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The Human Rights Dimension of the Barcelona Process: The Fundamental Prerequisite for a Sustainable Peace, Security and Area of Prosperity in the Euro-Mediterranean Region

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Introduction

The multilateral approach of the Barcelona Process, initiated in 1995, places human rights at the centre of the Euro-Mediterranean partnership. Article 2 of the Association Agreements, which govern the bilateral relations between the European Union and its Mediterranean partners, reiterates this priority. Seven years later, the mechanisms set up within the framework of the Euro-Mediterranean partnership have not properly addressed this priority, putting into question the integrity, as well as the relevance of the whole process.

While the Barcelona Process aims at ensuring democratic development, the protection of human rights and the existence of an area of lasting prosperity and security in the Euro-Mediterranean region, the equilibrium between these different objectives is put into question notably by the emphasis put on security, often at the expense of human rights. Developments seen since the 11 September attacks in the United States, along with the situation in Israel and the Occupied Palestinian territories point to the fact that in the Euro-Mediterranean region human rights are being violated in the name of security. While this trend is not new and was in place well before the beginning of the second Intifada and the 11 September attacks, its place on the political agenda of the Barcelona Process has become central, while the repression in the name of security and the fight against terrorism is on the increase. For instance, the 11 September attacks provide the authorities in the Mediterranean region with a further pretext for accusing the human rights defenders of supporting terrorists' movements, directly or indirectly, leading the scope of repression to a higher scale.¹ Similarly, Israel has been justifying and continues to justify its violations of human rights and humanitarian law by the fight against "terrorists", a reason that should justify all abuses and that divert attention from the root causes of the whole problem, i.e. the occupation.

The Barcelona Declaration shows that democratic development, the protection of human rights, security and prosperity are intrinsically linked and that the achievement of one of these goals is not sustainable without the realization of the others. However, the current developments show that human rights are currently sacrificed and marginalized in the name of stability and security at the national level but also within the Barcelona Process' mechanisms.

In this respect, international treaties which protect human rights and humanitarian law do not authorize, under any circumstance, the suspension of certain rights such as the right to be free from torture, the right to life, known as binding and non-derogable rights. International humanitarian law guarantees, in addition, certain elements of the right to a fair trial even during armed conflict. A number of important judicial guarantees cannot, therefore, be suspended even in a state of war. While one of a government's first duties is to ensure the security of its citizens, it has been recognized by states that strive to uphold the rule of law that these objectives must be accomplished without sacrificing individuals' basic rights. Governments, which in the past have adopted measures curtailing individual rights so as to ensure aims such as national security, have too often been responsible for widespread

and serious human rights abuses. Measures that are ultimately designed to combat certain groups often encourage disregard for individual rights and the neglect of adequate investigation and prosecution of individual suspects and should, therefore, be applied with extreme caution. Legal guarantees that have been developed and adopted so as to protect the innocent from prosecution and all persons from abuse and serious human rights violations such as torture and summary executions should not be lightly waived aside as if suddenly unnecessary or irrelevant.

If democratic development, security, peace, stability and prosperity are to be achieved in a sustainable way, they have to be rooted in the respect and the promotion of all human rights. In this equation, human rights represent much more than desirable goals: they constitute a basic condition that needs to be fully, and practically integrated within the framework of the Euro-Mediterranean partnership. A marginalisation of the human rights agenda within the context of the Barcelona Process would not only deceive the hopes of human rights defenders, but it would also leave very few hopes to see democratic development, security, peace, stability and prosperity emerging in the region.

In this respect, OMCT expects that the Euro-Mediterranean partners meeting in Valencia will solemnly:

- Guarantee that all anti-terror measures and legislation implemented at the national and regional levels are in accordance with international human rights and humanitarian law;
- Guarantee the respect of the right to life, the right to be free from torture under any circumstance.

The Human Rights Clause

The Euro-Mediterranean Partnership progressively developed with the conclusion of bilateral Association Agreements between the EU and its Mediterranean partners. All these Association Agreements include a human rights clause, enshrined in their article 2. Today, this human rights clause is meant to regulate, among other factors, the bilateral relations between the EU and Egypt, Israel, Jordan, Morocco, the Palestinian National Authority, Tunisia and Turkey. Bilateral Association Agreements will also soon regulate the relations between the EU and Algeria and Lebanon. Here again, the agreements stipulate that the relations between the parties shall be based on the respect of democratic principles and human rights.

Seven years after the conclusion of the first Association Agreement with Tunisia (1995), no concrete and effective substance has been given to this human rights clause. The absence of concrete initiative to give content to this clause contrasts with the human rights situation in the region. Human rights defenders in the Euro-Mediterranean

¹ See The Observatory for the Protection of Human Rights Defenders, Annual Report 2001

region are confronted to several challenges, including oppression, harassment, intimidation, the muzzling of any dissenting voice and restrictive legislations.² In this respect, it is interesting to recall that out of the 26 co-signatories of the restrictive interpretation of the United Nations Declaration on Human Rights Defenders, 12 countries –practically half- were from that zone.³ Violations of procedural rights, arbitrary detention, ill-treatment, torture, a lack of independence of the judiciary leading to widespread impunity and very few opportunities for the victims to receive reparation are taking place in the different Mediterranean countries. However, human rights violations are not solely taking place in the south of the Mediterranean. For instance, in Greece, the persons most vulnerable to human rights violations, including torture, include refugees and illegal immigrants who have been entering the country in increasing numbers over the last year and have been illegally detained. The Roma population in Greece is also subject to harassment, arbitrary arrests, ill treatments, torture and violation of the right to adequate housing. With regard to the situation of children, torture and other forms of ill treatment are still imposed to children by state agents in some countries of the region, such as Turkey or Tunisia. Violence is also culturally and legally accepted as a means of discipline in several countries. Corporal punishment affects children mainly in the family and at school. Issues of concern also include the commercial sexual and economic exploitation of children. In both cases, the lack of reliable data makes it difficult to fully evaluate these problems and thus to elaborate adequate prevention strategies. Various sources, including the UN Committee on the Rights of the Child, have expressed their concerns about it. All forms of violence particularly affect children living and/or working in the streets. Due to their economic precarious situation, they are more vulnerable to exploitation, as well as to arbitrary arrest and ill treatment by the police. Finally, violence against women in the Euro-Mediterranean Region remains a matter of great concern. Women are victims of violence in the family, in the community and at the hands of State officials. OMCT would particularly like to highlight its concern regarding crimes against women and girls committed in the name of honour in Turkey, Israel and Egypt. The killing or mutilation occurs when a woman or a girl allegedly steps outside her socially prescribed role, especially, but not only, with regard to her sexuality and to her interaction with men outside her family. Husbands, fathers or brothers have gone unpunished after murdering their wives, daughters or sisters in order to defend the “honour” of the family or their own “honour”.

As an essential element of the bilateral Association Agreements, the human rights clause requires the establishment of concrete mechanisms and procedures, which should go well beyond the simple mention of human rights during the Association Council meetings.

In this respect, OMCT calls on the European Union and its Mediterranean partners to:

- Make article 2 of the Association Agreements operational in setting up concrete mechanisms and procedures to assess compliance with the human rights clause, encompassing civil and political rights

² See The Observatory for the Protection of Human Rights Defenders, Annual Report 2001

³ On 10 December 1998, the day following the approval of the Declaration on Human Rights Defenders by the General Assembly of the United Nations, 26 States, headed by Egypt, signed an interpretative statement on the text. This statement reaffirmed the primacy of national legislations over international instruments, thus calling the whole basis of the approved Declaration in question.

as well as economic, social and cultural rights. These procedures should also encompass, beyond the assessment, proper follow-up mechanisms. Consequently, this approach should include, among others:

- Monitoring the freedom of human rights defenders to act and speak freely in their defence of all human rights;
 - Monitoring the compatibility of anti-terror law with standards of human rights and humanitarian law;
 - Monitoring the compatibility between the enjoyment of economic, social and cultural rights and the economic, trade and financial policies established within the Barcelona framework;
 - Monitoring the implementation of the recommendation made by relevant international and regional human rights mechanisms, including UN treaty bodies, UN Special Rapporteurs, the International Labour Organisation and the African Commission on Human and Peoples' Rights;
 - Monitoring the ratification and reservations made to human rights covenants and conventions;
 - Monitoring individual cases of human rights violations;
 - Making specific recommendations;
 - Taking adequate measures within the framework of the Euro-Mediterranean partnership to stop and prevent abuses.
- o Address human rights issues in the negotiations surrounding the signature and ratification of an Association Agreement with Syria.

The Situation in Israel and the Palestinian Occupied Territories

Each day brings additional information about the deterioration of the situation in Israel and in the Occupied Palestinian territories, where violence begets violence and where no prospect for peace is apparent. Reports and daily updates from Palestinian and Israeli human rights organisations cast no doubt about the urgency of the situation and Israel's breaches of human rights and humanitarian law. Security concerns and the fight against terrorism are advanced as a "laisus" and should, according to the discourse, justify all the violations. In this respect, it is important to recall the binding and non-derogable nature of certain rights, including the right to life and the protection against torture, summary executions and other forms of cruel, inhuman or degrading treatments or punishments, meaning that these rights cannot be suspended under any circumstance. Similarly, the Fourth Geneva Convention makes it clear that collective punishments, such as but not limited to the closure and house demolitions are strictly prohibited and cannot be justified by security arguments.

With respect to the current situation, the United Nations Special Rapporteur on Occupied Palestinian Territories recognised that occupation is the root cause of the violence and the main cause of violations of international humanitarian law and human rights law in the Occupied Palestinian territories. Similarly, on March 12, 2002, the

UN Secretary General Kofi Annan stated that Israel “must end the illegal occupation” of the Palestinian Occupied territories.

The resolution of the current crisis, as well as further peace negotiations, require the full integration of human rights concerns, including civil and political rights, but also economic, social and cultural rights, the right to self-determination and the right of return. The past and present denial of human rights in the region only fuels the cycle of violence that affects Israeli and Palestinian civilians and tarnishes future hopes of finding a peaceful solution to the crisis. The current situation also shows that an urgent answer is needed in order to protect Israeli and Palestinian civilians from further violence. In this respect, the United Nations Special Rapporteur on Occupied Palestinian Territories recognised that “there is no alternative to an international peacekeeping mission, structured and composed to meet the special circumstances of the region”.

At this stage, urgent intervention of the international community is needed in order to bring a halt to violence and violations of international human rights and humanitarian law. The European Union, with the framework provided by the Barcelona Process and the bilateral Association Agreements with Israel holds the adequate tools and leverages for action in order to bring the actors in the region in line with their obligations under international law. The decisions taken by the Council against Zimbabwe and Liberia within the framework of the Cotonou agreements prove, if need be, that such sanctions can be implemented when supported by a real political will. However, today, no concrete steps have been taken to bring a halt to violations of human rights and humanitarian law and to guarantee that human rights are fully integrated in any future peace process. The suspension of the bilateral Association Agreements with Israel, as asked by the European Parliament in its latest resolution on the Middle East, can be, in this regard, a first step allowing to guarantee that international human rights and humanitarian law have a concrete meaning and value in the region. This initiative should be accompanied by concrete steps being taken by the EU in order to guarantee that a permanent, transparent and independent international human rights and humanitarian law monitoring mechanism is established and that human rights will be placed at the centre of any initiatives aimed at restoring peace and security in the region.

Social Justice, Human Rights and the Euro-Mediterranean Free Trade Area

One of the Barcelona Declaration’s and the Association Agreements’ objectives is the creation of an area of shared prosperity, notably through the establishment of a free-trade area by 2010. This area is planned to link together the 15 EU Member States and the 12 Mediterranean partners, i.e. Algeria, Cyprus, Egypt, Jordan, Israel, Lebanon, Morocco, Malta, Syria, Tunisia, Turkey and the Palestinian National Authority. The Euro-Mediterranean free trade area foresees gradual liberalisation of trade in goods, agricultural products, services and capital. As recognised by the first Euro-Mediterranean Ministerial Conference on trade, the question of foreign direct investment will also play an important role in the process.

Another objective of the Barcelona Process (Barcelona Declaration and the Association Agreements) is the promotion and protection of human rights. This commitment includes the promotion and protection of economic, social and cultural rights, including the right to education, the right to adequate housing, the right to health, the right to food, the right to work, the right to form and join trade unions and the right to social security.

Consequently, within the Barcelona Process framework and under the bilateral Association Agreements, EU member States and their Mediterranean partners hold the concurrent responsibilities to promote and protect human rights and to implement trade rules.

International human rights mechanism – the United Nations Committee on Economic, Social and Cultural Rights, the United Nations Sub-Commission on the Promotion and Protection of Human Rights, the Office of the High Commissioner for Human Rights, the United Nations non-conventional mechanisms established by the United Nations Commission on Human Rights and the International Labour Organisation (ILO)- are increasingly looking at the link between international trade, economic and financial rules. In this respect, concerns have been raised about the human rights implications of trade policies, recalling the primacy of human rights obligations over economic policies and agreements, and asking governments and regional economic policy forums to take international human rights obligations and principles fully into account in economic policy formulation.⁴ For instance, the United Nations Committee on Economic, Social and Cultural Rights has determined that the “failure of a State to take into account its international legal obligations regarding the right to food when entering into agreements with other States or with international organisations” constituted a violation of this right.⁵ Finally, at the 1993 World Conference on Human Rights in Vienna States solemnly declared that human rights constitute the “first responsibility of Governments”⁶

In her report on “globalisation and its impact on the full enjoyment of human rights” the High Commissioner for Human Rights stresses that a human rights approach to trade liberalisation should provide a balance to the liberalisation of trade, therefore allowing guaranteeing the social dimension of trade liberalisation.⁷ Applied within the Barcelona Process framework, this approach can guarantee that human rights, including economic, social and cultural rights, are not sacrificed in the process of trade liberalisation.

While it is difficult to identify the real and potential human rights impact of trade liberalisation in the Euro-Mediterranean region, the design and implementation of trade liberalisation concerning agriculture, services and investment could affect the enjoyment of human rights and in particular the right to food, the right to education, the right to health, the right to work, the right to social security, as well as the rights of particular groups such as women, children, minorities, farmers, etc.

⁴ U.N. Doc. E/CN.4/Sub.2/RES/2001/7; U.N. Doc. E/CN.4/Sub.2/RES/2001/4; U.N. Doc. E/CN.4/Sub.2/RES/2001/5

⁵ U.N. Doc. E/C.12/1999/5, para 19

⁶ A/CONF.157/23, para 1

⁷ U.N. Doc. E/CN.4/2002/54

With regard to the liberalisation of trade in services, the bilateral Association Agreements cover the “right of establishment of one Party’s firms on the territory of the other and liberalisation of the provision of services by one Party’s firms to consumers of services in the other”. Furthermore, the part on services in the Association Agreements reaffirms each Party’s obligations under the GATS and in particular the most-favoured nation and national treatment principles. In this respect, the United Nations Sub-Commission on the Promotion and Protection of Human Rights recalled, in a resolution passed in August 2002, the potential human rights implications of liberalisation of trade in services, including under the GATS framework.⁸

Indeed, liberalisation of trade in services raises concern regarding the universal, equitable and non-discriminatory access to basic services – such as education, water and health- and the enjoyment of such rights as the right to education, the right to adequate housing and the right to health.⁹ The United Nations Special Rapporteurs on the right to education and on the right to adequate housing, addressing the issue of basic services’ privatisation, highlight the possible potential human rights implications of liberalisation of trade in services.¹⁰ In this respect, the privatisation of sectors such as health, water and education has often been accompanied with the introduction of user fees, placing these essential services out of reach for the poor, the destitute and other vulnerable groups. In terms of quality, the privatisation of basic services has also led, in many cases, to the creation of two different systems, a private and an expensive one of good quality but out of reach for the majority of the population, and another one, public and free, but of very low quality. Both outcomes can constitute serious hurdles impairing the enjoyment of economic, social and cultural rights, as well as the achievement of sustainable development goals. It also remains unclear whether a government, under the national treatment, most-favoured nation and non-discrimination principles will be able to implement affirmative action policies. The intrinsically nature of affirmative action policies is to give preferential treatment to certain groups or regions in order to guarantee a de facto equal enjoyment of all human rights. Regulatory measures as well as the provision of subsidies can be considered as implementing measures of affirmative action policies. While under human rights law affirmative action policies are not considered as a form of discrimination, subsidies to a particular actor operating in a given sector that has been liberalised under the GATS might be considered as discriminatory in nature.

With regard to liberalisation of trade in agriculture and given the important role that agriculture plays for development of many countries, including the Mediterranean ones, the High Commissioner for Human Rights highlighted in her last report on globalisation and human rights that the design and implementation of trade liberalisation concerning agriculture could affect the enjoyment of human rights and affect particular groups such as children, women, indigenous peoples and migrants.¹¹

⁸ U.N. Doc. E/CN.4/Sub.2/RES/2001/4

⁹ See for instance U.N. Doc. E/CN.4/2000/6; U.N. Doc. E/CN.4/2000/6/Add.2; U.N. Doc. E/CN.4/2002/60; U.N. Doc. E/CN.4/2002/59

¹⁰ *Ibid.*

¹¹ U.N. Doc. E/CN.4/2002/54

There is therefore a crucial need to guarantee that developments towards the creation of a free-trade zone in the Euro-Mediterranean region do not lead to a zero sum game where human rights are being marginalized in the process. The Barcelona process, which in this respect differs from the international framework regulating trade and human rights law, offers the interesting setting of having trade and human rights goals incorporated in a single instrument (i.e. the Association Agreements, the Barcelona Declaration). Consequently, special procedures and mechanisms must be put in place in order to give adequate human rights considerations in trade rules and to guarantee that the objective of a free trade area by 2010 will not be realised at the expense of human rights. In this task, human rights shall not be viewed as disguised protectionism or additional conditionalities but rather as essential safeguards guaranteeing social justice and sustainable development.

In this respect, OMCT urges the EU and its Mediterranean partners to:

- Give adequate human rights consideration in trade rules and in liberalisation of trade in the Euro-Mediterranean region, through the establishment of clear procedures at the multilateral and bilateral levels, notably within the framework of the EU Commission, the MEDA Programme and the Association Councils meetings;
- Guarantee that the liberalisation of trade in services and trade in agriculture will:
 - not negatively impact on the enjoyment of economic, social and cultural rights including the right to education, the right to health, the right to adequate housing and the right to food;
 - not negatively impact on States' ability to implement adequate policies, including affirmative action policies, to guarantee the enjoyment of all human rights within their territory and under their jurisdiction;
- Undertake human rights impact studies of liberalisation of trade in services, which should orientate further liberalisation. One way of performing these human rights impact studies would be to integrate them in the assessment of liberalisation of trade in services that has to be conducted by the Association Councils no later than five years after the coming into force of the Association Agreements;
- Undertake human rights impact studies of liberalisation of trade in agriculture, which should orientate further liberalisation. One way of performing these human rights impact studies would be to integrate them in the assessment of liberalisation of trade in agriculture that has to be conducted after the coming into force of the bilateral Association Agreements;
- Inscribe human rights on the agenda of the Euro-Mediterranean Ministerial Conference on trade, in a way that does not place human rights as additional conditionalities or disguised protectionism.

List of OMCT Documents

Regarding the urgent appeals and press releases released by OMCT on the Euro-Mediterranean region (General, Women, Children, Economic, Social and Cultural Rights, Racism and Human Rights Defenders), please consult the website of OMCT www.omct.org.

The other documents released by OMCT that are relevant to the Euro-Mediterranean region and the issues raised in this paper include the following:

Torture

OMCT, *Comments on the Third periodic Report by the State of Israel Concerning the Implementation of the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*, 2001

OMCT, Urgent Appeal, *Libya: developments in the trial of five Bulgarian nurses and one doctor*, 2002

OMCT, Press Release, *Tunisie: grave détérioration de la situation des droits de l'homme en Tunisie*, 2002

OMCT, Press Release, *Greece: OMCT expresses its concern about the trial of policemen accused of beating two Roma in Greece*

OMCT, Press Release, *Tunisia: A General, responsible for acts of torture, at the head of the Organising Committee of the Mediterranean Games*, 2001

Women

OMCT, *Violence against Women in Israel*, in Violence against Women: 10 Reports/Year 2001, 2002

OMCT, *Violence against Women in Turkey*, in Violence against Women: 10 Reports/Year 2001, 2002

OMCT, *Violence against Women in Egypt*, 2001

OMCT, *Violence against Women: A Report*, 1999

Children

OMCT, *Rights of the Child in Tunisia*, 2002

OMCT, *Rights of the Child in Spain*, 2002

OMCT, *Rights of the Child in Egypt*, 2001

OMCT, *Rights of the Child in Turkey*, 2001

OMCT, *The treatment of detained Palestinian children by the Israeli authorities*, 2001

Human Rights Defenders

The Observatory for the protection of Human Rights Defenders (OMCT and FIDH), *Annual Report 2001: Human Rights Defenders on the Front Line*, 2002

The Observatory for the protection of Human Rights Defenders (OMCT and FIDH), *Tunisie : L'affaire Yahyaoui, le combat d'un homme pour l'indépendance de la justice*, 2002

The Observatory for the protection of Human Rights Defenders (OMCT and FIDH), *Tunisia: A lawsuit against the human rights league, an assault on all rights activists*, 2001

OMCT, FIDH, EMHRN, KHRP, UIA, Bar Human Committee of England and Wales, *Trial observation : freedom of expression, freedom of association and unfair trials in Tunisia: A report of the trials of Dr Moncef Marzouki, Attorney Nejjib Hosni and the Tunisian League for Human Rights*, 2001

The Observatory for the protection of Human Rights Defenders (OMCT and FIDH), *Egypte : Les défenseurs des droits humains, cibles de l'extrémisme religieux. Le procès intenté contre Nawal El Saadaoui*, 2001

OMCT, EMHRN AND KHRP, *Report from a fact-finding mission to Istanbul and Ankara on 5-11 May 2001 with updates: The F-Type prison crisis and the repression of human rights defenders in Turkey*, October 2001

OMCT, FIDH, HRW, AI, *The administration of justice in Tunisia: Torture, trumped-up charges and a tainted trial*, 1999

Economic, Social and Cultural Rights

OMCT, LAW and PCATI, *The Policy of Closure, House Demolitions and Destruction of Agricultural Land as violations of the Convention against Torture*, 2001

OMCT, *The Closure of the Palestinian Occupied Territories: Violations of Economic, Social and Cultural Rights, Torture and Other Cruel, Inhuman and Degrading Treatment*, 2001

OMCT, *Human Rights in the Euro-Mediterranean Region and the Barcelona Process*, 2000

OMCT, Press Release, *Greece: Violations of Roma's Right to Adequate Housing as Part of the Preparation of the 2004 Olympic Games*, 2002

Racism

OMCT, Contribution to the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, South Africa: "*Racism and Torture: From National Preference to Inter-ethnic Violence*", 2001

OMCT, Press Release, *Greece: The illegal deportation of 34 asylum seekers from Greece to Turkey*, 2001

OMCT, Press Release, *Greece/Turkey: Illegal deportation of asylum seekers from Greece to Turkey and fear of further deportation to Iraq*, 2001

OMCT, Urgent Appeal, *Turkey: arbitrary detention and forced deportation of more than 205 Africans*, 2001