LIBYA

PRESENTATION

This review is part of a larger two-part study on **freedom of assembly in the Euro-Mediterranean region.**

Following an overview of the international standards relating to the freedom of assembly, Part I examines the legal frameworks in 11 countries of the Mediterranean and in the European Union and their compliance with international human rights standards. Part II examines the implementation of laws and the exercise of the freedom of assembly and demonstration in practice.

In order to assess the compliance of national legislations with international standards relating to the exercise of freedom of assembly, objective indicators were used as a reference throughout this study. A gender-sensitive approach was incorporated to determine whether women enjoy freedom of assembly to the same extent as men or face more restrictions.

This study was conducted in consultation with members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 human rights organizations in 30 countries. It thus reflects the active involvement of EMHRN's working group members on freedom of association and assembly, as well as other civil society organizations and experts.

The study is meant to provide human rights defenders, civil society organizations, international organizations, and state institutions with an analysis that allows them to compare national laws and policies with those of other countries and assess their conformity with international conventions, with a view to advocating for reforms and guaranteeing freedom of assembly across Euro-Mediterranean area.

The chapters are also available separately: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco and Western Sahara, Palestine, Syria, Tunisia, Turkey, and the EU.

Introduction

Whilst public protest was prohibited and non-existent in the time of Gaddafi, since 2011 Libyan citizens have extensively turned to expressing their opinions publicly at demonstrations. However, since early 2014[1] the exercise of this right has been coming up against many uncertainties and a resurgence of violence.

Armed groups formed during the conflict have seen their ranks swell since the end of hostilities in 2011, and they exercise considerable political and military power. Most of the militias were officially incorporated into the Ministry of the Interior and the Ministry of Defence following the decree promulgated by the National Transitional Council (NTC) in September 2012, but in fact they operate independently. The assassinations of State representatives or human rights activists and clashes between the regular army and militia groups bear witness to the major difficulties encountered by the government in establishing its authority over the whole country. The chaotic security situation therefore constitutes one of the main obstacles to exercising the right to freedom of assembly.

In the eastern part of the country, the institutions of government continue to be weaker and the armed groups stronger. Nevertheless, demonstrations protesting against lack of security are more numerous. Moreover, the fall of the previous regime has highlighted various problems of an inter-community nature, and the marginalization of certain regions by the capital. As a result, many demonstrations have been held in Benghazi in order to obtain regional autonomy. To this are added a considerable increase in corruption and a lack of a legal framework for effectively addressing the abuse and violation of human rights.

A majority of demonstrations demand the dismantling of the militias and a return to public order. Since February 2014, several demonstrations against the General National Congress (GNC) have taken place (Tripoli, 2 March; Benghazi, Zawiva, Tripoli in April). Some Trade Unions have also demonstrated (in 2012, teachers and airline employees; since 2012, petroleum sector employees: Sidra, December 2012; Ras Lanouf, January 2013; Zueitina, December 2012; Benghazi, April and November 2013).

The demonstrations are usually organized by local leaders, social movements or political parties, very often via social networks. On other occasions, local councils and tribal leaders themselves lead the protests, as in the case of the demands for autonomy in the Benghazi region.

Many women participated in the organization of rallies at the start of the revolution. At the end of 2011, demonstrations were held to increase the number of women in Parliament and, during the 2012 election campaign, some of the 600 female candidates took part in public events. Some women's rights organizations in Libya organized public meetings in Tripoli to discuss women's rights and women's participation in the political process.

And finally, since 2013, demonstrations by Berber and Tuareg groups asserting their rights as minorities have been increasing, as has direct action such as the boycott of the constituent assembly and the blocking of ports and refineries throughout the country (Tripoli, September 2011; Tripoli, January 2012; Sebha, February 2013; Tripoli, July 2013; Mellitah, October 2013; Sahrara February 2014 etc.). The Tubus, an ethnic minority of southern Libya, have also demonstrated on several occasions seeking from the government the creation of separate districts and local councils for the Tubu minority in Kufra (Al-Sarir, end of 2013).

1. Restrictions Imposed on Freedom of Assembly

No case of prior refusal to allow a demonstration has been identified within the context of this study. Restrictions imposed on the right of assembly by the security forces and/or third party groups acting

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1 In 2013, a report by the General National Congress (GNC) estimated the number of extra-judicial executions at 643. DefenceWeb, 29 January 2014, http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=33392:643-libyans-killed-in-assassinations-extra-judici

as guarantors of public order depend on the purpose of the demonstration, and the balance of forces and interests at that time.

According to civil society organizations, women are faced with increased harassment and intimidation by certain extremist groups who consider their participation in public events as a violation of religious and cultural norms.

2. Facilitation of Assemblies by the Authorities

In practice, the prior notification arrangements established by Law 65 of 2012 is applied fairly loosely and, although most demonstrations do not observe them, such demonstrations are nevertheless condoned by the authorities. The notification process is theoretically quick and simple but, due to the chaotic state of public administration, organizers do not tend to notify the competent authorities. The authorities have generally shown tolerance toward peaceful demonstrations even when they do not comply with the procedure or if they contravene certain regulations. For example, non-resident citizens who, in accordance with Law 65 of 2012, are not allowed to demonstrate, were able to participate freely in demonstrations at refineries and ports in the country (Ras Lanuf, January 2013). The authorities have condoned demonstrations critical of the transition process and the government (demonstrations of February 2014 throughout the country), despite article 195 of the Penal Code amended in February 2014 which prohibits both public criticism of the Revolution, and any insult to the State and the GNC.

> However, the security forces' lack of resources imposes upon them a minimal role in public demonstrations and in most cases, they simply observe the development of events without intervening. The de facto composition of the security forces in Libya being currently confused, the brigades with responsibility for public order, nominally controlled by the government, facilitate or disperse demonstrations according to their own opinions and interests.

On the other hand certain militias can exercise a facilitative as well as a disruptive role and disperse gatherings in the absence of any reaction by the security forces.[2] For example, on 16 March 2012, a demonstration on the Freedom Square in Benghazi was disrupted by an armed group and resulted in one death and several injured. In the end, it was the militias responsible for security in the town that managed to disperse the armed men. During violent attacks by armed groups against demonstrators, the inaction of the law enforcement bodies has resulted, in some cases, in dozens of deaths and hundreds of injured. Several examples are illustrative:

The massacre at Gharghour

On 15 November 2013, a peaceful demonstration organised by the local council in Tripoli to demand that the police guarantee public order and that a militia set up in the vicinity of Gharghour leave the city, ended in a blood bath. The demonstration had been notified to the relevant Directorate of Security. As thousands of demonstrators were approaching Gharghour, the militias opened fire, killing 43 and wounding more than 450 people, including children. The police had taken no preventive measures to ensure safety and neither did it intervene to protect the demonstrators.[3]

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2   The GNC has justified the inaction of the security forces in this kind of case by their inability to oppose armed groups. Statements of Prime Minister Zeidan, 16 November 2013, http://www.lana-news.ly/ara/news/view/35975/
3   World Organization against Torture (OMCT), press release of 17 November 2013, http://www.omct.org/statements/libya/2013/11/d22445/

The displaced persons of Janzur

On 6 February 2012, Janzur, the camp of the displaced Tawergha people[4] in Tripoli, was attacked by armed groups which resulted in 7 deaths. The same day, the Rahma association organized a spontaneous march from Janzur to the Place des Martyrs to protest, but armed individuals attacked the march and 16 people were injured.

> *"After the revolution, we had hoped to be able to exercise our right to assemble freely. We organized several peaceful demonstrations to challenge the inhumane conditions in which we live, be it at the level of health, education, citizenship, security, justice, as well as the continual abuse that internally displaced persons still suffer in Libya",* laments Ali Nouh, representative of the Rahma association which works to put right the violations committed against internally displaced persons.

The authorities have also proved incapable of guaranteeing the safety of journalists covering the demonstrations. Reporters Without Borders (RWB) has condemned threats and attacks against journalists on several occasions, as well as cases of arbitrary arrests by militias, above all in Tripoli and Benghazi but not only there.[5] In November 2013 in Gharbour in Tripoli, at least one journalist was killed and several others wounded in violence unleashed by the militia.

After the events in Gharghour, the government tried to better protect demonstrators. As a result, during the many demonstrations of February 2014, more police officers were deployed on the scene in coordination with the local councils. However, in general, the police and militias that have been integrated into the security forces, have received only rudimentary training and have no concept of how to maintain order whilst respecting human rights.

3. The Use of Force and Detention

The security forces, third party groups and at times, armed demonstrators, make use of force. Whether force is used depends on the messages being put across by the demonstration and the interests of security officials.

In the face of uncertainty and arbitrariness, some individuals resort to self-defence, and some demonstrators are themselves armed, with the risk of the situation becoming inflamed in the face of militias which are more or less officially responsible for maintaining order.

The case of 'Black Saturday'

On 8 June 2013, hundreds of demonstrators gathered in Benghazi, in front of the headquarters of the Libya Shield 1 Brigade, a militia which cooperates with the Ministry of Defence, in order to protest against the abuses of the militia and demand that the State guarantee public order. Despite the different versions as to how events unfurled, it seems that the wave of violence occurred when the militia started shooting in order to disperse the crowd which had begun throwing stones. A small

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4 Because of the 2011 conflict, nearly 60,000 people from various groups, Tawergha, Mashashiya, Gualish, Jaramla in Dirj, S'ian in Zigzaw, Tubu in Kufra and Tuareg in Ghadames, remain displaced internally. The inhabitants of Tawergha represent the largest group, some 30,000 people in total. Armed groups from Misrata drove them out of the town by force in August 2011, equating them with the pro-Gaddafi forces from Tawergha which had been responsible for serious abuses. In 2013, the government undertook to develop a plan for them to return and in the meantime to improve their living conditions, but there is no comprehensive strategy aimed at enabling displaced communities to return to their homes.

5 Reporters without Borders, press releases 2014, http://en.rsf.org/libya.html

group of armed demonstrators defended itself by opening fire and the militia responded with anti-aircraft weapons. The demonstration ended with 32 deaths. The Libyan security forces did not intervene.

Arrests

The security forces have arbitrarily arrested demonstrators, as have the militias, and detained them briefly. Demonstrators in possession of firearms have also been arrested even though in the end, no charges were brought against them. In August 2012, for example, the militias destroying Sufi shrines in Tripoli and Zliten detained several protesters who were demonstrating peacefully against this act. On 2 March 2014, armed groups detained demonstrators who were participating in a sit-in in front of the Parliament. The Press is also a victim of these arbitrary arrests, as demonstrated in the case of an American journalist arrested by an armed man in civilian clothes in Tripoli in May 2013, while he was covering a demonstration. People arrested at demonstrations are normally released a few hours later.

However, cases of arbitrary detention and torture take on alarming proportions in Libya.[6] Witnesses have stated that some of those detained arbitrarily by militias during demonstrations were then taken to illegal detention centres where they were tortured.

4. Accountability of Law Enforcement Forces

No effective mechanism exists to ensure the investigation of abuses committed by both the official security forces and the militias. The confusion between the militias and the State is highly prejudicial since these non-governmental players commit violations of human rights under the guise of state legitimacy. Subsequently this phenomenon contributes to the increased vulnerability of the victims, who cannot go to the police or prosecutors who themselves fear they may become victims of reprisals.

Although after the massacres of June and November 2013 in Benghazi and Tripoli, the GNC ordered investigations to be opened in order to shed light on the events,[7] in practice, violations of the right to freedom of assembly have not been brought to justice, and this contributes to the entrenchment of a culture of impunity in the country.

5. Judicial Sanctions against Organisers and Participants in Assemblies

Even though there is a judiciary, in reality, it does not work properly because of the insecurity (several judges and prosecutors have been victims of selective assassinations),[8] the fragility of the institutions, and the growth of corruption.

In these circumstances, those detained at demonstrations are not systematically brought before a judge. Apparently, only cases of demonstrators accused of being armed at rallies have been referred.

6. Civil Society Initiatives and Good Practices

After more than 40 years of repression, initiatives to find a place in the public arena as a peaceful way of expression and participation are currently spreading across Libya. Libya is experiencing an exponential growth in the number of human rights organizations and movements. Before the 2011 revolution, civil society did not exist and non-governmental organizations were illegal. Some of these organizations currently work on documenting human rights violations. Some have set out recommendations for legislative reforms

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6 In Libya, torture is widespread. In most cases, it is used immediately after arrest and at the start of detention during the first few days of interrogation in order to obtain confessions and other information. Several detainees have died in the custody of the armed militias in Tripoli and Misrata in circumstances which suggest torture.

7 Human Rights Watch, press release of 17 November 2013, "Libya: Militias Kill Unarmed Protesters ", http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=528b440a4&skip=0&coi=LBY&searchin=title&sort=date; Amnesty International, press release of 21 November 2013, "Libya must protect demonstrators from 'out of control' militias or risk new bloodshed", http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&docid=528f14564&skip=0&coi=LBY&searchin=title&sort=date; Human Rights Watch, press release of 14 June 2013 « Libya: No Impunity for 'Black Saturday' Benghazi Deaths", http://www.hrw.org/news/2013/06/13/libya-no-impunity-black-saturday-benghazi-deaths

8 Human Rights Watch, press release of 08 August 2013, "Libya: wave of political assassinations" http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations

in order to ensure that the law on demonstrations and public meetings complies with the international regulations.[9]

The Libyan National Council for the Civil Liberties and Human Rights, is an independent institution established[10] to promote human rights in Libya and document violations, but it still lacks resources and skills.

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9   Cairo Institute for Human Rights Studies (CIHRS) and 6 Libyan organizations, Press release 3 December 2012, http://www.cihrs.org/?p=5178&lang=en. EMHRN, *The right to freedom of assembly in the Euro-Mediterranean region Part I: Legislation Review,* 2013 (Libya chapter) http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_LIBYA.pdf

10 It was set up by the National Transitional Council (CNT) on 28 November 2011 in compliance with Law no. 5 but did not take effect until 2013. Its mandate is established in compliance with the Paris Principles. See NCCLHR, *Strategic Plan of the National Council for Civil Liberties and Human Rights,* 19 December 2014, http://9bri.com/wp-content/uploads/2014/01/20141219-NCCLHR-Strategic-Plan-English_FINAL.pdf .

Recommendations

1. Guarantee that the freedoms of assembly, expression and association can be exercised by any individual or group without any discrimination based on opinions, origins, sex, religion etc.;

2. Bring legislation on public meetings and demonstrations into line with international law, and with commitments made by Libya; enshrine in law the State's duty to maintain public security, and protect citizens; (see first part of the Study);

3. Ensure that the notification procedure provided for by law is transparent, accessible, and not unduly onerous, and that the administrative authorities do comply with the law when it is implemented;

4. Make sure that restrictions applied comply with the law, respect the principles of necessity and proportionality and are communicated in writing to the organizers within a time frame that allows for an appeal before an independent tribunal or court before the scheduled date of the event;

5. Ensure that the authorities are always open to dialogue with the organisers (before and during the gatherings), and when such dialogue occurs, that its purpose is to better facilitate the right of peaceful assembly;

6. Put an end to arbitrary arrests during peaceful demonstrations;

7. Ensure that the protection of demonstrators on the ground is guaranteed by the State in compliance with its international obligations and not by militias or bodies not authorised by the State; protect peaceful demonstrators in all circumstances against third parties attempting to interfere with their right to demonstrate peacefully; in particular ensure that women can effectively exercise their right of assembly without fear of intimidation, harassment or violence threatening their security and integrity;

8. Guarantee the security of journalists and facilitate their access to peaceful gatherings;

9. Reform the security sector in Libya: define clear lines of responsibility, bring the various security forces under control, and disband parallel armed forces and militias;

10. Adopt clear, detailed, and binding regulations for the use of force against demonstrators, in compliance with the United Nations Basic Principles on the use of force and firearms by law enforcement officials; train the law enforcement bodies in the use of force and anti-riot weapons accordingly;

11. Ensure that any use of force by law enforcement officers follows the principles of last resort, necessity, progressiveness and proportionality; ensure that lethal force is only a last resort and used as a defence against an imminent threat endangering human lives;

12. Expedite prompt, independent and impartial investigations in the event of a complaint or information about possible breaches or violations of human rights committed by law enforcement authorities during any operations to maintain order; punish those responsible and enable victims to obtain redress as well as be given guarantees of non-repetition; to this end, establish an independent mechanism for monitoring and investigating the behaviour of the security forces.