of us were taken to court for "demoralising the army, inciting the army to revolt, and endangering state security". We were grateful for the show of international solidarity which took the form of 117 lawyers present at our trial in December 1999.

The Observatory: Is the right to demonstrate guaranteed by the Constitution?

Halidou Ouédraogo: Yes. Article 9 of the Constitution guarantees it, but the government prefers to use methods similar to those used in a state of emergency in order to completely block the freedom of assembly or association. The 6 December decree is insidious; it prevents us from meeting or calling activists to meetings by forbidding posters, and radio or newspaper announcements. They even stop us from receiving friends at home. Professor Joseph Kizerbo and myself were forbidden to receive people because such occasions were seen as collective meetings. It is hard to imagine that, in the 21st century, citizen associations are prevented from meeting and consulting each other.

We asked Blaise Compaoré to repeal the 6 December decree which constitutes a grave violation of the right to meet and assemble.

11 January 2001
Statements collected by
Emmanuelle Duverger and
Juliane Falloux

The right to seek and publish information

"Everyone has the right, individually and in association with others:
a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; "

Article 6 of the Declaration on Human Rights Defenders
adopted by the United Nations General Assembly

The case of the Democratic Republic of Congo

Interview with Gilbert Kalinde (Lotus Group, based in Kisangani - a zone controlled by rebel forces), Dave Banza (President of ASADHO, which offices have been closed and which members have had to go underground clandestine), and Paul Nsapu (President of the League of Electors, based in Kinsasha)

The Obervatory: A state of war has existed for over two and a half years in the Democratic Republic of Congo. On a daily basis, what impact does this situation have on your respective organisations, especially on the investigative side of your activities?

Gilbert Kalinde: It is a difficult "territory" to work in, being that it is under the control of the rebel forces of the "Congolese Rally for Democracy" (RCD) - insofar as the rebels think that we want to block their advance towards Kinshasa. They say that the information contained in our reports is harmful to both their cause and their supporters. The reports published by human rights associations are not well received by the authorities, because we make public their continuing abuses of power. Personally, I have been detained in the middle of town and publicly humiliated. They took me into a guardroom where they interrogated me about our work relating to the defence and protection of human rights.

The Obervatory: When you try to gather information, what extra precautions do you have to take?

Gilbert Kalinde: The situation is becoming more and more difficult. Since the war, it has been difficult to identify who is in charge because, on the one hand there are the leaders of certain countries whom the Kinshasa authorities describe as aggressors, and on the other hand there are the Congolese who work with them.

Dave Banza: In the part of the territory controlled by the Kinshasa government, the situation is still the same: there are massive violations of human rights and the situation is going from bad to worse. Right now, the government is gaining a few small diplomatic victories, especially with the U.N. and the Security Council, which has asked the aggressors to withdraw. This reinforces government policy. Whereas the authorities wish to convey the image of a government excelling in the domain of human rights, in practice it is the exact opposite.
The denunciation and publication of these violations are very badly received. Various arrests spring to mind, especially that of Laurent Kantu Lumpugu of the "Association of Penitentiary Executives", who wanted to make public the death sentences handed down by the military. It is very difficult to work in this field. The most well-known activists are unable to gather information from

the general population, and access to the prisons is becoming increasingly blocked. Our inquiries have to be made under cover. What is more, the publication of news is becoming more and more complex and perilous. Fortunately, our international office facilitates the dissemination of both our reports and information on stands we have taken. The member associations of the "Committee for Human Rights Now", which include, among others, the ASADHO, the Black Togas, the League of Electors, the AMOS group as well as the CDDH (The Committee for Democracy and the Defence of Human Rights), announced their support for the Lusaka Agreements as soon as they were signed. And yet, the protagonists have never really hoped for the enforcement of these agreements. For us, it is the most effective way of protecting our members on the ground.

So the authorities are watching the defenders. All movement within the country or in the provinces is strictly monitored by the security services. Victims who have the courage to bear witness to the human rights violations are regularly interrogated. Recently, the NGOs have been able to spot 'infiltrators' during their meetings.

Paul Nsapu: As for me, I am systematically searched both when leaving and returning to the country. Our offices are monitored and sometimes sabotaged, the telephone is continuously breaking down, and frequently we are without electricity, which prevents us from working. We have to find other ways.

Right now, you can feel the fear within civilian society. Under this pressure, some of the civilian leaders have become members of the government; this hijacking strategy is used by the government to "cut off the branches which nourish civilian society".

The conditions for research and checking information have changed: the dissemination of information as it was done before the war is totally different from the publication of information today. In a democratic state, it is possible to approach the authorities to ensure that all necessary measures are taken; activists can use all of the classical means of denunciation: urgent appeals, press releases, etc.

In a conflict situation, however, everything becomes complicated, for the authorities are no longer willing to give traditional replies to the questions we put to them. The authorities make the following points: "We are in a state of war, therefore the abuses committed are linked to the state of war. We do not have to justify ourselves". If anybody criticises them, that person becomes an accomplice of the aggressor.

The defenders are obliged to develop other means of gathering, processing and publishing information.

Dave Banza: Human rights defenders find themselves propelled into situations where relations with the authorities have broken down (either the Kinshasa governmental authorities or those of the occupied territories). This situation means that we have to organise ourselves in a different way: for the ASADHO, we have regrouped on local, national and international levels. When our relationships with those in power are particularly tense, we recommend that our members should simply document cases and prepare press releases; the publicity and the dissemination of these documents are carried out by the international office. Even in these conditions, the authorities hound our activists.

Paul Nsapu: But for those who find this division of activity unacceptable, things are becoming

dangerous. Activists are victims of reprisals. Then the defenders are forced into exile. It is a difficult choice which cuts you off from your base and eventually weakens the movement. And during this time, the government continues its policy of repression: executions, arrest, and so forth. We need to consider very seriously the conditions of exile and their impact.

This policy has repercussions which go beyond the normal scope of relations between those in power and the human rights organisations. The population is divided as well. Sometimes there are propaganda campaigns which set out to brand our organisations as spies or objective allies of the "enemies of the Congo". People spread it around that we were only able to obtain the information which we propagate because we are spies, or that we have been manipulated by the other camp.

In the context of war, certain traditional aspects of our mandate, like observing trials, or upholding the rights of the defence, begin to look like 'disinformation', whereas we are only carrying out our mission of denouncing injustice and promoting human rights.

Gilbert Kalinde: Before the war, the machinery of the system was well known. Now it is more difficult, because the whole structure of society has broken down; services no longer function normally, and nobody knows who does what any more.

Dave Banza: Methods of repression against defenders have changed from directly confrontational to more pernicious. Our private lives are used as a tool to make us ineffective, and put us at a disadvantage. These methods are devastating for those who are close to us. The authorities do not hesitate to use private journals to dispatch internal information of the organisations, or to distort discussions between the organisations and associate members. These tactics aim to damage the reputations of the organisations and their directors.

Paul Nsapu: That's quite true. They have created "activists" who try to get close to us and take over our groups. The mission of these individuals is to rummage into our private lives. Unfortunately, at an international level, they do find some partners, some support. For example, in the context of the defence of civil and political rights, it is the role of the League of Electors [my organisation] to be in contact with politicians, whereas this is looked upon as a betrayal. We are accused of doing politics on behalf of politicians who are in exile. We are associated with politicians who want to take power, and so it becomes easy to attack us.

There are very few of us who have stayed in Kinshasa, as the situation is very difficult. At the moment they are examining every way of infiltrating the committees of the League.

Gilbert Kalinde: The Congolese Rally for Democracy is also changing its methods at the moment. They no longer dare attack us directly. Instead, they obstruct our activities indirectly.

Paul Nsapu: From a personal point of view, the pressure is very great. For example, I've had to move houses four times, as all my landlords are frightened. People tell them that I am a dangerous element who is selling the country to the West in the guise of a human rights activist. They are warned that their house will be destroyed if the repressive regime cracks down on me. The owner then says to me: "With your militant

activities, I'm afraid of losing my bit of property". The repercussions on the family and on morale are considerable. There was a time when my children were questioned to find out where I was, whom I went around with. That hasn't happened so much recently.

They use these methods to harass both the organisation and family. This has affected the human rights movement. Thus, we try to recruit people who are not in the public eye. For example, there was the case of Jeannine Mukanirwa: while she was returning from the African Commission on Human and Peoples' Rights in Cotonou, she was arrested and all her documents were seized. They know very well who our contacts were, and they let us know that they knew. "You've been plotting. We've not yet received the order to pull you in, but it will come one day". That is the type of discouraging threat we are getting. These are the methods they have been using recently.

11 January 2001
Statements collected by
Emmanuelle Duverger and
Juliane Falloux

The right to know, hold information and communicate with NGOs and IGOs

« Everyone has the right, individually and in association with others,
a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems; »

Article 6 of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly

« Everyone has the right, individually and in association with others, at national and international levels:
c) To communicate with non-governmental or intergovernmental organisations. »

Article 5 of the Declaration on Human Rights Defenders adopted by the United Nations General Assembly

The case of Uzbekistan

Analysis by the Human Rights Society of Uzbekistan

The Uzbek authorities use all conceivable means to stop the development of human rights. To this end, the Human Rights Society of Uzbekistan (HRSU) is an organisation that they still refuse to register.
The authorities go to great lengths to confiscate literature relating to human rights, even though such confiscations are illegal. They say the texts and documents that HRSU possesses are anti-constitutional, and that includes United Nations documents. It is on this basis that they intend to build a "democracy" with the aid of the security services.
These schemes are not just the work of the police, the justice system, and the executive, but of the entire government administration.
The persecution of the HRSU and its members is constant. Below are some examples of violations of our rights recently perpetrated by the National Security Services (NSS):
On 7 October 2000, the Tashkent post office confiscated two magazines addressed to the HRSU, the first and second editions of the review *Harakts*. They were declared "anti-Constitutional" and the Ministry for Culture Commission ordered them to be destroyed. Although the Attorney-General of the Republic overturned the Ministry's decision, the HRSU was not permitted to receive the documents.

On 22 December 2000, the HRSU tried to hold its third congress (the Kurutlay, which meets every three years and determines the organisation's activities), and for the fifth time requested official recognition of the association. The Hokimiyat (Town Hall) refused to allocate a venue for the meeting, and the request for recognition was once more rejected.

On 15 February 2001, **Tulkun Karaev**, a member of the Kashkadar'ya regional branch of the HRSU, was detained at Tashkent Airport by security services militia when he was returning from a human rights seminar organised by the Ekateringurg section of Memorial. The members of the militia declared the following documents anti-constitutional:
- the book by Ernst Neyizvestniy *Neyisvestniy speaks*;
- the review *October 30* , no.10, 2000;
- an appeal by different NGOs (Kyrghyzstan Committee for Human Rights, HRSU, Memorial, etc.): "Civil war in Uzbekistan can still be avoided", destined for the governments of Uzbekistan and other central Asian States as well as international organisations;
- "The United Nations Mechanisms for the Protection of Human Rights", a document produced by the International Helsinki Foundation for the Defence of Human Rights.
The militia called the individual responsible for the prevention of extremism and religious terrorism; this person threatened to put Tulkun Karaev in prison. Tulkun Karaev was only allowed to phone the HRSU after a three-hour interroga-

tion. He was released that evening, and his passport and documents were returned to him.

Elena Urlayeva, who works at the HRSU, and who collects victims' testimonies to send to the various United Nations Committees, was arrested in Saylgoh Square, Tashkent, on 19 February 2001 at 11.40 a.m., by four militia personnel (Abdurashidov SH.U., Mahkamov U.R., and Haydarov). At the militia's headquarters, the militia officers explained to Elena that they were going to take legal proceedings against her, and seek a sentence of 15 years of imprisonment for the possession of the following documents (which were confiscated and put on record as being anti-constitutional):
- a report of 16 February 2001 by Ruslan Shapirov, who works for the HRSU press office, entitled "You Need to be Kept in Fear";
- the United Nations International Covenant on Civil and Political Rights;
- a letter from the International Committee of the Red Cross dated 9 January 2001 (TAS 01/41);
- the individual (and confidential) complaint by Stephanov Konstantin Yur'Yevitch to the United Nations Committee for Human Rights in Geneva (by stealing this document, the officers violated the confidentiality of the correspondence; they also made a note of Stephanov K Yu's whereabouts stating their intention to go after him);
- a document by the United Nations Committee Against Torture from 13 November 2000;
- a letter addressed to the Uzbek President Islam Karimov on the situation in universities,
- a letter to the Uzbekistan Ombudsman, Sayora Rashidov, on the situation in universities;
- Uzbek law on the citizen's right to appeal.
After having taken her documents and confiscated her passport, the militia officers pressured Elena to sign a declaration acknowledging that she disseminated anti-constitutional documents and that she was preparing a coup. All her personal possessions were searched in her absence, in office n° 21 of the Yunusbad District Headquarters for Internal Affairs.
During her detention, which lasted seven hours, Elena Urlayeva received no response to her questions and requests. She was not permitted to receive the assistance of a lawyer or to call the HRSU or the OSCE. No one gave her anything to drink, and she was not allowed to take her heart medication. She was told that she would have all the time in the world to take her medication when she was in prison. Elena Urlayeva was taken to the office of the Yunusabad District Public Prosecutor. She was humiliated several times and threatened with physical harm when she was shown a pistol and a belt. She continued to be transferred from office to office without any notes being taken by her interrogators. Colonel Djurabayev gave orders for her release in the evening, but none of her documents have been given back to her.

On 21 February 2001, **Al'fiya Ishimbetova** was threatened by officers. When she was investigating cases of torture and physical harm inflicted on students, officers from the security services - discovering that she belonged to the HRSU - gave orders for her arrest. Her passport and documents on human rights were confiscated, and she was informed that she would be imprisoned for being in possession of anti-constitutional documents. Defenders of human rights in Uzbekistan are placed in a very high-risk situation.

2 March 2001

Right to solicit, receive and utilise resources

"Everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration."

Article 13 of the Declaration on Human Rights Defenders
adopted by the United Nations General Assembly

The case of Egypt

The issue of grants to Southern NGOs is an integral part of the new policy of a growing number of governments. This strategy is aimed at stamping the activities of truly independent organisations as illegitimate; the philosophy behind it consists of "accusing" NGOs leaders of living in "luxury", so they claim, with high salaries and extensive travels abroad. Some "activists" even adopt this reasoning and propose, for instance, that national monitoring mechanisms for NGOs be put in place. Other "activists" oppose charitable work, which is noble by its very nature, believing that NGOs tend towards professionalism, which is also suspect.

True, the issue of NGO funding[1] and management[2] is complex and varied, but on no account is it to be seen from this point of view. The goal of governments is quite clear: they do not want civil society to speak up, since the activism of civil society has helped to bring the human rights agenda to the table over the last few years. They refuse to acknowledge the universal momentum towards the recognition of the role of NGOs, which has been developing since the Vienna Conference[3].

In any case, the funding argument serves as a basis for governments and their allies to lead a smear campaign against human rights defenders. Thus, foreign-funded NGOs in Jordan, for instance, are often accused of corruption, because they are perceived as serving Western interests, and supporting the normalisation of relations with Israel.

In Turkey, an article was published by the news agency *Anatolia* in January, which was picked up by the Turkish daily *Hürriyet* and two television channels the following day. The news agencies were claiming that the Turkish Human Rights Association (IHD) had accepted funding from the Greek Ministry of Foreign Affairs. This news was subsequently corrected by the TV Channels NTV and CNN Turkey, upon the request of IHD who strongly refuted this accusation, while the Turkish Ministry of Foreign Affairs published a piece of news on its Internet-site, in an attempt to deny the credibility of IHD by questioning its impartial and neutral character.

In Egypt, a clause which requires the prior consent of the authorities for any foreign funding has been included in the new legislation on associations. The situation in Egypt is a typical example that demonstrates how the argument of

1 In the Mediterranean, the financial situation of NGOs is very diverse. Associations in countries like Morocco, Lebanon, and Egypt have received a number of grants in the past years, whereas in Algeria, Tunisia, Libya, and Syria, the situation is the opposite.

2 It is of course essential that NGOs use strict management methods.

3 For example, all resolutions adopted by the United Nations Commission for Human Rights ➪ 3 (56th Session) reaffirm the role of NGOs and human rights defenders in building and strengthening the rule of law.

funding is being successfully used in practice by the government and judicial authorities.

In Egypt, several Egyptian human rights organisations are facing legal proceedings and arrests, and are even threatened with prohibition, because they have solicited, received or used resources for the specific aim of promoting and protecting human rights. The Egyptian authorities are pursuing these proceedings against these organisations on the grounds of extremely restrictive legislation. The law which is currently in force (Act 32 of 1964) was to be substituted with a law that was adopted in 1999, only to be declared unconstitutional by the Constitutional Court shortly after for reasons that were primarily related to the way in which the law was adopted, rather than its contents.

The People's Assembly is thus drafting a new law, which, however, raises as many concerns as the previous one, particularly on the issue of foreign funding. According to Article 17 of the law, associations are not allowed to obtain funding from abroad without prior authorisation from the Ministry of Social Affairs. This legislation is in opposition to all charitable organisations - human rights organisations in particular - which are often perceived as being too critical of the government. This legislation thus allows the authorities to monitor the volume and content of the activities of human rights organisations (if not stop them from working altogether); yet, these organisations have no other choice but to seek funding from abroad to finance their activities, given the poor funding that is available in Egypt.

This legislation thus stands in complete contradiction to the U.N. Declaration on Human Rights Defenders. Hence, it is easy to understand why Egypt, when this Declaration was adopted, raised its voice and spoke up on behalf of a group of 26 states, claiming that the rights contained in the Declaration should be exercised in accordance with national legislation, particularly with regard to funding legislation. This pledge, however, stands in contradiction to the very terms of the Declaration, which provides that a national law that is not in accordance with international obligations cannot serve as a framework for action for human rights defenders.

Although Egyptian national legislation is in breach of the international obligations of Egypt, it is this legislation that is invoked by the Egyptian authorities to initiate judicial proceedings against human rights defenders, particularly on the grounds that they have received funding from abroad. Thus, Mr. Hafez Abu Saada, Secretary-General of the Egyptian Organisation for Human Rights (OEDH), was arrested on 1 December 1998 for "receiving funds from abroad without prior authorisation". He had received a grant of $ 25,703 USD from the United Kingdom on 11 October 1998 in order to finance a legal aid programme for women. He was released several days later under the pressure of the international community, but the proceedings are still pending over two years later. These criminal proceedings are based on military decree no. 4/1992, which provides for seven years imprisonment.

In addition, Dr. Saad El Din Ibrahim, Director of the Ibn Khaldoun Centre for Developmental Studies, was arrested on 30 June 2000. He was accused of propagating false information deemed to be harmful to the image of Egypt. He was also accused of spying for the United States on 6 August. He was further accused of receiving funds from abroad without prior authorisation, and of abusing these funds. Mr. Ibrahim had received a grant from the European Commission through

the Ibn Khaldoun Centre to be used for his MEDA programme for democracy. However, it was not until December 2000 that the European Commission reacted, by considering that, "These projects are aimed at supporting democracy and civil society and that there is no reason to believe that there should be fraud or abuse" (European Agency, 13/12/2000).

By opening judicial proceedings against certain human rights defenders, the Egyptian authorities are seeking to control the activities of their organisations, which they perceive to be a threat against them. It should be pointed out that these proceedings are aimed at the leaders of human rights associations whose integrity and credibility, in Egypt and abroad, cannot be questioned, and whose research and inquiries regularly lead them to denounce the human rights violations in Egypt.

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The right to fight against Human Rights violations and be effectively protected

"2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be effectively protected under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States which result in violations of human rights and fundamental freedoms as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms."

Article 12 of the Declaration on Human Rights Defenders
adopted by the United Nations General Assembly

The case of Colombia

While maintaining the right of every person, individually or collectively, to peacefully react to or oppose violations of human rights and fundamental freedoms, the Declaration on Human Rights Defenders also declares the right to receive adequate protection in the struggle against violations perpetrated by States, groups, or individuals.

Such protection, which States have a duty to guarantee through the competent authorities, must be brought against all forms of violence, threats, reprisals, discrimination, denial of rights de facto or through the law, pressure, or any other arbitrary action against the legitimate exercise of the rights mentioned in the Declaration.

Far from being a privilege, as some would argue, it is a question of responding to the tragic reality which shows that, despite the widespread recognition of human rights and the commitment of States to promote their implementation, in many countries there is no guarantee for the protection of these rights, much less for those who actively promote and defend them.

In fact, in many countries human rights defenders are the victims of restrictions and violations of their own rights and freedoms, such as the right to life and physical integrity. Such a situation usually comes about when the authorities cast discredit over the legitimacy and objectivity of human rights defenders' activities. This is a situation which creates a rift between the human rights defenders and those involved in the running of public institutions and official agencies, and also increasingly between unofficial individuals or groups.

The situation in Colombia is an appropriate illustration of this development: in the last two years, the Observatory has taken note of some thirty human rights defenders assassinated.

It must be remembered that Colombia has ratified the vast majority of international instruments concerning human rights, which are largely recognised in the Constitution[1]. The Constitution also provides for a number of different ways or procedures to protect them[2], and has given a vital role in this respect to the "Ministerio Publico"[3] and Public Prosecutor[4];

1 The Constitution, adopted in 1991, stipulates that the State recognises without any discrimination the primacy of rights which are inalienable to the person (Article 5), and maintains the obligation to protect, promote and defend fundamental rights (Chapter 1, articles 11-41); social, economic and cultural rights (Chapter 2, articles 42-77); collective and environmental rights (Chapter 4, articles 83-94). This same Constitution also recognises the right of persons to have access to, and to be able to correct information that concerns them personally whether these are archived in a data bank or in other public and private registries (Article 15).

2 Such as habeas corpus, tutelary action, popular action (Article 30, 86 and 88) and a plea of anti-constitutionality.

3 The "Ministerio Publico" is composed by the General Public Prosecutor, by the Public Defender, by delegated attorneys and agents ➪

further complemented by the powers of the Ministry of the Interior[5].

Despite the existence of this legal and institutional framework, defenders of human rights have, for several decades, worked in a climate of violence and repression which continues to obstruct their capacity to investigate and denounce, and to fight against impunity; in short, the authorities attempt to outlaw their legitimate activities.

Smear campaigns relayed by the media are compounded by legal proceedings based on false reports fabricated from beginning to end by the military; these campaigns are also exacerbated by threats, summary executions and forced disappearances.

This repressive situation has become more intense over the last two years, a period also marked by a "privatisation" of repressive violence against human rights defenders, characterised by the diminishing "direct" participation of official agents and the expanding role of paramilitary groups; this has also been accompanied by grave violations, albeit of an apparently lesser intensity, committed by guerrilla groups.

During this period in 1999 and 2000, armed groups kidnapped several human rights defenders, only five of whom were subsequently released shortly afterwards[6], while the whereabouts of the others are still unknown: Edgar Quiroga and Gildaro Fuentes, Jairo Bedoya Hoyos, Gilberto Agudelo Martinez, Ruben Usuga Higuita and Arvey Poso Usuga, Claudia Patricia Monsalve Pulgarin, and Angel Quitero Mesa are all considered victims of forced disappearances. In addition, four other people who were kidnapped - Ingrid Washinawatok, Terence Freitas, Laheienaie Gay, and Roberto Canate Montealegre - were tortured during captivity and finally killed.

We also know that summary executions by presumed paramilitary groups of several other defenders: Everardo de Jesus Puerta, Julio Ernesto Gonzalez, Manuel Avila Ruiz, Lucindo Dominico Cabrera, Hernan Henao-Delgado, Hernan Mora Mora, Jesus Orlando Crespo Cardenas, Jesus Ramiro Zapata Hoyos, Carmen Emilia Rivas, Edgar Rivas, Edgar Marino Pereira Galvis, Antonio Hernandez, Hector Enrique Acuna, Elisabeth Canas Cano, and Carmen Sanchez Coronel.

Some of these acts, especially those committed during the second half of 2000, which coincided with the implementation of Plan Colombia, signal an intensification of violence and repression, in particular against human rights defenders.

➪ 3 of the Public Prosecutor's Office, before jurisdictional authorities, by municipal personnel and all civil servants representing the law. The « Ministerio Publico » has the power to ensure the respect and promotion of human rights, the protection of public interests and to oversee the conduct of those who exercise a public function. (Article 118, Constitution)

4 The Public Prosecutor, trigged by himself as the result of a complaint or a lawsuit, is responsible for investigating the crimes and presenting those presumed to be guilty before the competent judges and tribunals. Exceptions are crimes committed by members of the public forces which are related to their service. (Article 250, Constitution)

5 The Ministry of the Interior is responsible for the coordination of activities developed by governmental institutions concerned with the promotion, defence and protection of human rights. Law no. 199 of 22 July 1995.

6 Claudia Tamayo, Jorge Salazar, Jairo Bedoya and Olga Rodas, members of the Instituto Popular de Capacitacion (IPC), kidnapped in January 1999; and Piedad Cordoba, Senator and President of the Senate Commission for Human Rights, kidnapped in May 1999

Since 1992, faced with this situation, NGOs have been campaigning for the establishment of a process of dialogue and consultation at a political level for public acknowledgement of the legitimacy of the activities of NGOs and their members, and a reaffirmation of the responsibility of the State regarding the protection of human rights defenders.

This initiative, which has undergone difficulties because of the absence of any real will on the part of the authorities, has received seldom responses from the government, especially after dramatic events of national and international importance such as the assassination of distinguished human rights defenders.

Concerning physical protection, in 1995 the government created a programme specifically[7] aimed at providing material support for persecuted human rights defenders. However, this programme proved insufficient given the intensity of the violence, a state of affairs with a bearing not only on the very small number of people protected, but on the programme's limited budget.

However, the main obstacle of the protection of human rights defenders stems essentially from the lack of will or lack of ability on the part of the authorities to take effective measures to neutralise, charge, and sanction paramilitary groups.

We cannot overlook the slowness of the process of cleaning up the armed forces and security services[8], or the absence of mechanisms to monitor investigations carried out by the security forces, of cleaning up or suppression of information contained in the archives of the military intelligence services.

This last point is crucial, given that human rights defenders continue to be subjected to the risk of being prosecuted on the basis of reports by the military secret services. Worse still, the people mentioned in these reports are frequently the victims of threats and attempts on their lives.

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7 The Committee for the Control and Evaluation of Risk, created on the basis of Article 32 of Law 199 of 1995, referring to the creation of a special administrative body for human rights within the Ministry of the Interior. The Committee put in place effective measures to physically protect a certain number - although small - of human rights defenders and organisational heads, especially by the provision of bullet-proof jackets, vehicles or finance to travel by taxi, the installation of equipment to aid physical protection (closed circuit television, reinforced doors, alarms, etc.), the assistance of security agents or people selected by those concerned and employed by the security service (DAS).

8 As well as the withdrawal of several high-placed officials, in 2000 judgements against 3,000 military personnel and politicians were transferred to the ordinary courts. However, it is not clear whether these judgements were brought about through actions or omissions which involved a violation of human rights.

Domestic law consistent with the international obligations of the State in the field of Human Rights

"Domestic law consistent with the United Nations Charter and other international obligations of the State in the field of human rights and fundamental freedoms, is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this Declaration for the promotion, protection and effective realisation of those rights and freedoms should be conducted. "

Article 3 of the Declaration on Human Rights Defenders
adopted by the United Nations General Assembly

The case of China

In China, the authorities continue to denigrate the right to freedom of expression, opinion, demonstration and association. In the political, social, economic and religious field as well as defense of the environment, there is very little room or-no-room for independent initiatives.
In the past few years, the right to freedom of association was particularly ridiculed as concerns union rights, just as all attempts to create independent unions were crushed by the State. The government still refuses, in principle as well as in practice, to accept any opposition or criticism of the action carried out by the authorities - the case of Zhang Shanguang and Li Bifeng testify to this. They were condemned to penalties of ten and seven years, respectively, for having tried to create unions and for having given help to the unemployed. Alongside the single party system there is now a single union.
China thus is acting in flagrant disregard of the international human rights instruments signed.
This tendency is further confirmed: China, in ratifying the International Covenant on Economic, Social and Cultural Rights, expressed a reservation to article 8, which guarantees union rights. The Government, indeed stated that it would apply this article insofar as it conformed with the Constitution, the law on unions and the labor law. Freedom of unions suffers because of the basic principle of the Chinese State.
Similarly, in 1998, when China signed the International Covenant on Civil and Political Rights, which guarantees the right to freedom of association it also, at the same time, promulgated a series of laws - presented here - which aim to restrain this fundamental right.
In order to neutralise the actions of all independent association, the Chinese government disposes of a very restrictive juridical arsenal which it keeps reinforcing. The laws adopted in 1998 on associations are a perfect example.

"Citizens of the People's Republic of China enjoy Freedom of Speech, of the Press, of Assembly, of Association, of Procession, and of Demonstration".

Constitution of the People's Republic of China, Article 35

Restriction of the freedom of association. Report of Human Rights in China (1998)

In the same month as finally signing on to the International Covenant on Civil and Political Rights, which enshrines the right to freedom of association, the Chinese government passed laws which aim to enforce even more strictly than before its long-held position that Chinese citizens may not exercise this fundamental right without first gaining express permission from the state. In effect, the new laws nullify freedom of association, a right which is also enshrined in China's 1982 Constitution.

The following is Human Rights in China's analysis of the new laws.

On October 25, 1998, in its Order No.250 China's State Council promulgated long-awaited new **Regulations on the Registration and Management of Social Groups** (shehui tuanti dengji guanli tiaoli). These Regulations replaced a set of the same name passed ten years ago, in October 1989, in the wake of the crackdown on the Democracy Movement, a moment of conservative reaction against demands for political reform and separation between the Party and the government, the state and the society. On the same day as it passed these new Regulations, the State Council also promulgated another law in Order n° 251, **Provisional Regulations on the Registration and Management of People-Organized Non-Enterprise Units** (minban feiqiye danwei dengji guanli zanxing tiaoli). A third law, **Provisional Regulations on the Registration and Management of Institutional Units** (shiye danwei dengji guanli zanxing tiaoli), was also promulgated as Order n° 252 on that day. All three had been adopted in principle at a September meeting of the State Council, but were then subject to further revisions.

During the past nine years, certain commentators have claimed that China is witnessing the emergence of a nascent "civil society", in which organizations are growing more independent of the state. Even the Chinese government now points proudly to home-grown "NGOs" (non-governmental organizations), which are increasingly attracting funding and support from international agencies, both intergovernmental and non-governmental. Furthermore, some reports have said that a "Beijing Spring" of more open discussion in early 1998 heralded a more liberal attitude on the part of government, while others asserted that the platform of the 15th Congress of the Chinese Communist Party (CCP), which included ideas about "small government, big society", presaged a more tolerant approach to association.

Certainly, in the last 20 years the personal freedom available to most Chinese people has gradually expanded as a result of the retreat of the state, although arbitrary infringement of such freedom can occur at any time. Also, the unremitting efforts of people inside and outside the system to enlarge their political and social space and the fracturing of bureaucratic interests as a result of economic change has created some degree of "pluralism by default," in which certain non-profit initiatives have been able to begin to play some of the roles of NGOs in freer societies.

But these new laws throw icy water over hopes for a more liberal climate for association, since they are clearly aimed at binding all non-profit ventures more tightly to the Party-state. They represent an effort to bring the entire sector under stricter control, expanding the existing "registration and management" scheme previously applicable only to "social groups" to all non-profit initiatives undertaken by Chinese citizens. (There are still no regulations governing foreign organizations operating in China, apart from provisional regulations for foreign chambers of commerce.) Previously, some such initiatives had managed to avoid the requirements of the 1989 Regulations on Social Groups by, for example, registering as companies.

Main changes

The following are the main changes in the 1998 Regulations on the Registration and Management of Social Groups (indicated below as "SGR") compared with the 1989 version, and the principal elements of the new Provisional Regulations on the Registration and Management of People-Organized Non-Enterprise Units (indicated below as "NEUR").

The new regime for non-profits: substantially raises the requirements for the establishment of a social group (SGR Article 10); allows for a preemptive ban on the registration of an organization or unit, based on "evidence" of how it might act, and threaten those engaging in unapproved activities with unspecified criminal penalties and criminal detention (SGR Articles 13 and 35 and NEUR Articles 11 and 27); triples the length of time required for the processing of a registration application from a social group (SGR Articles 12 and 16), from 30 days to 90 days, and adds a third stage to the approval process; bars individuals who have ever been deprived of their political rights from acting as the representative or "responsible persons" of an organization (SGR Article 13 and NEUR Article 11); prohibits national groups from establishing any kind of regional-level branch office, thus severely restricting the coordinating capacity of any social group (SGR Article 19) and prohibits non-enterprise units from setting up any branch offices (NEUR Article 13; allows for extensive government interference in the financial affairs of groups (SGR Articles 10 and 29, NEUR Article 21); increases the controls to be imposed on social groups by the government "sponsors" to which they are required to be attached (SGR Article 28) and imposes such controls on non-enterprise units as well (NEUR Article 20); and removes any possibility of appeals against decisions taken by the registration authorities.

All duties, no rights

Article 1 of the SGR states that the regulations are enacted to "guarantee citizens their freedom of association and protect the legitimate rights and interests of social groups, strengthen the registration and management of social groups and promote the construction of socialist material and spiritual civilization". Article 1 of the NEUR states that these regulations are enacted to "regularize registration and management" of non-enterprise units and to "guarantee the legitimate rights and interests of people-organized non-enterprise units". These are the only mentions of any rights in either of the documents. The rest is almost entirely about constructing a comprehensive two-tiered mechanism of control for social groups and non-enterprise units, restricting their overall number and scope of activity and forestalling any possibility that they may emerge as an independent force.

SGR Article 2 defines social groups as "non-profit social organizations carrying out activities within the scope of their charters which are voluntarily established by Chinese citizens to achieve the common aims of their members". Thus social groups are now limited to membership associations, which was not the case in the 1989 rules.

NEUR Article 2 defines what type of entities are to be included in the category of people-organized non-enterprise units as: "social organizations (shehui zuzhi) set up for the purpose of conducting non-profit social service activities by

enterprises, institutional units, social groups and other social forces, as well as individual citizens, using non-state assets." The effect of the NEUR is to extend the current system of control to all unofficial non-profit activities.

The Provisional Regulations on the Registration and Management of Institutional Units are aimed at publicly-owned bodies, defined in Article 2 as "those social service organizations the state establishes for the purpose of the public interest of society, run by state organs or by other organizations with state funds and carrying out activities in fields such as education, science and technology, culture and medicine". Although these regulations establish a registration scheme for institutional units, since they remain essentially government-run agencies, in practice these rules may make little difference. Thus the focus here will be on the two sets of regulations covering nominally independent non-profit entities.

Registration

Overall, the registration scheme of the new SGR mirrors the 1989 version, and the NEUR establishes a virtually identical model. All groups and units are required to register with the Ministry of Civil Affairs or its departments above county level before they can begin operating. These departments' "management" of social groups and units means they are supposed to "supervise" them and conduct an annual audit of each one.

But before a group or unit can even submit an application, it must have received prior "approval" from the relevant "professional leading departments" (SGR Article 3, NEUR Article 3), which must be government departments or institutions to which government has explicitly delegated such authority (SGR Article 6 and NEUR Article 5). This "sponsoring unit" (guakao danwei), as it is commonly known, is in charge of making sure that the subsidiary organization obeys the rules, and is responsible for the group's actions. SGR Article 28 and NEUR Article 20 spell out the extensive responsibilities of sponsors to "supervise" and "guide" the affairs of the social group or unit, and various other articles state that the sponsor's prior approval is required for any change in the circumstances of the group or unit. The new responsibilities of sponsors include: supervising every stage of the application process; approving any change in personnel, activities, charter, address, funding sources, setting up of branch offices or representative offices; approving annual reviews of the group's or unit's activities and financial affairs; making sure that the group or unit abides by laws, regulations and government policies and adheres to its charter; and facilitating any investigation of a group or unit which is thought to have violated the law.

Since the 1989 regulations did not specify the elements of the supervisory role of sponsors, in the past in practice some social groups were able to operate with little interference. And those non-profit ventures registered as companies generally did so to avoid the requirement of having a government sponsor.

Requirements

As well as meeting the previous requirements for a registration application - providing the address, officers' names and details, purpose, charter and so on - according to SGR Article 10, a proposed group must have at least 50 individual members, or 30 institutional members; have a fixed location for its operations; and have personnel who have "expertise appropriate to its activities". In

addition, a national organization must have 100,000 yuan or more of "legitimate assets or funding sources," while a local organization must have upwards of 30,000 yuan. While the requirements of NEUR Article 8 are less stringent, they still set a high standard, requiring that the unit have an office, the unspecified "necessary" organizational structure, personnel with "expertise appropriate to its activity" and "legitimate assets suitable for its activities".

Determining whether the assets of groups or units are "legitimate" clearly gives the government wide powers to examine the funding sources of social groups, as SGR Article 29 further elaborates. The concept of "legitimate" is overly vague, and gives rise to concern that it may be used to justify arbitrary interference in the financial affairs of social groups. For example, under the State Security Law, receiving funds from individuals and groups inside and outside the country which are viewed by the authorities as "harmful to state security" or "hostile" may be considered an offense.

The new SGR increase the hurdles for social groups to register by adding an additional stage to the registration process. First, a prospective group must find a sponsor, which will prepare unspecified "documents" testifying to its support. As before, no details are given as to what this preliminary stage requires on the part of the social group or the sponsor. With these documents in hand, the social group can then apply to the civil affairs departments for the newly created status of "preparatory establishment", and wait up to 60 days for an answer (Article 12). If the civil affairs department refuses to grant permission, it must "explain the reasons" to the group's initiator. If the group is approved, then it may begin preparatory activities only, and must hold its first membership congress within six months, at which its charter is to be passed (Article 14). After this, the group must submit all relevant documents to the civil affairs departments and wait up to 30 days for a decision on whether the social group may be "established". If registration is denied, the authorities are required to "notify the applicant of the decision" (Article 16).

The NEUR have a two-stage approval process. First, approval from the sponsor, for which no specifics are given, and second, registration. The civil affairs departments have up to 60 days to approve or disapprove the application (Article 11). If registration is refused, an "explanation" must be given to the applicant(s).

There is no indication of whether the above "explanations" or "notifications" are to be provided in writing. More importantly, neither of the two laws envisage any procedure for appeals against any of the decisions civil affairs departments, sponsors or other government bodies may make regarding a social group or unit, in contrast to the previous SGR which had various articles specifying time periods and procedures for administrative appeals. A new law passed by the State Council, Regulations on Administrative Review, lists administrative acts for which review is available, and decisions of the civil affairs departments on social groups or non-enterprise units are not among them. Furthermore, there is no opportunity for judicial review, since legal challenges are only permitted under China's Administrative Litigation Law if a law or regulation explicitly allows for them, and neither the Social Group Regulations nor the Non-Enterprise Unit Regulations do so.

Monopoly to official groups

Both the old and the new SGR contain a rule which does not allow for organizations covering the same ground to exist, and a similar rule is included in the NEUR. According to SGR Article 13 and NEUR Article 11, a social group or unit cannot be established "when a social group/unit covering an identical or similar professional scope already exists within the same administrative area, and it thus is not needed". This rule gives official bodies like the All-China Women's Federation an effective monopoly over certain kinds of activities. Citizens, rather than government, should be able to decide whether an existing organization represents them adequately or not, without government deciding what is "needed".

Article 4 of both laws enumerates an identical extensive list of prohibitions constraining the activities of social groups and units. It reads: "Social groups/units must abide by the Constitution, the laws and regulations and state policies; may not violate the basic principles established in the Constitution; may not harm national unity, state security and the solidarity of the nationalities; may not harm the interests of the state, society, other groups or individuals; and may not go against society's morality and customs". This is not only much stronger language that the wording in the 1989 Regulations, it also adds the key elements of "endangering state security," adhering to "state policy".

The authorities are given broad scope to forestall any attempt on the part of the social group to go against these broad ideological prohibitions. Among the circumstances listed in SGR Article 13 and NEUR Article 11 in which groups or units which are not to be registered are: 1) "when there is grounds to prove that the objectives and the professional scope of the social group/unit applying to prepare for establishment are not in accordance with the stipulations of Article 4" (Clause 1); 2) "when the initiator or persons in responsible positions are currently or have ever been sentenced to the criminal punishment of deprivation of political rights, or are not able to assume full civic responsibility" (minors and those found mentally incapable are included in this latter category) (Clause 3); 3) the above-mentioned monopoly rule (Clause 2); 4) submitting false information in an application (Clause 4); 5) and the catch-all clause so familiar from other PRC laws and regulations "other circumstances prohibited by law or administrative regulations" (Clause 5).

SGR Article 19 bars social groups from establishing regional-level offices, and requires that all branches or representative offices of groups need to be approved by the sponsor and separately registered with the appropriate civil affairs departments. NEUR Article 12 prohibits such units from setting up branches altogether.

Heavier punishments

The sections on punishments provides for administrative sanctions, fines and criminal penalties. Under SGR Article 33 and NEUR Article 25, the civil affairs departments may order a group or unit to make reforms, to suspend its operations or change responsible personnel, as well as ordering its dissolution, for the following types of actions: fraudulent use of the group's status, or profit-making activities; engaging in activities outside the scope of its objectives or charter; refusing to accept "supervision"; setting up unauthorized branches;

and violating unspecified state regulations on raising funds and receiving assistance. Fines of between one and five times the amount of funds raised through illegitimate business activities or ill-gotten gains may be levied.

SGR Article 34 and NEUR Article 26 state that if a group violates "other laws and regulations" which are the responsibility of other government departments, these may request that the civil affairs departments close down the group or unit in question. SGR Article 35 and NEUR Article 27 are particularly vague and threatening, allowing for criminal sanctions or criminal detention of up to 15 days for, in the case of social groups, "those who, without having received official permission, initiate preparatory activities" and in the case of both, for social groups or units which "initiate activities without being registered, and those who continue to carry out activities in the name of a social group/unit for which registration has been revoked". The lack of definition of "preparatory activities" is particularly troubling, since people wishing to establish a group have to do a significant amount of work to prepare all the necessary conditions for finding a sponsor and filing an application. In recent years, many individuals have been detained and sometimes sentenced to labor camp terms merely for attempting to register a social group.

Finally, SGR Article 39 requires that all social groups must re-register in accordance with the new rules within a year after their promulgation. This will inevitably entail a significant purge of existing organizations. During the last re-registration exercise following the enactment of the 1989 Social Group Regulations, some 30,000 groups were ordered closed down. Furthermore, social groups have just gone through a nationwide "rectification" which began in early 1997, in which thousands were deregistered. And since the rectification campaign started, there has been a moratorium on the registration of national groups, which also applied to provincial and local-level organizations for varying periods of time.

NEUR Article 31 requires that all people-organized non-enterprise units must register in accordance with the regulations within a year of their enactment.

This is also likely to mean that some non-profit initiatives are closed down or are effectively taken over by official departments.

Blocking freedom of association for many

The stringent requirements for registration will make it impossible for associations formed by poorer citizens to register, and will thus bar the development of self-help groups and other such associations. The minimum membership requirements effectively mean that only large groups will be permitted to exist. The inordinate number of documents and length of time to wait before a group is formally established create formidable barriers to association. The new laws also deprive a whole category of people of their rights to form or serve in associations or non-profit entities for life.

Under Article 56 of the Criminal Code, those convicted of offenses "endangering state security" are automatically sentenced to deprivation of political rights, and thus these people may never set up or become officials in a social group or non-enterprise unit.

Although the SGR and the NEUR specify that neither the sponsor nor the civil affairs departments are permitted to charge for their supervision of groups or units - they are evidently allowed to levy

unspecified fees for other services, including registration itself - undoubtedly negotiating the continuing bureaucratic obstacle course the regulations set up will entail greasing many palms. Even if they are able to register, groups and units will have to spend a great deal of time, money and energy on fulfilling all of the bureaucratic requirements for their "supervision" listed in these regulations. There is already a host of other regulations governing specific issues relating to social organizations, and Implementation Regulations for the new rules are likely to contain further restrictions. This will lead to further bloating of the bureaucracy, and create even more opportunities for rent-seeking officials to cream off money intended for charitable purposes.

The level of official interference in the day-to-day affairs of groups and units permitted by these regulations is entirely unnecessary, as well as being an unacceptable infringement of freedom of association. The coming purge of groups and units is likely to eliminate or co-opt some of the most innovative and useful initiatives Chinese people have struggled to create in recent years in the face of continuous official hostility. The lack of appeals procedures for any of the decisions mentioned completes what is evidently an arbitrary system granting the authorities virtually unlimited discretion to block and ban associational and non-profit activities "according to law".

The new regulations are the latest indication that what the Chinese leadership means by "ruling the country in accordance with law" (yi fa zhi guo), one of the principal slogans put forward at last year's 15th CCP Congress, has little to do with what is commonly understood as constituting the "rule of law". Under the former concept, depriving citizens of their fundamental rights is perfectly acceptable, provided there is a written rule permitting it. And the rules are always written in such a way as to leave officials with broad scope to determine what they mean in practice. We believe that in order to realize the rule of law in China, the starting point should be to eliminate such vague and arbitrary provisions as the Four Basic Principles of the Constitution, mentioned above.

Involvement of international agencies

Unfortunately, some in the international community have ended up providing support for the government departments involved in these efforts to regulate away citizens' rights in the name of "legal reform", promoting civil society or assisting the development of the non-profit sector. For example, the International Center for Not-for-Profit Law (ICNL) in Washington, DC, and the U.S.-based Asia Foundation have assisted the Ministry of Civil Affairs' Department of Social Groups while it was working on the drafting of these new repressive laws.

ICNL has provided "consultation" for officials from this Department, including submitting a paper recommending revisions of the previous law, a paper it has refused to make available. ICNL is the author of the World Bank's draft Handbook on Good Practices for Laws Relating to Non-Governmental Organizations, a document criticized by the Three Freedoms Project, as well as other NGOs, for approaching the issue of civil society merely as a technical problem of regulation and failing to incorporate good practice in terms of interpretation of international law on freedom of association.

In its 1997 Annual Report, the Asia Foundation wrote: "NGOs in China, Japan, Nepal and Mongolia benefited from Foundation support in developing laws governing NGOs". In China, some of the Foundation's support went to the China Research Society for Social Groups, an "NGO" set up by the Ministry of Civil Affairs. During 1997 the Asia Foundation funded study tours for Ministry officials including the head of the Department, Wu Zhongze, to the United States and Australia. Previously the Asia Foundation had taken officials from the National People's Congress Legal Affairs Commission to Thailand, the Philippines, South Korea and Indonesia to study regulation of non-profits. Some of these countries are hardly appropriate models for legislation on the NGO sector.

We believe that international institutions and funding agencies, particularly those claiming to support programs on human rights, civil society, legal reform and good governance, should only give assistance to those initiatives which will genuinely promote the rights and freedoms of Chinese people. They must ensure that their projects are not merely contributing to extending the repressive capacity of the state.

During these last years, the rights of trade union have been the main target. Any attemp to form independant trade-union organisations has been crushed by the chinene autorities. This is especially worrying as China has just signed the International Convenant on Economic, Social and Cultural Rights.

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The United Nations opens the door to GONGOs

Article 71 of the United Nations Charter provides that the Economic and Social Council of the United Nations (ECOSOC) can make use of all measures to consult non-governmental organisations concerned with issues relating to their areas of competence. ECOSOC determined the conditions of consultative status, and defined the forms of consultation for the first time in 1950 in resolution 288 B (X) of 27/2/1950. The Council then revised these measures by adopting resolution 1296 (XLVI) in 1968.

Until 1996, consultative status was reserved solely for international NGOs. In 1996, ECOSOC adopted resolution 1996/31 by reforming its forms of consultation with NGOs. It took note of the development of national NGOs, in particular national human rights NGOs, and thus recognised the need - pointed out by the FIDH and OMCT from the start of the process - of revising the resolution to enable national NGOs to have access to the United Nations system.

Five years after this reform of consultative status, the FIDH notes with concern that, while resolution 1996/31 aimed to increase participation by all NGOs, it appears today that States display the highest degree of reluctance when it comes to independent human rights NGOs. Some of the provisions in resolution 1996/31 are used in an abusive way by some governments, either to block certain national human rights NGOs that are independent, credible and efficient from making use of consultative status, or to favour access by national pro-government NGOs.

In fact, in the terms of resolution 1996/31, the granting of consultative status to a national NGO is directly dependent on the agreement of the state concerned. NGOs which are not officially recognised by their government are consequently ineligible for consultative status. Currently, many governments have a policy of undermining national NGOs, particularly through restrictive laws on association. As a consequence, national NGOs which do not have the support of their government see their request for consultative status subject to a veto by their State. This is even more the case for NGOs forced to work in exile. At the same time, it is clear that some States give their agreement to the granting of the status to NGOs that they control (currently known as GONGOs - governmental non-governmental organisations), as they are secure that these NGOs will support government positions from their NGO platform.

This situation is made even worse by the composition of the body which decides on the granting, suspension and withdrawal of consultative status: the NGO Committee, made up of 19 States elected by ECOSOC. A study of this composition has enabled us to determine that some of the States which are the least respectful of international human rights instruments succeed in getting themselves elected to this committee in order to control which NGOs will have the right to

participate in the work of ECOSOC's subsidiary bodies, including the Commission for Human Rights. In this way, the door is wide open to the GONGOs.

Looking closely at the reports of the Committee of NGOs since 1996, it can be seen that the GONGOs from countries such as Cuba, Tunisia, China, Pakistan and India have obtained consultative status. Although they are not great in number, their presence in the international arena discredits NGOs as a whole. At the last sessions of the United Nations Commission for Human Rights, or of the Subcommission for the Promotion and Protection of Human Rights, several GONGOs intervened to praise the level of respect for human rights in their countries, expressing support for government policies that had involved grave human rights violations, or denouncing human rights violations by neighbouring countries. Sometimes, these GONGOs make oral interventions undermining all the Commission's points of order for the day; this brings ever-growing criticisms on the quality of the NGOs participating, in particular, in the Commission for Human Rights. It must be stressed very emphatically that the first responsibility for this situation lies with the States, because it is they who elect the Committee of NGOs - an intergovernmental body which decides who has the right to participate in the work of the various United Nations entities.

Political instrumentalisation by States and failures of the consultative status can only be countered by establishing the independence of the Committee of NGOs. Likewise, the principle of the independence of the NGOs with regard to governments should be considered an essential condition before being awarded consultative status.

Thus, the Observatory considers that the Committee of NGOs has a tripartite composition - representatives of governments, NGOs, and independent experts - that could meet to decide which NGOs deserve, through their expertise and independence, to have access to the United Nations.

In any case, GONGOs have access to the work of the United Nations and to major United Nations conferences where consultative status is not a condition for participation. There again, the accreditation procedure required, in the majority of cases, that governments agree which NGOs are to be accepted, which creates problems for national independent NGOs and facilitates at the same time the participation of GONGOs. The depoliticisation of the selection procedure represents here too a major challenge, questioning the credibility of these conferences.

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