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2014 Freedom of Assembly under Threat Muzzling dissent in the Euro-Mediterranean region



Part II
Practices

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"Burial of opponent Chokri Belaid, Tunis, 8 February 2013." by Pierre Terdjman.

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"Anti-Morsi protests, 3 July 2013."
by Pierre Terdjman

INTRODUCTION

Since its creation in 1997, the **Euro-Mediterranean Human Rights Network** (EMHRN) has paid particular attention to freedom of association and of assembly in the Euro-Mediterranean region. The EMHRN has closely monitored the situation in the various countries, all the while reporting violations, supporting the work of its member organizations and formulating recommendations to governments in order to ensure the exercise of these freedoms.

In 2013, the EMHRN published the first part of its **Regional Study on the Freedom of Assembly in the Euro-Mediterranean Region** focusing on the legislative frameworks that govern this right across the region. We now present the continuation of this analysis, which focuses on the practical exercise of freedom of assembly, the various forms that social protest movements have assumed in recent years and the ways in which this fundamental right has been protected or undermined.

The fundamental rights which are now enjoyed across the region - albeit to varying degrees in each country - are in large part due to the repeated and public struggles of men and women who have often put their lives at risk by protesting publicly. The democratic uprisings of the “Arab Spring” are the most recent example of this quest and, even if subsequent events have not always brought the hoped-for changes, they have nevertheless revealed people’s powerful collective aspiration for freedom and their desire to participate directly in public affairs and regain their role as civic actors engaged in today’s social transformations and democracies.

The wave of protests of the “Arab Spring” demonstrated the centrality of freedom of assembly in democratic transitions and in the functioning of participative democracy. The Arab “revolutions” or uprisings were accomplished through the exercise of the fundamental rights of freedom of assembly and freedom of expression. These rights are not only a key element in the struggle against oppressive regimes - often at a high price in terms of human lives - but are also an essential element for the exercise of democracy, which cannot be diminished to the mere holding of elections. Although these uprisings have often been triggered by the use of new communication technologies and “social media”, they played out in the streets where the physical, continued, and repeated presence of men and women in public spaces has caused governments to fall, to change course, and sometimes, unfortunately, to adopt even more drastic and repressive measures in order to crush protest and muzzle criticism.

After the revolution which put an end to dictatorship in Tunisia, it was the so-called “Casbah” sit-ins throughout February 2011 in Tunis which enabled change to go even further, spurring the establishment of a transition commission and the adoption of initial democratic reforms. Following a series of political assassinations in 2013, it was once again a prolonged sit-in staged by democratic activists in Bardo Square in front of the Constituent Assembly building which led to a renewed acceleration of the process toward democratic transition and the involvement of civil society. This resulted in the establishment of a “technical” government of national unity, the adoption of a new constitution following a referendum, and the holding of legislative and presidential elections in 2014.

Inspired by the events in Tunisia, millions of Egyptian citizens took to the streets of Cairo and other Egyptian cities in January 2011, in spite of brutal repression. The fall of President Hosni Mubarak being insufficient to bring about the hoped-for democratic, economic and social changes, Egyptians continued to resort to countless demonstrations in subsequent years, often risking their lives in the process. Successive administrations grudgingly accepted this new way of political participation chosen by their citizens, who had until then been forced to accept the charade of regular elections as a façade of democracy. In June 2013, mass demonstrations paved the way for the overthrow of President Mohamed Morsi by the army, and today street demonstrations remain the preferred means by which human rights defenders and political opponents speak out, risking their lives and liberty at the hands of President Abdel Fattah el-Sisi’s government.

In Syria and Libya, the peaceful 2011 uprisings were met with even more ferocious and deadly repression. President Bashar al-Assad’s government has refused to engage in any kind of dialogue and reform, and has instead pursued a relentless and deadly escalation of violence, which has resulted in the on-going civil war. The government is responsible for extremely serious and extensive violations of human rights constituting war crimes and crimes against humanity.



In Libya, the repression carried out by the “Supreme Leader” Muammar Gaddafi triggered NATO’s international intervention, aimed at supporting the uprisings which eventually brought about his fall. Although the security and political situation is far from stable, the Libyan people regained, following Qaddafi’s overthrow, their right of assembly and protest as a way of influencing and taking part in the decision-making process.

While most of the countries bordering the Mediterranean were affected by the tidal wave of Arab uprisings, some Arab countries such as Morocco, Algeria and Jordan have faced protest movements of lesser magnitude and governments adopted reforms to strengthen their position. Turkey and Europe have not been spared. Turkey experienced its “Spring” in June 2013 with the mass movement that started in Gezi Park and Taksim Square in Istanbul, while Europe has, since 2009 and particularly after the Arab Spring, faced mass protests against economic austerity measures imposed without democratic consultation. Some of these movements, such as the “Indignados” movement in Spain, adopted a *modus operandi* very similar to that of the Tunisian, Egyptian, and later Turkish uprisings, with the long-term occupation of public spaces, the setting up of protest camps and the organisation of their own broad-based debating assemblies outside of traditional trade unions or political organizations.

One of the fundamental aspects of democracy is the peaceful resolution of conflict and the respect of the rights of each individual within the limits of the rights of others. **It is therefore essential for a democracy to enable opposition, differing and minority views to be expressed publicly and peacefully through the exercise of the right of assembly and demonstration.** These demands must also be heard and taken into account by elected representatives; otherwise the very essence of democracy is undermined, pushing societies towards violence and open conflict.

The key therefore lies in the facilitation by authorities of the right of peaceful assembly, and their non-use of excessive force or arbitrary arrests. On the other hand, demonstrators must not resort to violence if they want to see their right protected. Only under these conditions can a space for social dialogue be established and can freedom of assembly be an effective agent for participation in public affairs and social change. In practice, participation in democracy does not stop at the election process, as claimed by some leaders, such as Mohamed Morsi in Egypt or Recep Tayyip Erdogan in Turkey, who both relied on the legitimacy given to them in the ballot box to discredit the 2013 mass movements challenging their rule.

It is sometimes difficult to determine where the right of peaceful assembly begins and where it ends: what should be done in the face of blind repression of peaceful movements by authorities? Do citizens not have the legitimate right to rise up against tyrannies and organize themselves to actively resist repression? The uprisings in the Arab countries have demonstrated these blurred boundaries and the continuum which can exist between a peaceful demonstration and a revolution.

It is certainly paradoxical that it is the government’s role - should it be the object of protest - to ensure the facilitation and protection of the right of peaceful assembly, thereby guaranteeing the possibility of being brought into question. This makes it all the more necessary for civil society organizations and democratic movements to promote this right and demonstrate the extent to which it is fundamental in entrenching and ensuring the proper functioning of democracy.

Whether or not authorities facilitate or restrict the right of assembly is therefore a key indicator when assessing the state of a democracy and its ability to protect the diversity of opinions and the expression of dissenting and minority voices.

Assessment of freedom of assembly in the countries of the Euro-Mediterranean region

A summary of the diverse and numerous developments in Euro-Mediterranean countries points to a rather gloomy picture of the state of democracy in the region. This is particularly disheartening in light of the immense hopes which followed the “Arab Spring” and the initial democratic steps taken in several countries.

In **Morocco** (and elsewhere), the individual has, since 2012, emerged as a political being with rights and as an active citizen in public affairs. In large measure this is due to the explosion in the number of street demonstrations as a means of expression. Nevertheless, police repression, arbitrary arrests and censorship are still used, especially when demonstrators cross the monarchy’s “red lines”, rendering these advances fragile and limiting their institutional entrenchment.

In **Algeria**, the 2011 demonstrations forced the government to lift the state of emergency that had been in force for 19 years and embark on some reforms, primarily by adopting new laws on associations, media and political parties. Despite these reforms, the human rights situation has changed little and significant restrictions on freedoms, especially of assembly and association, persist in this politically closed country.

In **Tunisia**, significant progress has been made in protecting public freedoms, but these are yet to be embedded institutionally. Incidents where they are violated continue and highlight the need for systematic judicial prosecution of abuses as well as an in-depth reform of the security apparatus and of certain repressive regulations still in force.

In **Libya**, although the fall of the Gaddafi regime has enabled citizens to express themselves, organise themselves into associations and political parties, and assemble without significant interference by the authorities, the pernicious security situation, the weakness of the State, and the power of multiple armed militias make exercising the right of public assembly extremely dangerous and subject to the whims of armed groups.

In **Egypt**, street demonstrations have made and unmade two governments, reinforcing amongst successive authorities the idea that freedom of assembly is not a fundamental right, but a risk of instability to be quelled through legislation and force. No democratic reform has in fact been made beyond the reform of the constitution, whose provisions relating to the protection of freedoms are constantly abused by the authorities themselves in a systematic policy of oppression and serious human rights violations.

In **Israel**, the relative freedom afforded by authorities to their Jewish citizens with regards to demonstrations and public meetings has been challenged by the mass demonstrations of the “outraged” in July 2011 and June 2012 and demonstrations against the Prawer Plan. The attitude of the authorities and law enforcement agencies vis-à-vis Arab Israeli citizens, and their Jewish allies is, on the other hand, clearly discriminatory and repressive, resulting in numerous violations of the right of assembly and the right to liberty and life.

In the **Occupied Palestinian Territory**, citizens are subjected to two repressive regimes. On the one hand, the two warring parties in power which make up the Palestinian Authority, Hamas in Gaza and Fatah in the West Bank, continue to repress public support for the opposing party. In the absence of a system to combat impunity, abuses by law enforcement agencies are not followed up on. On the other hand, the drastic Israeli “military orders” regime maintains the Occupied Palestinian Territory under exceptional arrangements, simply prohibiting public gatherings when they can in any way be considered “political”. The abuses committed by the Israeli army against peaceful Palestinian demonstrators are legion and remain astonishingly unpunished, feeding into the cycle of hatred and revolt against the occupying power.

In **Lebanon**, significant progress has been made over the past ten years in protecting and facilitating the freedom of assembly. However this makes all the more obvious a few isolated yet serious cases of restriction and excessive use of force.

In **Jordan**, in spite of major demonstrations taking place since 2011, only very limited reforms have been achieved. The majority of the country's repressive legal provisions remain intact while drastic curbs have been imposed on the expression of political opinions. In this context, criminal proceedings, including before military courts, for crimes of opinion or for taking part in demonstrations, remain frequent.

In **Turkey**, the imposition of increasing restrictions on the freedoms of expression, assembly and association has marked the failure of the country's hesitant moves toward democracy in 2000. The brutal repression of the huge peaceful demonstrations that began in Istanbul's Taksim Square in 2013 has demonstrated once again that Turkish authorities perceive the public expression of dissatisfaction as a risk to be contained and not as a constituent element of the democracy they otherwise profess.

Finally, **Europe**, which cannot easily be summarised in one chapter due to the diversity of its legislative systems, institutional and security practices, and maturity of democratic institutions, has similar characteristics and faces comparable challenges as other countries in the Euro-Mediterranean region. European institutions and national governments have imposed economic austerity measures in most of the Member States of the European Union, often without any genuine democratic debate. This has given rise to massive popular protest movements at a time when there is increasing disenchantment with traditional forms of political participation, primarily voting in elections. Established western democracies are therefore confronted with a crisis in the democratic system and with new forms of expression, including the take-over of public spaces. This has posed a challenge to authorities, who must facilitate these forms of participation and respect individual freedoms, all the while maintaining public order. Another major issue is the respect for the expression of minority opinions or identities, especially with regards to sexual orientation and the cultural and religious identities of indigenous or immigrant minorities.

This quick tour of the region and summary of the following chapters demonstrates how pivotal freedom of assembly and its protection are to building democratic institutional foundations. **The protection and promotion of this right is therefore an important cornerstone of the work of civil society actors wishing to promote democracy.** It is with this in mind that the EMHRN has carried out this study, which provides an analysis, regional comparison, as well as recommendations for civil society organisations working, or interested in working, on the issue. By putting forward recommendations to national authorities, the EMHRN aims to offer its members and partners, civil society organizations and human rights defenders, the arguments and tools needed to effectively demand these reforms. This study should therefore not only be seen as an assessment of the current state of affairs, but as a first step towards further action.

This support to civil society organizations is consequently not only ink on paper; this study is and will be disseminated as widely as possible and used as a tool for advocacy with national, regional, and international authorities capable of influencing the adoption of democratic reforms where they are needed. It will also serve as a foundation for training and capacity-building activities for civil society organizations in order to instil a sense of local ownership and encourage its use for the promotion of fundamental freedoms, as part of the continuum of work that the EMHRN has developed with its working groups over several years.

Only through this sustained and continued work – which combines the practical exercise of the right of assembly by human rights defenders with awareness, public demands, and political advocacy – can authoritarian states be pushed and compelled to turn away from repressive methods and towards more democratic practices.

Definition

Freedom of assembly consists in being empowered to organize and participate freely in a gathering. For the purposes of this study, a “gathering” is defined as one which is intentional and time-limited, may be static or moving, in a public or private space, and whose purpose is to express an opinion that goes beyond the private sphere of each individual. As individual freedom exercised in a collective way, it may take the form of marches, sit-ins, picket lines, conferences, public meetings, processions, and other types of gatherings. It should be noted that the right allowing individuals to meet on private premises presents specific limitations related to property rights.

Needless to say, the freedom of assembly cannot be dissociated from the freedoms of expression and association, and it is a right fully protected by many international conventions, primarily the International Covenant on Civil and Political Rights. This is a pillar of democratic societies which enables the expression of and demands in respect of collective interests, especially minority opinions or the interests of marginalized groups which sometimes have no other ways to make their claims heard.

Geographical and time framework

This study covers the Euro-Mediterranean countries where the EMHRN has members and partners and carries out its work, i.e. Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia, and Turkey, as well as the European Union. One chapter is devoted to each one of the southern and eastern countries of the Mediterranean, whilst a single overarching chapter is devoted to Europe. The latter does not pretend to be exhaustive nor reflect all the diversity of this region, but rather to show the salient general trends by illustrating them with examples taken from several countries. This “difference of treatment” between European countries and those of the southern Mediterranean is explained by the fact that the EMHRN’s work consists mainly in developing solidarity with its most threatened members, the majority of whom are located in the countries with authoritarian regimes in the southern Mediterranean, and therefore in analysing in depth their situation and developing the tools to facilitate changes to this situation. This in no way means that Europe is free of problems and that violations of fundamental freedoms have disappeared. On the contrary, the chapter on Europe teaches us that the rights acquired must be continually defended against attack (by legislators, law enforcement agencies, private interests etc.). In this situation, the dynamics of discussion and solidarity created by the EMHRN Working Group on freedom of association and assembly - at the heart of this study - are fully realised, by bringing together activists from countries in Europe and those bordering the Mediterranean to the south and east.

The time framework for the study covers recent years up to the time of writing in mid-2014, with no fixed limit so as not to jeopardize the nuanced analysis according to each country’s context. Examples from 2008 are relevant to explaining general trends in some countries, while for others we have focussed on the period commencing in 2011 and the upheavals caused by the “Arab Spring”.

Methodology

As with the first part of the study on the legislative framework, the report reflects experience accumulated over some years by the Working Group on freedom of association and assembly which is made up of the EMHRN and its member organizations throughout the region. It is the result of collaborative work which has involved dozens of associations, activists, institutions, and regional academics, with the objective of providing human rights defenders, civil society organizations, international organizations, and State institutions with a comparative analysis that will enable them to evaluate national policies and practices and assess them in terms of

international law, in order to advocate relevant reforms and contribute to the strengthening of democracy and respect for the fundamental rights of all men and women in the Euro-Mediterranean region.

In order to allow an overall reading of the two parts of the study - the legislative framework and the exercise in practice of the freedom of assembly - the analysis of the situation in practice at the national level follows the indicators defined in the first part, namely, legal restrictions and procedures, facilitation and protection of the right of assembly, and sanctions, thus enabling an evaluation as to what extent the legal provisions are or are not enforced by the authorities and whether they tend to actually protect or alternatively hinder the exercise of the right of assembly. In view of their scale and seriousness in the region recently, the study is particularly interested in the use of force and in the issue of impunity and liability of State officials for the alleged violations of human rights. In addition, in all cases where it was relevant, the analysis has sought to highlight the innovative initiatives and good practices of civil society or institutions for the protection and promotion of freedom of assembly.

In reference to the countries of the European Union, and in view of their number and the diversity of their situation, the study only presents an outline of the main problems relating to the exercise in practice of the freedom of assembly, by probing more deeply the cases of several Western European countries in which the EMHRN has member organizations working on the issue and which were able to provide details and recommendations.

Finally, the regional study on the freedom of assembly in the Euro-Mediterranean region presents general recommendations which reflect the main recommendations addressed to the national authorities of the countries of the region, as well as recommendations for use by European Union and international institutions that can positively influence democratic reform.

GENERAL RECOMMENDATIONS

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The EMHRN invites all governments in the Euro-Mediterranean region to bring their legislation and practices relating to the right of assembly and demonstration into line with international law and the recommendations of international human rights forums.

The EMHRN particularly wants to submit the following recommendations to the governments of the countries of the region:

1. Ensure that the freedoms of assembly, expression and association can be exercised by any individual or group without discrimination based on opinions, origins, sex, religion etc.; implement concrete measures to ensure that women can effectively enjoy their right of assembly without the fear of intimidation, harassment, or violence threatening their security and integrity;
2. For all public meetings and demonstrations which may inhibit the rights and freedoms of others, establish a notification procedure (and not an authorisation procedure); ensure that the procedure is indeed transparent, accessible, and straightforward, and that the administrative authorities do comply with the law when it is implemented;
3. Make sure that restrictions applied comply with the law, respect the principles of need and proportionality, and are communicated in writing to the organizers within a time frame that allows for an appeal before the scheduled date of the event;
4. Ensure that the authorities are always open to dialogue with the organisers (before and during the gatherings), and when this dialogue takes place, that its objective really is to improve the facilitation of the right of peaceful assembly;
5. Protect the right to demonstrate peacefully even in the event of non-compliance with the notification procedures; protect peaceful demonstrators in all circumstances against disruptive elements who may try to interfere with their right to demonstrate peacefully;
6. Guarantee the security of journalists and facilitate their access to peaceful gatherings;
7. Not to resort to arbitrary arrests during peaceful demonstrations;
8. Adopt clear, detailed, and binding rules 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; arising from this, train the law enforcement bodies in the use of force and anti-riot weapons;
9. Ensure that any use of force by law enforcement officers follows the principles of last resort, need, progressiveness and proportionality; ensure that lethal force is only a last resort and used as a defence against an imminent threat endangering human lives;
10. 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 win 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;
11. Guarantee the fundamental right to a fair civil trial for all demonstrators who are prosecuted; refrain from bringing civilians before military or special courts where peaceful demonstrators are involved; prohibit the use of and the application of the

provisions of anti-terrorism legislation and review the procedures and sentences handed down by these courts against demonstrators.

The EMHRN wants to recall the recommendations made to the European Union (EU) in Part I of this study, which relate to the implementation of its own principles and guiding documents in its bilateral and multilateral relations with the States of the Euro-Mediterranean region.

In particular, we called for the real and effective implementation of Article 2 of the Association Agreements which stresses that “Relations between the parties ... shall be based on respect for democratic principles and fundamental human rights as set out in the Universal Declaration of Human Rights, which guides their internal and international policy and constitutes an essential element of this agreement”; of its commitment to democracy, respect for human rights and gender equality in the new European Neighbourhood Policy (ENP); or additionally, of the EU’s Strategy and Action Plan (current and future) on human rights and democracy and also its guidelines on human rights defenders,¹ and violence against women and combating all forms of discrimination against them.²

We once again call for the inclusion and specific assessment of respect for and the promotion of freedom of assembly in the EU Action Plan on human rights and democracy and in other geographically based accords, and also in the ENP Action Plans signed between the EU and partner countries.

In addition, we stress the essential role of EU Delegations in the implementation of European policies in the world, especially the promotion and protection of human rights in the countries where they are located. For this reason we call upon the EU delegations in the countries of the Euro-Mediterranean region to use all the means at their disposal to contribute to the respecting of the freedom of assembly, and particularly to:

- Set up a working group on human rights with the embassies of EU member States in all the countries concerned and organize regular meetings of this group in order, among other things, to assess the implementation of the local human rights strategy, decide on the topics to be reported on by heads of mission, coordinate observations on trials of human rights defenders, visits to prisons, and also the messages to be conveyed to the authorities locally;
- Regularly invite human rights defenders and local activists to discussions with the working group about the local human rights situation and freedom of assembly in particular as well as possible action when human rights defenders and organizations find their freedom of assembly flouted;
- Implement the positions adopted by the EU’s Foreign Affairs Council, as well as the EU guidelines (especially the guidelines on human rights defenders and on violence against women); have regular consultations with local independent civil society organizations both before and after (debriefing) bilateral meetings between the EU and the partner country. The aim of this is to include on the agenda of these meetings the human rights priorities raised by civil society, and also to assess the implementation of European policies (including the local strategy for human rights) and their impact on human rights and the freedom of assembly in particular;
- Support players in local independent civil society by way of funding, training, or any other form of support;
- At every opportunity for dialogue with the authorities locally, promote the development of a more democratic environment for civil society, including through legislative reforms, and systematically raise cases of human rights defenders and organizations where freedom of assembly has been flouted.

¹ <http://www.consilium.europa.eu/uedocs/cmsUpload/16332-re02.en08.pdf>

² <http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf>



ALGERIA

Introduction

Since 1991, freedom of association and freedom of assembly have been seriously hampered in Algeria by laws and abusive practices which restrict the exercise of these rights. In spite of this, the people of Algeria have not stopped demanding their rights to express their dissatisfaction in public with the deterioration of the political, economic and social situation.

In 2011, in the wake of the 'Arab spring', demonstrations and unrest increased in Algeria. Civil society sought to articulate an opposition strategy through the "National Coordination for Change and Democracy" movement. However thousands of police officers were deployed to put an end to the demonstrations and dozens of legal cases were brought against the demonstrators.

2011 and 2012 were notable for the adoption of legal reforms such as the lifting of the state of emergency but stymied by the approval of various laws further restricting citizens' rights, in particular, the freedoms of association and expression. The retention of restrictive legal provisions makes the organization of demonstrations and public meetings difficult.¹

Since then, the mobilization of socio-professional sectors such as the communal guards,² students, the unemployed, teachers, civil servants, health workers, etc. demanding improvements to working conditions has continued whilst the policy of repression has stiffened. Many of the demonstrations were broken up, involving violence in some cases, and some activists were prosecuted. In towns of the southern part of the country, organisations of unemployed workers and workers with insecure jobs, as well as employees of multinational companies, have considerably increased since 2013.

Human rights organizations, re-echoed in EU reports,³ have widely documented the deterioration of freedom of association and assembly in Algeria.

Between February and March 2014, during the period prior to the presidential election, hundreds of demonstrators, particularly in Algiers, were arrested during meetings convened by civil society groups.⁴ Following brutal repression at the start, the authorities adopted a more subtle strategy in order to safeguard Algeria's international image before recommencing its repressive practices some weeks later.⁵

1 For more details see the studies issued by the EMHRN: *The Right to Freedom of Peaceful Assembly in the Euro-Mediterranean Region – Legislative review*, 2013 (Algeria chapter): http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_ALGERIA1.pdf; and *lifting the state of emergency in Algeria : a game of smoke and mirrors*; <http://www.euromedrights.org/eng/2012/02/24/latest-emhrn-report-lifting-the-state-of-emergency-in-algeria-a-game-of-smoke-and-mirrors/>

2 The Communal Guard was established in Algeria during the Algerian Civil War in order to combat Islamist terrorism. For some years, the Communal Guard has been asking for the body not to be disbanded (this was decreed in 2012), a greater recognition of their work, and the approval of a backdated salary increase.

3 EU (2014): *ENP Package Report - Algeria*, dated 27 March 2014 http://europa.eu/rapid/press-release_MEMO-14-219_en.htm. It should be noted that thanks to the work of the many human rights organizations which have condemned the situation in the country over many years, the EU has finally reflected these violations in its European Neighbourhood Policy progress report. See the EMHRN reports and press releases: <http://www.euromedrights.org/eng/emhrn-statements/> and <http://www.euromedrights.org/eng/publications/>; Amnesty International: <http://www.amnesty.org/en/region/algeria>; Human Rights Watch: <http://www.hrw.org/middle-eastn-africa/algeria>; Cairo Institute for Human Rights: <http://www.cihrs.org/?s=Algeria&lang=en>; International Federation of Human Rights: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/algeria>; among others.

4 See Amnesty International's press release dated 14 April 2014: <http://www.amnistie.ca/sinformer/communiqués/international/2014/algerie/repression-menee-en-cette-periode-preelectorale>

5 During the demonstration of 16 April (the day before the elections), for example, two young people with no connection to the demonstration were arrested, detained and prosecuted. Joint EMHRN and Amnesty International Press Release dated 9 May 2014 condemning the detention and arbitrary prosecution of two young people: <http://www.amnesty.org/fr/library/asset/MDE28/006/2014/en/d5b8b27-554f-40f0-a768-ef5cc9c638db/mde280062014en.pdf>

1. Restrictions Imposed on Freedom of Assembly

Knowing that permission will be refused at the last minute, many of the organizers do not usually follow the procedure for the prior notification of public meetings nor for authorization of demonstrations.

Whereas, according to the law, public meetings are merely a matter of notification, in practice arbitrary restrictions amount to authorization. Human rights organizations and independent trade unions which give notification of their congress or general assembly often come up against a refusal by the authorities to issue a receipt of the declaration,⁶ yet this receipt is then required to assess the legality of the event, a pretext which serves to prohibit or disband the meeting.

Authorisation requests made to the local authorities (wali) for demonstrations by groups critical of government policies, in particular organisations representing the unemployed and workers with insecure jobs, the families of disappeared persons (during the 1990's internal conflict), human rights activists, and certain political parties and independent trade unions, are usually refused. Refusal is by means of a written notification or, more often than not, by simply a failure to reply. The absence of an acknowledgement that a request has been lodged or of a written notification prohibiting the demonstration prevents the organizers from presenting an appeal to the competent administrative authority. Some political parties have condemned this practice which blocks access by opposition organisations and parties to public areas.⁷

These obstacles make the practical organization of public meetings very difficult. Since the meeting is deemed to be unlawful in the absence of a response from the authorities, how can the event be publicised, participants invited, and assurance obtained that those responsible for hiring out the hall for the meeting will agree to do so?⁸ Organizers often ignore arbitrary prohibition, running the risk of administrative and criminal sanctions and seeing their event interrupted by law enforcement officials.

During the election period, meetings are permitted in closed-off areas for the political parties taking part in the electoral process and public halls are even made available to them. The parties who were involved in boycotting the 2014 presidential election⁹ for the most part saw their requests for the authorization of public meetings refused,¹⁰ even if they were able to carry out their plans on their own premises.

In this repressive environment, a circular from the Ministry of the Interior and Local Government, dated 8 January, announced that a list of 19 associations, including the Algerian League for the Defence of Human Rights (LADDH), would not be able to obtain permission to hold a public meeting prior to the wali consulting with the Ministry. The circular limits itself to invoking the existence of "internal conflicts within these associations"¹¹ without specifying the legal basis that would justify this measure.

6 As was the case of Amnesty International - Algeria section's general assembly in 2014.

7 See the case of the group of 16 political parties which opposed the revision of the Constitution before the presidential election of 2014 and which received no reply to the request to hold a public meeting at a hotel in Algiers on the 1 October 2013.

8 See CFDA (Collectif des Familles de Disparus en Algérie) (2013): *Le régime algérien à l'épreuve des droits de l'Homme - L'illusion du changement*, p. 90. <http://www.algerie-disparus.org/>

9 This is the case of the Coordination Nationale des Partis et des Personnalités (CNPP -National Coordination of parties and personalities) group, which brings together several parties, including the secular party RCD and the Islamist MSP as well as the former prime minister Ahmed Benbitour.

10 See: <http://www.euromedrights.org/eng/2014/04/10/algeria-violations-of-the-freedom-of-peaceful-assembly-during-the-electoral-period/>; some have, however, been permitted, such as the meeting of the "boycott front" on 21 March 2014

11 See LADDH press release dated 30 January 2014: http://www.algeria-watch.org/pdf/pdf_fr/laddh_communique_0614.pdf

2. Facilitation of Assemblies by the Authorities

As regards public or even private meetings (such as the meetings of certain associations on their own premises), the surveillance or harassment of participants by police officers – in civilian clothes or in uniform – is not uncommon.

With unauthorized rallies, law enforcement bodies very often intervene to stop the event taking place or to break it up at the start. Their intervention involves occupying the place where the demonstration should be taking place, blocking access to pedestrians and the means of transport used by the protesters to reach the location, and the preventive arrest of demonstrators in the streets nearby and at bus and railway stations.

The security forces intervening in the demonstrations are, primarily, the anti-riot brigades, the gendarmerie and, sometimes, officers of the Mobile Brigade of the Judicial Police (BMPJ) and even the “Brigade for Search and Investigation” (BRI) which takes photos and videos. Police officers in civilian clothes also intervene to arrest demonstrators and even to make sure their efforts are frustrated before and after the demonstrations.

After forcibly breaking up dozens of demonstrations in February and at the beginning of March 2014 during the election campaign, the authorities finally allowed several rallies, particularly in the capital. However, law enforcement officers encircled the demonstrators to prevent them from blocking the flow of traffic in the main streets and to deter other citizens from joining in, but without dispersing them. This practice is, moreover, very common.

In addition, law enforcement officers often prevent journalists or observers from doing their work,¹² especially when it comes to the independent press¹³ covering unauthorized demonstrations. It is not uncommon for journalists to be attacked and prevented from getting near the demonstration, sometimes even confiscating or breaking their equipment.¹⁴

With regard to the protection of women at demonstrations, no systematic violence or discriminatory treatment has been reported, but law enforcement officers occasionally engage in acts of harassment or even of degrading treatment during dispersion or interrogation.¹⁵

3. The Use of Force and Detention

Use of force

Resorting to force depends on the message and the identity of the demonstration’s organizers, the place, and political moment. For some demonstrations, law enforcement bodies resort to preventive arrests and for others, to the use of force and violently detaining people during the event. The cases of the movement

12 During the demonstrations organized the day before the April 2014 election, several journalists found it difficult to do their work normally. See Reporters without Borders’ press release dated 17 April 2014: <http://en.rsfb.org/algeria-authorities-urged-to-allow-16-04-2014,46157.html>

13 Several journalists from the media such as El Watan and Echorouk TV were detained while they were covering demonstrations against the government during the April 2014 presidential elections. A journalist working for El-Watan was even pursued and harassed along with three other journalists by a car on 17 April 2014 in the town of Khanchla. The individuals wanted to smash the vehicle that was carrying the journalists who were on assignment covering the presidential elections.

14 See the case of Mazian Abane, a journalist working for El Watan, who was arrested the 10 April 2014 whilst he was covering a student march at the University of Boumerdes. Law enforcement officers took away his personal phone and his camera to erase the videos.

15 Case of Amira Bouraoui, one of the initiators of the Barakat movement, whom the police attempted to undress publicly on 1 March 2014, during a demonstration against the Bouteflika’s fourth mandate. <http://lareleve.ma/news7872.html>

for the families of the disappeared, the movement of the unemployed, and political opponents illustrate this dynamic.

As regards spontaneous gatherings, law enforcement bodies almost always resort to force and making arrests, as in the case of the demonstrations in January 2011¹⁶ in Algiers or also the suppression of the 34th anniversary of the Berber Spring at Tizi Ouzou on 20 April 2014.¹⁷

There are differences depending on region. In the regions of the south and the interior regions, the law enforcement bodies suppress almost all demonstrations (the case of the movement for the unemployed is one of the most striking). In Kabylia, social movements are powerful and many demonstrations take place, but the sometimes brutal repression often causes riots which then lead to even more forceful repression. And in Algiers demonstrations are often broken up by force on the pretext of the 18 June 2001 decision which forbids demonstrations in the capital.

The use of force takes several forms: batons, kicking, insults etc. and sometimes use of rubber bullets and tear gas. Often, the use of force by the police is not consistent with the procedures established in the Penal Code and the principles of necessity and proportionality are not observed, resulting in injury among peaceful demonstrators.

This was the case during the demonstration of 23 February 2014 organized by the committee of workers in insecure jobs because of 'pre-employment' conditions, at which 350 people tried to approach the National People's Assembly building in order to peacefully claim improvements to their working conditions. According to the Independent national union of public servants (SNAPAP), participants were beaten and insulted by law enforcement officers, giving rise to approximately 50 injured.

Women enjoy no deference from law enforcement officers, and those taking part in the demonstrations are also mistreated and arrested. The most striking example is that of the mothers of disappeared persons (ill-treated, for example, when rallies on 5 July 2012, 10 December 2012 and 9 March 2013 were broken up).

Arrests

In general, the leaders or the organizers of the rallies are arrested in order to break up the movement. The legal basis invoked is the absence of permission to demonstrate. Arrests generally continue until nightfall, when the demonstration is over and the media have left.

In some cases detention is extended for several days, and some activists have been held for questioning under court supervision, imprisoned and brought before the courts.

Cases of ill-treatment were reported by demonstrators who have been detained. For example, on 20 February 2013, a group of unemployed people was taken to the police station in Laghouat where, according to the testimony of the LADDH, they were subjected to ill-treatment by the police in order to make them to sign statements.¹⁸

16 The Ministry of the Interior reported 19 injured and nine arrests during the demonstration of 22 January 2011 but the RCD (opposition party) claimed 49 injured and a score of arrests: http://www.lemonde.fr/afrique/article/2011/01/22/des-blesses-et-des-arrestations-dans-des-heurts-a-alger_1469056_3212.html

17 For example, on 20 April 2014, during the commemoration of the Berber Spring and the Black Spring, the peaceful demonstration of Tizi Ouzou was brutally broken up: <https://www.youtube.com/watch?v=hdu0fYKhZIQ> (in French). A student, Lounis Aliouat, lost his right eye: http://algeria-watch.de/fr/article/pol/kabylie/marche_reprimee.htm. The authorities justified police intervention by saying that the march at Tizi had not been authorised but neither had the demonstrations at Bejaia and Bouira been and they were allowed.

18 See press release issued by the LADDH in Laghouat dated 27 February 2013: <http://www.la-laddh.org/spip.php?article1454>. On 12 March 2013 the court at Laghouat sentenced four of these demonstrators to one month's imprisonment with a further suspended sentence of one month for "gathering together an unarmed crowd and using force against law enforcement officers".

During the March-April 2014 election period, numerous demonstrations organized in Algiers by various opposition groups¹⁹ were followed by arrests.²⁰ The national police admitted arresting 264 demonstrators during the first week of March. Reporters without Borders also drew up a list of a number of journalists arrested on the margins of the demonstrations.²¹ Following the outcry, this wave of arrests then eased off.²²

4. Accountability of Law Enforcement Forces

In spite of several articles in the Penal Code providing for the punishment of officers who restrict rights or freedoms,²³ in practice the authorities deny any infringement and investigations have very rarely been carried out when cases of abuse have been made public (by the broadcast of videos on social networks for example).

Following the suppression of events to commemorate the Berber Spring at Tizi Ouzou in April 2014, the chief of police announced an investigation into police brutality. No result has so far been published, and in similar cases neither the findings of the investigations, nor the perpetrators of the attacks have been made public.

On occasions, citizens have resorted to international human rights mechanisms to condemn cases of violence, considering that domestic remedies are useless or ineffective. A communication has for example been sent to the United Nations Special Rapporteur on the right to peaceful assembly and association, denouncing the violence of law enforcement agencies against activists during a sit-in at the Court of Algiers in April 2013.²⁴

5. Judicial Sanctions against Organisers and Participants in Assemblies

When demonstrators are brought before the courts, they are usually prosecuted under the Code of Criminal Procedure for demonstrating illegally, disruption to normal working, bringing together and inciting a crowd, disturbing public order or even for contempt and violence toward officials and institutions of the State.

On 18 April 2012, Abdelkader Kherba, trade unionist and human rights activist, was arrested during a rally organized by the court clerks' strike movement in Algiers. He was sentenced to one year's imprisonment (suspended) and a fine of 20,000 dinars (200 Euro) for usurpation of duty (as a trade unionist), hampering the work of an institution and direct incitement of a mob.

19 Among them, the Barakat movement, teachers and students, political parties (CNPP), the Communal Guards movement, the Collectif Citoyen contre le Quatrième Mandat (Citizens' group opposing the 4th mandate), the Refd Movement, human rights activists, etc.

20 In Algiers, demonstration on 23 February at Bouzareah University; 1, 6 and 15 March at the Central Faculty (arrest and remand in custody on 6 March of the lawyer Badi Abdelghani, president of LADDH in the Algiers area, released very late the same day); 12 March at the Martyrs Monument; 13 March at Bouzareah University; 15 March to the main Post Office. And elsewhere in the country: 3 March at Laghouat; 10 March at Bejaia and Bouira; 11 March at Djelfa; 12 March at Tizi Ouzou.

21 See the case of Zineb Benzita of Echorouk TV, arrested on 1 March 2014 when she was covering a demonstration in Algiers.

22 <http://elwatan2014.com/component/k2/item/1016-apr%C3%A8s-les-arrestations-de-barakat-la-police-dans-lembarras>

23 Article 440a of the Penal Code, which punishes all officers who, in the exercise of their duties, swear at, insult or make injurious comments to any citizen, with a prison term of one to two months and a fine of 500 to 1,000 dinars; and article 107, which punishes any official who orders or commits arbitrary or detrimental acts violating either individual freedom or the civil rights of one or more citizens, with a five to ten year term of imprisonment.

24 Communication sent by the lawyer Sid-Ali Boudiaf on 17 April 2013 in respect of 14 human rights activists arrested on 26 March 2013 at a sit-in in front of the Court of Algiers in support of a detainee prosecuted for being an apologist for acts of terrorism. Law enforcement officers hit the activists in the lobby of the Hussein Dey District Court while they were waiting to go into the court room.

On 16 April 2014, the court of appeal in Ouargla sentenced Mr Houari Djelouli, who at the time was a member of the National Committee for the Defence of the Rights of the Unemployed (CNDDC), to one year's imprisonment (suspended) and a fine of 50,000 dinars (about 500 Euro), for distributing "*tracts or notices of a kind that undermines the national interest*" (art. 96 of the Penal Code). Mr Djelouli had been arrested on 8 April 2013 with CNDCC leaflets calling for a sit-in whose aim was to demand the right to work.

6. Civil Society Initiatives and Good Practices

Civil society organizations in Algeria, weakened by harassment and interference by the authorities, are struggling to put in place joint strategies to promote the freedoms of assembly and association. However, there are a number of laudable initiatives:

- Demonstrations condemning the abuse by the security forces of demonstrators (14 March 2013 in Ouargla; 31 December 2013 in El Biar Algiers; 23 February 2014 at the main Post Office in Algiers); rallies at the court during the trial of activists or people arrested during demonstrations;
- Creation of human rights lawyers' groups to defend, amongst others, those prosecuted for having exercised their right of assembly;
- Use of social networks to organize and document rallies and abuse by the security forces. This increasingly common practice has allowed a considerable increase in the information about the arbitrary practices of the authorities and violations of the right of association and assembly. However, these networks are also closely monitored by the authorities and represent a risk to the activists who find themselves exposed to prosecution and reprisals;
- Despite the repression, civil society continues to demand its right to public areas by holding rallies, which are substantial in number. For many years, some groups, such as the families of the disappeared, have been demonstrating every week. For example, the movement for the unemployed, founded in 2012 in the south of Algeria, has become a player in the organisation of significant rallies and organized, amongst others, the 'Milioniya' in March 2013, which brought together more than 3000 people. 'Barakat' is a citizens' movement launched on 1 March 2014 by journalists, bloggers and human rights activists demanding the right to political participation, freedom of expression and assembly.²⁵ The movement was able to insist upon its right to demonstrate in Algiers during the 2014 election campaign.

25 See the Barakat movement's Charter: <https://www.facebook.com/50snabarakat?fref=ts>.

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. Pass legislation in respect of meetings, rallies and demonstrations which conforms with international law and the commitments made by Algeria, and in particular repeal the head of the government's decision dated 18 June 2001 which prohibits marches or any form of public demonstration in Algiers; and amend the articles of the Criminal Code which provide for disproportionate penalties against peaceful demonstrators; (see the first part of the Study);
3. Establish a notification procedure (instead of an authorisation procedure) for all public meetings and demonstrations which could interfere with the rights and freedoms of others; ensure that the procedure is indeed 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 this dialogue takes place, that its purpose is to better facilitate the right of peaceful assembly;
6. Put an end to arbitrary arrests during peaceful demonstrations and also the judicial harassment of citizens demanding their right to demonstrate peacefully;
7. Guarantee the security of journalists and facilitate their access to peaceful gatherings;
8. Adopt clear, detailed, and binding rules 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;
9. Act upon the State's responsibility to protect peaceful demonstrators; 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;
10. 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.



EGYPT

Introduction

On 25 January 2011 in Cairo, an immense popular uprising calling for freedom, social justice, and human dignity began. Whilst Egyptians have courageously been demonstrating since, those who have dared to publicly criticise the authorities have seen their human rights deteriorating. The disproportionate use of lethal force by security forces and the lack of police protection during protests over the past three years have resulted in pervasive grave human rights violations, including violation of the basic right to life and to be free from torture and other inhuman acts.

The declaration by the Minister of the Interior on 9 January 2014, stating that “every Friday no less than 500 to 600 get arrested [...] at the beginning, we used to wait for the demonstration to turn violent, but now we confront them once they congregate. When we confront them, there are some who run, but, whoever we can grab, we detain,” is a worrying show of contempt towards basic human rights standards and the rule of law.

“We are in a de facto state of emergency where the authorities assault, rather than protect, individuals taking part in protests. It is so ironic that since the country’s 2011 revolution, successive governments have constantly failed to remember that it is the people – through their active and courageous participation in peaceful assembly – who brought them to power” said Moataz El Fegier, EMHRN board member, in May 2014.

1. Restrictions Imposed on Freedom of Assembly

Egyptian officials have seen, and continue to see, peaceful protests as a threat for the stability of the country. Since January 2011, successive governments have all attacked those expressing dissent, restricted individuals’ ability to communicate freely,¹ used lethal force against peaceful assemblies, and arbitrarily arrested and tried protesters before military courts.

On 24 November 2013 the authorities enacted a new law on public demonstrations, the so-called “Protest Law”, following similar attempts to revise in a restrictive way the legislation on assemblies under the previous President Mohamed Morsi, a member of the Muslim Brotherhood.

The new Law 107 on the Right to Public Meetings, Processions and Peaceful Demonstrations requires demonstrators to give the authorities advance ‘notice’ before holding public meetings, and continues to make spontaneous assemblies illegal. The law grants security officials the power to ban any protest on very vague grounds, which turns the notification procedure into a de facto authorization. The law also provides for heavy penalties, including prison sentences for minor and vaguely defined offences, including cases where protesters “impede the interests of citizens” or “influence the course of justice”.² Finally, the law does not repeal, nor amend other problematic provisions concerning public assemblies, in particular the Law 109 of 1971 which grants police forces the authority to use fire power on very vague grounds to disperse assemblies.³

1 ANHRI, 30 January 2012, <http://www.euromedrights.org/eng/2012/01/30/anhri-investigating-the-crime-of-cutting-down-connections-how-they-escaped-punishment>

2 The United Nations (UN) and the European Union (EU) have criticised the new legislation and called on the Egyptian authorities to revise it: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14029&LangID=E>; [https://spdb.ohchr.org/hrdb/24th/public_-_UA_Egypt_03.12.13_\(16.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_UA_Egypt_03.12.13_(16.2013).pdf); European Commission, 27 March 2014, http://eeas.europa.eu/enp/pdf/2014/country-reports/egypt_en.pdf

3 Euro-Mediterranean Human Rights Network (EMHRN), *The Right to Freedom of Peaceful Assembly in the Euro-Mediterranean Region – Legislative review*, 2013. Egypt chapter: http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_EGYPT2.pdf

On 5 April 2014, two counter-terrorism bills were approved by the Egyptian Cabinet. If adopted by the next Parliament, these bills will severely restrict the rights to freedom of association and assembly based on very broad grounds, for example “belonging to a group that harms national unity or social peace”. The draft bills also enable security forces to detain an individual without any arrest warrant, and expand the scope of application of the death penalty. According to human rights organizations, these bills would codify a permanent state of emergency.⁴

Despite that, “given the importance of the rights to freedom of peaceful assembly and of association in the context of elections, the threshold for imposing restrictions should be higher than usual”,⁵ in the days surrounding the 2014 presidential elections, protesters were prevented from demonstrating and were immediately scattered by use of force and with tear gas, as for instance on 30 May 2014, in Cairo and in Alexandria where 25 anti-military protesters were arrested.⁶

2. Facilitation of Assemblies by the Authorities

In law, as in practice, the continued lack of police protection during peaceful assemblies appears to be one of the most worrying trends in Egypt, despite recent recommendations by the UN Human Rights Council,⁷ and several UN Special Rapporteurs blaming the police for not protecting anti-government peaceful protesters against armed counter-demonstrators.⁸

The lack of protection of women demonstrators against sexual attacks is another appalling reality. According to the Egyptian NGO ‘Nazra for Feminist Studies’, “Gender-based violence and sexual violence have always been perpetrated in a systematic manner by both State authorities and non-State players even before January 2011. Since then, it is important to note that women of all political affiliations, and those who do not have any, have been targeted, in the midst of utter impunity”.⁹ The highest number of sexual assaults, according to Nazra and other groups, took place in 2013: on 25 January, 24 cases were documented, including gang rape and assaults with sharp objects requiring consequent surgical intervention;¹⁰ and from 28 June to 7 July during the demonstrations against Morsi’s rule in Tahrir Square, 186 cases were documented, ranging from sexual assault to gang rapes.¹¹

These attacks are facilitated by the failure of the authorities to protect peaceful demonstrators from attackers, and to prevent, combat, and punish violence against women.

Some groups such as Operation Anti-Sexual Harassment (OpAntiSH/A), HarassMap, “I Saw Harassment” or Tahrir Bodyguards have been formed to protect female demonstrators, but it must be stressed that the safety and protection of the population is one of the core obligations of the State.¹²

4 Joint statement by Egyptian NGOs, 5 April 2014, <http://www.cihrs.org/?p=8487&lang=en>; EMHRN, 27 March 2014, <http://www.euromedrights.org/eng/2014/03/27/terrorism-bills-further-stifle-peaceful-opposition-in-egypt/>

5 UN Special Rapporteur on the right to freedom of peaceful assembly and association, A/68/299, 7 August 2013, para.25, <http://freeassembly.net/wp-content/uploads/2013/09/UNSR-elections-report-to-UNGA-Aug.-2013.pdf>

6 Al Ahram, 30 May 2014, <http://english.ahram.org.eg/NewsContent/1/64/102549/Egypt/Politics-/Egypt-police-disperse-proMorsi-demos-in-Cairo.-gov.aspx>

7 UN Human Rights Council resolution 22/10 of 9 April 2013 urges States “to facilitate peaceful protests by providing protestors with access to public space and [to] protect them, where necessary, against any forms of threats”.

8 OHCHR Special Procedures of the Human Rights Council, “Alleged violence that unfolded in the context of protests in Cairo on 5 and 6 December 2012,” when protesters were attacked by pro-Muslim Brotherhood protesters, detained and extensively tortured; <http://freeassembly.net/rapporteurreports/egypt-communications/>

9 Interview with Nazra for Feminist Studies, 7 April 2014.

10 Amnesty International, *Egypt: gender-based violence against women around Tahrir Square*, February 2013, <http://www.amnestyusa.org/sites/default/files/mde120092013en.pdf>

11 CIHRS and Nazra for Feminist Studies, <http://www.cihrs.org/wp-content/uploads/2013/09/Human-rights-violations-against-women-in-Egypt.pdf>; Nazra for Feminist Studies, 26 January 2013, <http://nazra.org/en/2013/01/testimony-survival-gang-rape-tahrir-square-vicinity>; New Woman Foundation, 8 February 2013, <http://nwrcegypt.org/en/?p=8251>

12 FIDH, Nazra For Feminist studies, New Woman Foundation and The Uprising of Women in the Arab World, *Egypt: Keeping Women Out, Sexual Violence against women in the public sphere*, April 2014, http://www.fidh.org/IMG/pdf/egypt_women_final_english.pdf

Finally, the authorities have failed to facilitate journalists' access to protests in Egypt since 2011 and failed to protect journalists covering them, when they have not actively prevented them from carrying out their work. Several journalists have been attacked, injured, or killed. In particular, an American woman journalist was sexually assaulted in February 2011 by a mob in Tahrir Square; according to the Committee for the Protection of Journalists (CPJ), six journalists were killed on 14 August 2013 while covering the dispersal at the Rabaa sit-in of supporters of ousted president Morsi, and several were arrested, amongst them Al Jazeera reporters who are still in prison. The CPJ also stated that 16 journalists are currently arbitrarily detained, in part for their covering of protests.¹³

3. The Use of Force and Detention

Use of lethal force in violation of human rights law

In most cases, the use of force seems to follow the same pattern. When a gathering is formed, police and security forces, sometimes in civilian clothing, provoke or attack demonstrators. In response to clashes, security forces then use tear gas and unwarranted live ammunition to disperse protesters.¹⁴ In most cases, security forces do not distinguish between peaceful, non-peaceful demonstrators, and even bystanders who may be caught up in the violence. Whilst some of the demonstrators may throw rocks or incendiaries, the very large majority of them behave peacefully, and the violent behaviour of a few people does not immediately justify resorting to lethal force, as according to international law, security forces should "as far as possible, apply non-violent means before resorting to the use of force and firearms".¹⁵

According to the Ministry of Health, 840 people lost their lives and 6,467 were wounded during the 2011 revolution.¹⁶ After the SCAF took power on 11 February 2011, grave violations of the right to life, liberty and security persisted.¹⁷ During Mohamed Morsi's term, protests were also the subject of disproportionate use of force, including lethal force: in January 2013, the police in Port Said killed 46 people who were protesting against the verdict related to the Port Said stadium incident of 2012.

Since President Mohamed Morsi was deposed on 3 June 2013, numerous protests held by Muslim Brotherhood supporters were met with brutal repression: since 30 June 2013, an estimated 1,400 people have died in protests or political violence.¹⁸ Grave human rights violations resulted from the use of lethal force by security forces, amounting to summary or extrajudicial executions, or from their failure to intervene in violent clashes between opposing political groups.¹⁹

The most dramatic event took place on 14 August 2013 in Cairo when security forces dispersed two protest camps of the Muslim Brothers in Rabaa al-Adawiya and Nahda squares. According to the Egyptian National Council for Human Rights, 632 people were killed in the dispersal of the Rabaa sit-in, but casualties could amount to more than 1,000 according to Egyptian and international human rights NGOs.

13 See CPJ: <https://www.cpj.org/blog/List.of.Imprisoned.Journalists.in.Egypt.pdf> and <https://cpj.org/reports/2013/12/syria-iraq-egypt-most-deadly-nations-for-journalis.php>

14 Amnesty International, 14 October 2013, <http://www.amnesty.org/en/news/egypt-state-sanctioned-pattern-excessive-use-force-security-forces-2013-10-14>

15 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials n°4 and n°7, 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

16 OHCHR, *Report of the OHCHR mission to Egypt 27 March - 4 April 2011*, http://www.ohchr.org/Documents/Countries/EG/OHCHR_MissiontoEgypt27March_4April.pdf

17 On 9-10 October 2011, 27 protesters, mostly Coptic Christians, were killed during a demonstration in Maspero. From 19 to 24 November 2011, 51 protesters were killed in or close to Mohamed Mahmoud Street. On 16-18 December 2011, clashes outside the Cabinet building in Cairo led to the deaths of 17 demonstrators.

18 Amnesty International, *Egypt : Roadmap to Repression, No End in Sight to Human Rights Violations*, 23 January 2014, page 7, <http://www.amnesty.org/fr/library/asset/MDE12/005/2014/en/cdd8bfb-6dcb-45b2-b411-6d12190b7583/mde120052014en.pdf>

19 As examples, on 8 July 2013, at least 61 protesters were killed when security forces dispersed pro-Morsi protesters gathering outside the Republican Guard Club headquarters in Cairo. On 27 July 2013, 95 protesters died on Nasr Street in Cairo. On 16 August 2013, clashes around Cairo's Ramses Square led to the death of about 120 people. On 6 October 2013, marches headed from Dokki and Ramsis towards Tahrir Square in Cairo led to the deaths to at least 57 protesters.

“Police and army forces attacked the protest encampment at each of its five major entrances [...] with APCs and bulldozers and with government snipers on the tops of surrounding buildings [...] Security forces besieged demonstrators, leaving them without access to safe exit from the first minutes of the dispersal until the very end of the day, including for severely injured protesters in need of urgent medical attention and men, women, and children desperate to escape the violence. [...] Police detained over 800 protesters over the course of the day some of whom they beat, tortured, and, in several cases, summarily executed.”²⁰

Although there is corroborated evidence that over the weeks that the sit-in lasted, a few individuals were armed and committed violence, the indiscriminate shooting and the killing of hundreds of unarmed protesters is a blatant violation of international human rights law which authorises the use of lethal force only when three cumulative conditions are met: (1) when it is absolutely unavoidable; (2) as a last resort; and (3) to protect life.

There is also strong evidence that the level of lethal force used to disperse the sit-in had been planned and approved in the highest levels of the Egyptian government weeks before it happened. Indeed, the day after the dispersal, Interior Minister Ibrahim told newspaper Al-Masry al-Youm that “the dispersal plan succeeded 100%,” indicating that the manner in which it was carried out was centrally planned in advance and reflected a clear government policy.²¹ Based on these findings, the NGO Human Rights Watch “concludes that the killings not only constituted serious violations of international human rights law, but likely amounted to crimes against humanity, given both their widespread and systematic nature and the evidence suggesting the killings were part of a policy to attack unarmed persons on political grounds”.

Arbitrary arrests, detention and widespread use of torture

Thousands of individuals have, over the past three years, been arbitrarily arrested and prosecuted before military courts for participating in assemblies. Between January and February 2013 alone, the police arrested over 800 protesters outside the presidential palace, including 264 children.²²

In most cases, demonstrators were arrested in the demonstration location and detained for several days, before being released without charges, which tends to show that most of the arrests were baseless, or politically motivated. Many others, however, were released pending charges such as “taking part in an illegal gathering”, “obstructing the traffic”, and sometimes “assaulting police officers”, and thousands were brought before military courts (see part on *Sanctions* below).

A most worrying trend is the routine use of torture and ill-treatment against detainees by security forces. This situation has worsened since 2011, and human rights organizations documented numerous cases.²³ On 25 January 2014, more than 1,000 people who had gathered for the third anniversary of the 2011 revolution were arrested. According to several corroborating testimonies, arrested protesters, including women and children, were extensively beaten, subjected to sexual assaults and

20 Human Rights Watch, *All According to Plan. The Rab'a Massacre and Mass Killings of Protesters in Egypt*, August 2012, p.33-35; http://www.hrw.org/sites/default/files/reports/egypt0814_ForUpload_0.pdf?mc_cid=0a6a8fe80d&mc_eid=f889183195

21 Human Rights Watch, *op. cit.*, p. 103.

22 Human Rights Watch, *World Report 2014, Egypt*, *op. cit.*

23 See for example Human Rights Watch, 19 May 2012, <http://www.hrw.org/news/2012/05/19/egypt-widespread-military-torture-protesters-arrested-may>; also see cases such as the stripping of a veiled woman by security forces in Tahrir Square, the torture of Ramy Essam, and the “virginity tests” imposed to 17 women detainees by military personnel on 9 March 2011.

electric shocks.²⁴ Between August 2013 and February 2014, thousands of people have been victims of police brutality in detention.²⁵

4. Accountability of Law Enforcement Forces

The Egyptian authorities have failed to investigate independently and hold accountable those responsible for grave human rights violations against protesters and provide redress to the victims. This is contrary to international instruments relative to combating impunity.²⁶

Since 2011, State authorities have formed three investigation committees, but these promising steps have not resulted so far in bringing perpetrators of rights violations to justice.

One committee was set up in 2011 to investigate the killing of protesters in January and February 2011. Some parts of the report were released but it was not published in full. Another fact-finding committee was formed in July 2012 to investigate violence against protesters from January 2011 to June 2012. Its report was finalised in December 2012, but was not made public either. So far, only a handful of low ranking soldiers have been convicted for the unlawful killing of protesters. Only 5 out of the 38 police officers tried for killing protesters in January 2011 received prison sentences and only 3 actually served time in prison. In March 2013, a court sentenced one officer to three years in prison for shooting at protesters' eyes in Mohamed Mahmoud Street in Cairo in November 2011. In March 2012, a military judge acquitted the only army officer on trial for sexual assault under the guise of 'virginity tests' against female protesters in March 2011.²⁷

On 2 June 2012, former President Mubarak was convicted and sentenced to life in imprisonment for his part in the bloody repression of the 2011 demonstrations, but the decision was overturned in January 2013 by an appeal court which ordered a retrial.

Since 30 June 2013, not a single member of the security forces has been convicted neither for using excessive force against protesters nor for the hundreds of deaths at Rabaa protest camp.

In December 2013, Adli Mansour, Egypt's interim President established a fact-finding committee to investigate the violence that has taken place since 30 June 2013, including the grave human rights violations committed in Rabaa.²⁸ However, further concrete measures should be implemented to ensure that perpetrators of human rights violations are actually held accountable,²⁹ as the justice system worryingly lacks the necessary independence from those it is investigating.

5. Judicial Sanctions against Organisers and Participants in Assemblies

Between January and September 2011, almost 12,000 civilians were tried in military courts,³⁰ and these numbers rose again after Morsi's overthrow.³¹ While the majority of demonstrators have been released, many still remain in detention in very poor conditions pending trial.

24 See for example Amnesty International, 4 February 2014, <http://www.amnesty.org/en/news/walls-cell-were-smeared-blood-third-anniversary-egypt-s-uprising-marred-police-brutality-2014-0>

25 See for example CIHRS, 12 February 2014, <http://www.cihrs.org/?p=8113&lang=en>

26 OHCHR, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 60/147, 16 December 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>; and the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005

27 Human Rights Watch, *World Report 2014, Egypt*, op. cit.

28 See comments made by the Egyptian Initiative for Personal Rights (EIPR), http://eipr.org/sites/default/files/pressreleases/pdf/eiprs_commentary_on_the_presidential_decree_number_698_for_2013.pdf

29 See EMHRN, 3 March 2014, <http://www.euromedrights.org/eng/2014/03/03/silence-is-not-an-option-call-by-civil-society-for-the-united-nations-human-rights-council-to-address/>; and joint statement by 27 Member States, Human Rights Council, 7 March 2014, <http://fngeneve.um.dk/en/news/newsdisplaypage/?newsID=EB280696-2F4F-427A-A721-5963916F2CB2>

30 Human Rights Watch, 10 September 2011, <http://www.hrw.org/news/2011/09/10/egypt-retry-or-free-12000-after-unfair-military-trials>

31 Human Rights Watch, *World Report 2014, Egypt*, op. cit.

It is of serious concern that the new Constitution adopted in January 2014 continues to allow for the military trial of civilians, which is not in compliance with international standards.³²

On the basis of the 2013 law on public assemblies, activists have been sentenced to jail and heavy fines. This is the case of Mohamed Adel, of the 6 April Youth Movement, and Ahmed Douma, sentenced to three years in prison on 29 November 2013; of human rights lawyer Mahinour Al Masry and eight other activists, sentenced to 2 years in jail on 7 April 2014;³³ of blogger and activist Alaa Abdel Fattah and 24 others, sentenced in absentia to 15 years in prison on 11 June 2014.³⁴ All these activists were tried by 'special courts' that are not independent nor uphold the guarantee of a fair trial.

On 24 March 2014, 529 supporters of ousted President Morsi were sentenced to death in a two-day trial related to the violent clashes of August 2013. On 28 April, the judiciary condemned 683 other individuals to death, including Mohamed Badie, the Muslim Brotherhood's supreme guide, for violent protests held on 14 August 2013 in Minya.³⁵ This severe crackdown on Muslim Brotherhood supporters, which has been denounced as a "mockery of justice" by UN independent experts,³⁶ falls short of international standards related to due process.

Civil organizations are also directly targeted by the authorities. The Egyptian Center for Economic and Social Rights was raided twice in December 2013 (in Cairo) and in May 2014 (in Alexandria). In January 2014, the government declared the Muslim Brotherhood as a terrorist organization. In April 2014, the 6 April Youth Movement, one of the main groups which called for protests against Mubarak in 2011, was banned.

6. Civil Society Initiatives and Good Practices

Even before the 2011 revolution, Egyptian civil society organisations had been active in promoting freedom of peaceful assembly and association. Since 2008, the Cairo Institute for Human Rights Studies has been leading an NGO coalition advocating legislative reforms in the field of public freedoms. The coalition's prominent role has on occasions greatly contributed to prevent the adoption of more restrictive legislation and to raise the awareness of international human rights bodies.

Since January 2011, several organisations monitor, document, and report on human rights violations committed during demonstrations. The NGOs Nazra for Feminist Studies and New Woman Foundation have done excellent documentary work on gender-based violence. The Arabic Network for Human Rights Information documented communications cut offs during the 2011 revolution, and since 2014 publishes monthly reports on the state of freedom of expression and assembly. In 2014, the Egyptian Centre for Economic and Social Rights and 17 Egyptian NGOs filed a lawsuit challenging the constitutionality of the 2013 Protest Law.

32 See UN Economic and Social Council, *Issue of the administration of justice through military tribunals*, E/CN.4/Sub.2/2005/9, 2 June 2005; UN Economic and Social Council, *Report of the independent expert to update the Set of principles to combat impunity*, E/CN.4/2005/102/Add.1, 8 February 2005.

33 EMHRN, 30 May 2014 <http://www.euromedrights.org/eng/2014/05/30/joint-letter-to-permanent-representatives-of-member-and-observer-states-of-the-un-human-rights-council/>

34 EMHRN, 12 June 2014, <http://www.euromedrights.org/eng/2014/06/12/egyptian-justice-brazen-crackdown-on-human-rights-defenders/>

35 The judges later confirmed the death sentences of 220 people and commuted the other sentence into life imprisonment.

36 See OHCHR, 31 March 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14457&LangID=E>

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. Reform the Law of 2013 on public gatherings and peaceful demonstrations to conform with international law and ensure compliance with the commitments made by Egypt and the specific recommendations of international human rights bodies (see the first part of the Study);
3. Establish a genuine notification (rather than authorization) procedure for public meetings and demonstrations that potentially impact upon the rights and freedoms of others; ensure that this procedure is transparent, accessible and not unduly onerous, and that the administrative authorities comply with the law when it is implemented;
4. Make sure that any restrictions imposed 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 assembly organizers (both prior to and during gatherings) and where 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 and also to the judicial harassment of citizens demanding their right to demonstrate peacefully;
7. Act upon the State's duty to protect peaceful demonstrators, and especially guarantee that women can effectively exercise their right of assembly without the fear of intimidation, harassment or violence threatening their security and integrity; ensure that the National Council for Human Rights and the National Council for Women actively defend the rights of women in the context of peaceful demonstrations;
8. Guarantee the safety of journalists and facilitate their access to peaceful gatherings;
9. Repeal decree no. 109 of 1971 on the use of firearms by security forces; adopt clear, detailed and binding regulations governing the use of force against protesters, in accordance with the United Nations Basic Principles on the use of force and firearms by law enforcement officials; train law enforcement authorities in the use of force and anti-riot weapons accordingly;
10. 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 strictly a last resort and used as a defence against an imminent threat endangering human lives;
11. 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, especially arbitrary detention or allegations of torture, ill treatment, and sexual violence; 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;

12. Revoke any judicial decision and conviction handed down by special courts in the absence of guarantees of a fair trial, including the death sentence of 720 demonstrators;
13. Make public the findings of the three official commissions of inquiry and implement their recommendations (commission of inquiry into the murder of demonstrators between January and February 2011, into violence against demonstrators between January 2011 and June 2012, and finally into the violence related to demonstrations since 30 June 2013). Conduct a thorough, impartial and independent inquiry into the deaths arising from the dispersal of the Rabaa al-Adawiya and Nahda gatherings, aiming at establishing responsibilities, assessing the crimes committed, and granting redress to the victims.



ISRAEL

Introduction

In Israel, the right of peaceful assembly is guaranteed by various laws and protected by the decisive role played by the judiciary to safeguard public freedoms. Given the various attempts to restrict civic space in recent years in Israel,¹ an independent and impartial judiciary is crucial to ensuring compliance with international human rights law. Despite various judicial decisions protecting human rights and freedoms, the authorities have nevertheless in recent years too often resorted to restrictive administrative decisions, as well as preventive measures, and acts of intimidation and threats as well as indictments with no legal basis against peaceful protesters.

These practices constitute serious restrictions on the right of peaceful assembly. Not only do they retaliate against political activism, but they further inhibit the enjoyment of freedom of peaceful assembly of many others. These serious concerns are particularly relevant for Palestinian-Arab citizens of Israel and persons belonging to minorities who are regularly subject to these forms of restrictions.

In this context, it is essential to reiterate the State's duty to respect human rights of all individuals within its territory and subject to its jurisdiction without distinction of any kind, in light of Articles 2 and 26 of the International Covenant on Civil and Political Rights.

Based therefore on the important case law developed by Israeli national courts, State authorities should do more to translate the core principles it reaffirms into day-to-day measures.

1. Restrictions Imposed on Freedom of Assembly

In 2009, the Legal Center for Arab Minority Rights in Israel – Adalah published an important report on a wide variety of undue restrictions faced by peaceful demonstrators protesting against the Israeli military operation in Gaza.² The report notably described how the State Prosecutor's Office and the police presupposed that every protest was a threat to security. The State Prosecutor's Office and the police successfully appealed against every judicial decision releasing a protester from detention, arguing that every protest, regardless of its context, message, location or time, was a threat to the security of the State. Such a pre-emptive measure falls short of international law as it de facto suppresses the right of peaceful assembly.

Since then, the right of peaceful assembly has suffered from less drastic types of restrictions. One of them concerns the interpretation by police forces of a protest being, by definition, an 'illegal gathering'. In May 2013, in the city of Be'er Sheva, two demonstrators opposing the Prawer Plan were arbitrarily arrested on the assumption that the demonstration was illegal. Similarly, in June 2013, a demonstrator participating in a protest denouncing animal cruelty was arbitrarily arrested, on the same assumption that the demonstration was not legal; he was forced to strip naked and remain in detention for four hours with his hands handcuffed behind his back.³ In many cases, these arrests were challenged in court, which then found that the accusations of illegality were baseless. This poses serious questions about police officers' interpretation of laws governing public assemblies. More seriously, these measures suggest it is the State's intention to target protesters through arbitrary arrest and degrading and ill-treatment in order to deter other individuals from participating in demonstrations.

In the past few months, undue restrictions on freedom of peaceful assembly by Palestinian-Arab citizens of Israel or minorities have also continued.⁴ On 28 June 2012, Israeli Police Chief Yohanan Danino issued a directive to police commanders ordering them to document every "involvement of

1 In March 2014, the Ministerial Committee for Legislative affairs reviewed a bill aimed to amend the Non-Profit Organizations Law which, if adopted without changes, will allow State authorities to prevent the registration of an organization if any of its objectives contradict the definition of 'Israel as a Jewish and democratic state'. See more restrictions to freedom of association and of expression in Euro-Mediterranean Human Rights Network's *Annual reports on freedom of association in the Euro-Mediterranean Region*, available at: <http://www.euromedrights.org/eng/2012/10/19/annual-reviews-on-freedom-of-association-in-the-euro-mediterranean-region/>

2 Adalah, *Prohibited Protest: How the Law Enforcement Authorities Limited the Freedom of Expression of Opponents to the Military Attacks on Gaza*, 2009, <http://adalah.org/features/prisoners/protestors%20report.pdf> (in Hebrew); http://adalah.org/features/prisoners/GAZA_REPORT_ENGLISH_FOR_THE_NEWSLETTER.pdf (Executive Summary).

3 See more in Association for Civil Rights in Israel (ACRI)'s Situation Report, 2013, page 81.

4 See more in Euro-Mediterranean Human Rights Network's report *The EU and the Palestinian Arab Minority in Israel*, 2011, page 20-24: http://www.scribd.com/fullscreen/50343745?access_key=key-1vofvlqnsrj9cx13yhdi

the Palestinian-Arab citizens of Israel in protests”.⁵ On 5 July 2012, an article published in Haaretz newspaper reported that the police permission to hold a protest against the Praver Plan was accompanied by a note stipulating that protesters must not hold “signs that damage Israel’s name” and that “the applicants will be responsible for the event.” These limitations do not meet Israel’s obligations under international human rights law. The Israeli Police Chief’s directive undermines the very essence of human rights which is to ensure the respect of human rights for all without any discrimination, based on Articles 2 and 26 of the International Covenant on Civil and Political rights.⁶

Despite these challenges, the 2013 legislative electoral period did not engender additional restrictions on the right to freedom of peaceful assembly.

2. Facilitation of Assemblies by the Authorities

An important Israeli legal case states that the right of peaceful assembly shall not be contingent upon the subject or purpose of the demonstration and that the police should bear the responsibility for allowing each person to demonstrate, regardless of the cause.⁷ In consequence, protests in Israel, including spontaneous (unnotified) protests, are generally adequately facilitated by police forces. On 14 July 2011, an important social justice protest demonstrating against the lack of affordable housing and the high cost of living in Israel began. Within a few days, hundreds of thousands of people gathered across the country and most of these protests were facilitated by State authorities. However, on 7 September 2011, police decided to dismantle the tent encampments in the city of Tel Aviv where frequent demonstrations took place, although protesters were acting peacefully. This seems to indicate that the length and the message of these protests started to displease State authorities.

Indeed, one year later, on 22-23 June 2012, when protesters tried to restart the social justice protest in Tel Aviv, they encountered burdensome requirements and restrictive conditions.⁸ One day after the demonstration in Tel Aviv, on 24 June 2012, the Jerusalem municipality also issued a series of “Procedures for Protest Activity in Public Spaces in Jerusalem”, indicating, amongst other things, that even where a permit had been granted, protests involving tents may only take place in certain locations and last one day at the most. This is not in line with the principle that restrictions should not prevent demonstrators from delivering their message to their intended audience,⁹ and could hence be seen as an excessively general restriction.

Another serious concern for demonstrators who took part in the summer 2012 social justice protests was the repeated use of a “raccoon” – which is a military vehicle with intelligence gathering equipment – as well as the practice of police officers filming protesters.¹⁰ Although the Police Commissioner promised national NGOs that this practice would not be used in future demonstrations, it raises serious concerns as it is likely to engender mistrust between protesters and police officers, who are the designated officials responsible for facilitating peaceful assembly. More seriously, it may instil fear amongst protesters and may deter other individuals from exercising their human rights. This practice, which exposes that State authorities are engaged in surveillance of its citizens and collecting information about their political opinions, also raises concerns about the enjoyment of the right to freedom of opinion and expression in Israel.

5 <http://www.haaretz.com/news/national/report-police-intelligence-told-to-target-israeli-arabs-joining-social-protests-1.444790>

6 See also the Human Rights Council Resolution 15/21 reaffirming that “*everyone* has the rights to freedom of peaceful assembly and of association” (emphasis added); and the UN Special Rapporteur on the rights to freedom of association and of peaceful assembly who stressed that “the organizers and stewards of assemblies should not assume [the] obligation [to protect assemblies that fall within the jurisdiction of the State] (A/HRC/20/27 paras. 33 and 84 (b)).

7 PP 14677-02-11 State of Israel v. Beninga, decision rendered 16 February 2011, in Association for Civil Rights in Israel (ACRI), *Situation Report: the State of Human Rights in Israel and the OPT 2011*, December 2011, page 42.

8 For further details, see ACRI *Situation Report 2012*, page 9.

9 Page 30, footnote 9: The entire footnote should be the following: UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, para. 40, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

10 See ACRI *Situation Report*, 2012 page 11.

"The Israel Police is behaving as it would in a police state, rather than a democratic state. It has become a political, repressive instrument of the government, against all groups that protest against it. We saw on Rothschild Boulevard [where social justice protest took place] how the police are serving the government rather than the law," an opposition leader deplored.¹¹

When the message of the protest is perceived to be more controversial, State authorities seem to be much less favourable in facilitating the right of peaceful assembly. In May 2012, the Association for the Defence of the Rights of Internally Displaced Persons in Israel notified their intention to hold a protest commemorating the 'Nakba'.¹² Permission was not granted as the police rejected the proposed route of the demonstration and prohibited the raising of the Palestinian flag by protesters.¹³ On 24 November 2013, the president of the University of Haifa issued a decision banning students from raising the Palestinian flag during demonstrations. These various restrictions violate well established Israeli case law, as much as international human rights law.¹⁴

In other cases, State authorities have not only failed to facilitate assembly, but they also tried to dissuade individuals from exercising their rights and freedoms. On the eve of the 30 November 2013 important demonstrations in Haifa and Hura opposing the Prawer Plan, the Shabak (or Shin Bet, the Israeli General Security Services) summoned individuals involved in the organisation of protests for interrogation. The Shabak also sent threatening letters to activists informing them that they had been identified as 'targets'.¹⁵ During the interrogations, activists were questioned about their political activities, their personal lives and their future employment prospects.

These measures, clearly aimed at intimidating the protest organisers and at deterring them and others participants from joining the protests, constitute a worrying obstruction to the freedoms of peaceful assembly and expression and the right to take part in public affairs.

As far as journalists and other observers are concerned, they were reportedly not obstructed when monitoring assemblies, nor when attending trials of demonstrators.¹⁶

3. The Use of Force and Detention

The case of the Prawer Plan protests is worth exploring further considering the police's repeated excessive use of force. In summer 2013 a wave of protests against a controversial Bill on the Arrangement of Bedouin Settlement in the Negev, also called the 'Prawer Plan', began. This, if adopted, was "likely to result in the demolition of up to 35 Bedouin villages in the Negev desert and lead to the dispossession, eviction and forcible displacement of as many as 30,000-40,000 Arab Bedouins from their ancestral land and homes," according to the United Nations Commissioner for Human Rights.¹⁷ The vast majority of Bedouins, who are Israeli citizens and who claimed to have been living in the

11 See <http://www.jpost.com/National-News/TA-protest-Police-arrest-social-justice-leader-Leef>

12 'Al Nakba' marks the Palestinian forcible displacement from their homes that preceded and followed the Declaration of the State of Israel in 1948.

13 <http://www.adalah.org/eng/?mod=articles&ID=584>

14 See EMHRN *Regional Study on Freedom of Assembly in the Euro-Mediterranean Region - Part I* (Israel chapter) http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_ISRAEL1.pdf; see also European Court of Human Rights, *Handyside v. the United Kingdom*, application No. 5493/72, 7 December 1976, para. 49; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/17/27 para. 37.

15 <http://adalah.org/eng/Articles/2224/Adalah-and-ACRI-The-Shabak-is-Trying-to-Sow-Fear>

16 See <http://adalah.org/eng/Articles/2189/All-detained-demonstrators-from-anti-Prawer-in>

17 Pillay urges Israel to reconsider proposed bill that will displace tens of thousands of Bedouin, 25 July 2013, <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=13577&LangID=E>

Negev since even before the creation of the State of Israel, opposes the Praver Plan and organised a series of protests in 2013.¹⁸ Most of these protests were subject to excessive use of force by the police.

On 15 July 2013, one of the first protests opposing the Praver Plan took place in the city of Sakhnin. Only five minutes after the police had ordered the demonstration to end and whilst a group was starting to leave the site, a large number of police officers, together with mounted police, Special Forces and secret police, sprayed demonstrators with tear gas and arrested 14 protesters. On the same day, similar excessive force and tear gas were used against protesters who gathered in the city of Be'er Sheva. According to NGOs, dozens of protesters were injured – at least four of them even had to be taken to hospital – and 14 protesters were arrested. On 1 August 2013, in the city of Rahat, peaceful protesters were subject to excessive force and arbitrary arrest from police forces. On 30 November 2013, protesters in Haifa, Hura and Jerusalem were subject to excessive use of force, tear gas, stun grenades and water cannons by the police.

"I was at the demonstration against Praver on the 30 November on Ben Gurion Street in Haifa. Around 8 pm, officers began to remove protestors from the road onto the sidewalk; all of a sudden one of the officers grabbed my hair and pulled me down to the floor; he then proceeded to drag me across the floor, while my head hit the pavement a couple of times [...] When I was in the station I saw officers physically and verbally abusing some other detainees. At some point I screamed at one of the officers to stop abusing the others and he screamed back at me to "shut up bitch", when I told him not to call me a bitch he told me "if you don't shut up I will fuck you and other bitch" [One police officer] then took me with unreasonable force to a corridor outside and started searching me in front of other policemen and other detainees. The search was rough and very humiliating. They were searching me and touching me everywhere, even on private parts of my body [...] On 2 December, I had to go to the hospital as I had still been suffering from constant dizziness, headaches, vomiting, etc." one protester explained.¹⁹

Other recent examples include the regrettable use of lethal force against demonstrators. On 15 May 2014, during the Nakba Day demonstrations in the West Bank, Israeli troops shot and killed with live ammunition two Palestinians aged 17 and 20, Mohammad Abu Al Thaher and Nadim Nuwara, who posed no imminent threat, and injured other people during a crackdown operation.²⁰

Other occurrences of disproportionate use of force include events on 3 May 2012, when the police used Taser guns (weapons that fire electric shocks) against peaceful protesters gathering outside the Ramle prison even after they were handcuffed;²¹ severe police violence against some 500 protesters who gathered at the Horse Park in Jerusalem in June 2013 to protest against the government's intention to apply budget cuts; police assault against ultra-Orthodox protesters of Beit Shemesh opposing construction in the area;²² and police use of force against about 200 asylum seekers who gathered outside the Israeli Prime Minister's office on 17 December 2013 to denounce an amendment to the Anti-Infiltration Law.²³

The United Nations Human Rights Council (HRC) recently urged *"all States to avoid using force during peaceful protests and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force"*.²⁴ Even where some protesters may not act peacefully, the HRC resolution underlines that *"isolated acts of violence committed by others in the course of a protest do not deprive peaceful individuals of their rights to freedom of peaceful assembly, of expression and of association."*

18 After serious criticism, expressed by national activists and the international community, the authorities announced on 12 December 2013 that they decided to drop the draft bill. A few days later however, on 5 January 2014, the Israeli Prime Minister's Office issued a short statement stating that the Government would continue with the legislative process.

19 Interview with a victim who prefers to remain anonymous contacted by Adalah, 8 April 2014.

20 See Human Rights Watch, <http://www.hrw.org/news/2014/06/09/israel-killing-children-apparent-war-crime>

21 See <http://adalah.org/eng/Articles/1746/Adalah-Demands-Criminal-Investigation-into-and-in>

22 See <http://www.acri.org.il/en/wp-content/uploads/2013/12/SituationReportEng2013.pdf>, p.81

23 see also http://www.unhcr.org/52cfe2a09.html?_ga=1.32440374.968825390.1395762199

24 Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, 11 April 2014, A/HRC/25/L.20 http://ap.ohchr.org/Documents/F/HRC/d_res_dec/A_HRC_25_L20.pdf

In too many cases however, Israeli police forces have too quickly resorted to violence, as most of the protesters were released, in some cases without a court hearing, tending to show that these arrests had been baseless and aimed at intimidating protesters and delegitimizing the protest movement.

4. Accountability of Law Enforcement Forces

On 31 October 2010, the Magistrate's Court in Be'er Sheva awarded 12,838 NIS (about 2,700 euros) in compensation to a demonstrator who had been arrested in January 2009 during a protest against the war in Gaza. The compensation also included an unprecedented sum of 10,000 NIS (about 2,000 euros) for the harm caused by the undue restrictions to his freedoms of speech and of assembly.

5. Judicial Sanctions against Organisers and Participants in Assemblies

On 26 February 2013, the Tel Aviv Magistrates' Court acquitted four Palestinian-Arab citizens of Israel of the offenses of participating in an illegal assembly, disturbing peace, and resisting police officers. These persons had participated in a demonstration in Tel Aviv in 2008 against the Israeli offensive on the Gaza Strip. In his verdict, the judge strongly criticized the police and prosecution for charging the accused without any evidence.²⁵ This example is a positive illustration of the role played by the judiciary, but it also shows that too often the police rush to charge protesters belonging to minorities for political reasons.

In numerous other cases of activists protesting against the Prawer Plan, judges withdrew the charges of disrupting public order and/or attacking police officers, on the grounds that the police had provided false evidence. The Legal Center for Arab Minority Rights in Israel -Adalah- has documented numerous cases where police provided distorted evidence,²⁶ which indicates a pattern of intimidation and retaliation against those exercising their right of peaceful assembly.

On other occasions, sanctions were not dismissed by the judiciary. During the social justice protest in Tel Aviv on 22-23 June 2012, police forces arrested about 100 protesters. Although most of them were quickly released, others, such as Daphni Leef, one of the organisers, were subjected to further investigation on various grounds, including the lack of a permit for the protest.

Such a charge is not in line with international standards on freedom of assembly that consider *"that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities [...] Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment"*.²⁷

6. Civil Society Initiatives and Good Practices

National civil society organisations play a considerable role in promoting and protecting human rights in the context of peaceful protests in Israel. In 2011 the Association for Civil Rights in Israel (ACRI) published an important pamphlet on the rights of demonstrators.²⁸

In 2012, the organisation also set up a telephone hotline for questions, assistance, and counselling on issues of freedom of expression and protest.

From the legal standpoint, the NGO Legal Center for Arab Minority Rights in Israel - Adalah, in many cases in cooperation with ACRI, also played a decisive role in bringing individual cases of restrictions to the right of peaceful assembly before national Courts. This excellent work has not only made a

25 See more at: <http://adalah.org/eng/Articles/1925/Court-acquits-demonstrators-against-2008-Gaza->

26 See e.g. <http://adalah.org/eng/Articles/1918/Court-Cancels-Indictments-of-Al-Araqib>; <http://adalah.org/eng/Articles/2226/Update-on-Detained-Anti-Prawer-Demonstrators-in> and <http://adalah.org/eng/Articles/2241/Two-indictments-against-Naqab-activists-home>.

27 A/HRC/20/27 paras. 28 and 29.

28 <http://www.acri.org.il/en/2011/08/02/demonstrators-know-your-rights-july-2011/>.

Recommendations

contribution to ensuring the release of individuals arbitrarily arrested or charged, but also, and without any doubt, to the development of important case law on this crucial issue.

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. Repeal all laws and decisions specific to Palestinian-Arab citizens of Israel which impose restrictions or prohibitions on their expressing their opinions or opposition through action and at public gatherings (see the first part of the Study);
3. Establish a notification (rather than authorization) procedure for public meetings and demonstrations that potentially impact upon the rights and freedoms of others; ensure that this procedure is transparent, accessible and not unduly onerous, and that the administrative authorities comply with the law when it is implemented; suspend judicial proceedings and quash sanctions imposed on peaceful demonstrators who had not sought or obtained a permit, as pursuance of such principles of authorisation and sanctions is contrary to international law;
4. Make sure that restrictions imposed 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 assembly organizers (both prior to and during gatherings) and where 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 and also to any other type of threat, intimidation, reprisal, or judicial harassment of citizens demanding their right to demonstrate peacefully;
7. Guarantee the safety of journalists and facilitate their access to peaceful gatherings;
8. Train the law enforcement authorities in the use of force and anti-riot weapons in accordance with the United Nations Basic Principles on the use of force and firearms by law enforcement officials;
9. Act upon the State's duty to protect peaceful demonstrators; ensure that any use of force by law enforcement officers follows the principles of last resort, need, progressiveness and proportionality; ensure that lethal force is strictly a last resort and used as a defence against an imminent threat endangering human lives;
10. 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.



JORDAN

Introduction

Although the reforms adopted by the regime are insufficient to meet the demands of social movements that have emerged in Jordan since 2011, the drive for action has somewhat slackened off. Changes to the regional context with Syria bogged down in crisis and the risks of destabilization in Jordan as well as the developments in Egyptian internal politics after the Muslim Brotherhood was stripped of power by the military have had a restraining effect on the different parties engaged in opposition and have also created much division.

The political reforms adopted from 2011 onwards have not changed the authoritarian nature of the regime, or the balance of power. The king still holds vast executive powers, such as the dismissal of ministers and dissolution of the National Assembly at his discretion. Neither have the 2012 amendments to the electoral law overturned the fundamentals of a system that favours the tribal and rural areas (cradle of the Hashemite monarchy) to the detriment of large cities, such as Amman and Irbid, where the Jordanians of Palestinian origin are concentrated.

Since the wave of protests during the autumn of 2012, triggered by the government's decision to withdraw subsidies on fuel prices, there has been no more widely generalised protest movement. Demonstrations and public rallies have assumed an ad hoc and localised nature involving disparate demands: improvements to economic and social conditions, the Palestinian question, or the rights of refugees. Rallies calling for political reforms have largely decreased due to the repression and control exercised by the authorities which seriously limit the capacity of opposition groups to mobilise.

1. Restrictions Imposed on Freedom of Assembly

The amendment of Act no.7 on public meetings adopted in 2011 ([see the first part of the Study](#)) does away with authorization by the administration for the holding of public meetings, marches, demonstrations or sit-ins and replaces it with notification.

However, the administration may prohibit a meeting or a rally without any justification, if it is considered that these might disturb public order.

Other restrictions continue to impede the exercise of the right of assembly. For example, civil society organizations, when they organize seminars in hotels, must supply the hotel management with information about the participants.¹ The authorities send representatives to monitor work meetings and assemblies of organizations, especially when political matters are on the agenda.

In addition, the government has maintained and even strengthened measures restricting freedom of association and expression.

The law governing the right of association includes many legal obstacles that impose tight control over the activities of associations. For example, the law prohibits associations from pursuing "political objectives" and activities which violate "public order" and permits restrictions on funds to which they may lay claim and the type of activities they can initiate.² Some associations have been denied legal status.³

Any criticism of the monarchy is a red line not to be crossed. Public criticism of the king is punishable by up to three years in prison. These articles from the Penal Code, the wording of which is very vague, have been repeatedly used to criminalize and prosecute demonstrators and then refer them to the State Security Court (SSC). The decree of 18 September 2012, which amends the law on the Press and

1 A practice described by the Centre for Defending Freedom of Journalists (CDFJ), interview with Fateh Mansour, 23/3/2014.

2 Interview with Linda Alkalash, Tamkeen, 28 February 2014 and Hisham Boustani, activist and blogger, 19 February 2014.

3 Example of an organisation for Jordanian women married to foreigners who demand citizenship rights for their children but whose registration was refused in July 2011 on the pretext that "the issue of citizenship is a political matter governed by the law on citizenship and cannot be regulated by Society".

publications, significantly restricts freedom of information.⁴ This measure is part of a policy restricting freedom of expression and is exercised through threats, aggression and, in several dozen cases, the arrest and prosecution of journalists and opponents who have criticized the regime.⁵

Participation of women in demonstrations

Women are present at demonstrations and there are no legal restrictions on their participation, but many obstacles of a social and cultural nature prevent women from participating fully in public life. The absence of a State policy for the promotion of equality between women and men, in spite of the measures adopted by the government, has not helped to reduce inequality in the public and political spheres.⁶

In general, women are respected and cases of harassment or physical assault are uncommon. However, activists fighting for women's rights have been subject to threats, insults and defamatory campaigns on the internet.

Refugees and migrants

The UNHCR reckons there are nearly 600,000 Syrian refugees mainly in the north of the country, which represents one-tenth of the Jordanian population. The majority of them are located in the towns, the rest, i.e. nearly 30 %, are forced to settle in the camps at Zaatari in the north close to the Syrian and Iraqi borders.⁷ Foreigners in Jordan do not have the right to demonstrate. Protests by Syrian refugees from the camp at Zaatari demanding better living conditions are savagely put down by the police. The same is true for foreign workers in Jordan whose rights are not recognized and the organizations working with these groups have to confront many administrative obstacles.⁸

2. Facilitation of Assemblies by the Authorities

During the 2011 protests in Jordan, the violent behaviour of pro-regime demonstrators who hit the protesters in the street, with truncheons, sticks and stones⁹ were not contained by the authorities and no protective measures were taken.

As regards journalists, since 2011 a large number have been attacked and physically assaulted by the security forces at various demonstrations. Journalists do not enjoy any legal protection which ensures that those responsible for the attacks are prosecuted by the justice system and punished.¹⁰ In practice, the reform of the law on public meetings in 2011 has helped to make demonstrating easier and demonstrations have become more frequent. However, repression and the use of force remain common practice. The authorities justify this by the fact that illegal demonstrations or ones which threaten public order are involved. The authorities adopt a different attitude depending on the nature of the demands being made and the type of organization behind them. If the protesters are supporters of the government they are allowed to demonstrate where they want. If it is a matter of gatherings which oppose government policy, many restrictions are imposed and the authorities seek reasons to declare the demonstration illegal.

4 On 2 June 2013, more than 260 Internet information sites were blocked by order of the Department of press and publication because they refused to carry out the steps for registration required after the reform of the law as a sign of protest and to preserve their independence.

5 Human Rights Watch, press release of 26 February 2012, <http://www.hrw.org/news/2012/04/25/jordan-publisher-journalist-charged-state-security-court>

6 The new electoral law set up a quota and 15 seats in the lower house of Parliament are reserved for women as well as 20% of seats on municipal councils. The upper house (the Senate) has 7 female senators.

7 *Les clefs du Moyen Orient*, « La Jordanie face à la crise syrienne », Ilham Younes, 10 February 2014, <http://www.lesclesdumoyenorient.com/La-Jordanie-face-a-la-crise.html>

8 In 2012 the Tamkeen Centre was denied authorization for the funding of its assistance programmes for foreign workers in the country, Amnesty International, 31 October 2013, <http://www.amnesty.org/en/region/jordan/report-2011>

9 Amnesty International, press release of 1 April 2011, <http://www.amnesty.org/ar/library/asset/mde16/001/2011/ar/26c5fdf3-d3d4-4db7-89d7-7267bcf8ab3a/mde160012011en.pdf>

10 Interview with Fateh Mansour, CDFJ, 23/3/2014, <http://www.cdfj.org>

At election times, demonstrations have not been subject to more active repression. Those organized in January 2013 before the legislative elections were held without particular incident both in the capital and in other localities.

3. The Use of Force and Detention

The 2012 report of the Jordanian National Centre for Human Rights¹¹ has brought together many incidents caused by the use of force by security officials when breaking up rallies, such as the sit-in of 12 February 2012 at the Kaloti mosque or the sit-in of 1 April 2012 in front of the government offices in Amman regarding the release of the detainees of the Herak movement. In November 2012, the government's decision to discontinue subsidies on products derived from oil and gas provoked a wave of protests in every province of the Kingdom and this gave rise to clashes between demonstrators and security forces.

The sit-in of the 25 November 2012 of workers at the port of Aqaba was also subject to repression: one of the workers of the electricity company in Mafraq was arrested and released the same day on 12 December 2012. Another sit-in was broken up on 15 December 2012 in Irbid. The number of demonstrations about economic and social rights has increased significantly in recent years: 2473 protests about improvements to working conditions have been recorded between 2010 and 2013.¹² The use of force against these protests seems to be linked to whether the sectors affected by the demonstrations are or are not of a strategic nature.¹³

The demonstrations of 18 and 19 March 2014 in front of the Parliament to protest against the refusal of the Government to expel the ambassador of Israel after the assassination of the Palestinian Judge Raed Zuaier by the Israeli army, and the demonstration organised to seek the release of the soldier, Ahmed Dagamseh, occasioned an excessive use of force by gendarmes who beat up the demonstrators with batons. At least 11 people needed medical attention.¹⁴

In most cases, the security officers who intervene (gendarmes and police forces) use batons and sometimes water cannon as well as tear gas to disperse the demonstrations.

Many arrests have accompanied the break-up of demonstrations. During the November 2012 demonstration, more than 250 people were arrested and 89 were subsequently brought before the State Security Court, accused of illegal assembly and activities directed against the State. About twenty protesters were released immediately, and others were released in December 2012 (116).¹⁵ 13 were kept in detention (mainly Herak movement activists).

Arbitrary detention has been condemned by human rights organizations. Local governors have continued to use the provisions of the 1954 law concerning the prevention of crime in order to place individuals in administrative detention. This law allows them to order the detention of individuals suspected of endangering security.

Among those who were arrested, the NHRC has indicated that some of them had not participated in protests. Several people were arrested after the demonstrations (at their home, place of work or in the vicinity of the place where the event took place). Many people (66 according to the NHRC report) have stated that

11 The National Centre for Human Rights (NHRC) in Jordan is an independent institution that enjoys "A-status" relating to national institutions for human rights in compliance with the Paris principles. See *Human Rights Situation in The Hashemite Kingdom of Jordan for 2012*, 2012, 196 pages, p. 10 (in Arabic).

12 Labor Watch 2013 *Report of the Phenix Center for Economic and Informatics Studies*, http://www.labor-watch.net/uploads/en_labor-watch.net_635449776796111668.pdf

13 Interview with Fateh Mansour, CDFJ, 23/3/2014.

14 Arab Network for Human Rights Information (AHNRI), press release of 21 March 2014, https://www.ifex.org/jordan/2014/03/21/protest_forcefully_dispersed/ and also the video made by Alwakeelnews, <https://www.youtube.com/watch?v=meyAfZKxE9Y> (in Arabic)

15 Amnesty International, press release of 11 December 2012, <http://www.amnesty.org/en/for-media/press-releases/jordan-release-detainees-too-little-too-late-2012-12-11>

they had been beaten or humiliated, or had been subjected to ill-treatment during their arrest. 53 people stated they were tortured or beaten, or suffered humiliation and ill-treatment during their detention in security centres.

In March 2013, 6 members of the pro-reform movement “Free Tafiileh Movement” were arrested and kept in detention for a month for “insulting the King”. One of them, Majdi Qableen, stated he was beaten during an interrogation conducted by the officers of the General Department of Information.¹⁶ At the end of 2013, three activists were arrested for having made the 4 raised fingers sign of the supporters of Mohamed Morsi, the deposed Egyptian President and member of the Muslim Brotherhood.¹⁷

According to the NHRC, women have also been subjected to ill-treatment, in particular women detained at the Juwaideh Centre who stated they were beaten during their detention. Arrested in November 2012 for intervening between a protester and a security officer, Ola Saif was detained for three days at the Directorate of security and has reported being ill-treated. She was subsequently transferred to Juwaideh prison, charged, and then finally released in December 2012.

4. Accountability of Law Enforcement Forces

The mechanisms provided for in the legal framework in force do not allow the victims of violation of human rights to see a successful conclusion to their complaints. According to the 1965 law on public safety, if a victim files a complaint with the prosecutor in respect of acts of torture committed by the police, the latter will refer the complaint to the special prosecutor attached to the Directorate of public security, who is a police officer appointed by the Director of public security. If he finds the complaint admissible, the special prosecutor will refer to the police tribunal, composed of a civil judge and two judges who are police officers, also appointed by the Director of public security. Therefore, those responsible for investigating allegations of torture and ill-treatment and trying the perpetrators are part of the same administration as the accused. The fact of going to the police station to lodge a complaint also presents a risk of retaliation against those who do so. The police in Jordan therefore enjoy virtually total impunity in the use of force against demonstrators.

5. Judicial Sanctions against Organisers and Participants in Assemblies

The suppression of demonstrations has given rise to numerous lawsuits against demonstrators. Most of the detainees have been charged for offences under articles 164 and 165 of the Penal Code which prohibit gatherings whose purpose is to disturb public order. Others have been charged with taking part in activities aimed at overthrowing the political system (article 149 of the Penal Code).

Those prosecuted have not enjoyed fair trials. They were deprived of the assistance of a lawyer to help them understand the nature of the charges brought against them, and those who were injured following intervention by the police or their arrest were denied medical assistance. Thus, according to the NHRC 2013 report, 52 people were only informed of the charges by the public prosecutor when they appeared before the State Security Court (SSC).

This is the case of three activists belonging to the Herak movement who were arrested on 30 September 2013, Humam Qufaisha, Ayman al-Bahrawi and Diyya’ al-Din al-Shalabi, and who were brought before the SSC for “disruption of Jordan’s external relations” for having distributed leaflets on the bloody dispersal of the Muslim Brotherhood sit-ins in Cairo, Egypt, on 14 August.¹⁸

16 Amnesty International 2013 Report, *The situation on human rights in the world*, <http://www.amnesty.org/fr/region/jordan/report-2013>

17 ANHRI, press release of 19 March 2014, <http://anhri.net/?p=106413&lang=en>

18 Human Rights Watch, <http://www.hrw.org/news/2013/10/29/jordan-end-trials-protesters-undermining-regime>

Apart from punishments handed down by the courts, other forms of reprisal have been identified, such as the expulsion of some students from the University of Yarmouk in May 2012 because of their involvement in rallies demanding the adoption of reforms.¹⁹

The prosecution of civilians by the State Security Court

The amendment of the law on the SSC adopted in January 2014 limits its jurisdiction over civilians without completely eliminating this possibility. This reform is intended to adapt the law and bring it in line with article 101 of the Constitution, which stipulates that “no civilian may be tried in a criminal case by judges who are not civilians, except in the case of treason, espionage, terrorism, drugs related crime and the counterfeiting of currency”. Crimes coming under article 195 of the Penal Code (criticism of the monarchy) will no longer be subject to trial by the SSC.

These possible situations are nevertheless open to a wide margin of interpretation, and the SSC continues to try civilians. Demonstrators who had been referred to the SSC have been sentenced under the provisions set out in the law against terrorism. The SSC does not offer any guarantee of a fair trial because this Court is composed mainly of military men, its procedures do not comply with international standards, and there is no possibility of appeal.

Since 2011, many demonstrators or political opponents have been brought before the SSC. In 2014, dozens of demonstrators detained during the 2012 protests are still awaiting trial before the SSC, amongst them 11 members of the Herak movement. Included activist Hisham al-Heesa, accused of having chanted “Oh Abdullah, son of Hussein, where has the people’s money gone? Oh Abdullah, son of Hussein, look at what happened to Mubarak”. In many cases, prosecutors have charged the accused with “subversion of the system of governance”, or “incitement to opposition” by using article 149 of the Criminal Code,²⁰ or even of participation in “illegal gatherings”, “insulting the King”, dissemination of information aimed at “undermining national sentiment or inciting religious and racial discord”, and “attempts to amend the Constitution of the State”.

6. Civil Society Initiatives and Good Practices

Some fifty civil society organisations formed a coalition in November 2013, the National Alliance of NGOS, an initiative launched with a view to amending the various laws that govern the formation and activities of civil society organisations.

Between 2011 and 2013, within the context of the campaign, “My mother is Jordanian and her nationality is my right”, a dozen sit-ins and demonstrations were organized in front of the Parliament building and government offices. This campaign is supported by a coalition that brings together activists for women’s rights, lawyers, journalists, academics and other professional figures. This group demands amendments to the law, and the right of Jordanian women to pass on their nationality to their children and their husbands, on the same basis that men can. Demonstrations have allowed this issue to enter the realm of public debate.

19 ENP progress report 2013, Solidar, http://www.solidar.org/IMG/pdf/jordan_v23.10.13.pdf.

20 World Report 2014 - Human Rights Watch, <http://www.hrw.org/world-report/2014>

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 meetings, rallies, and demonstrations into line with international law and commitments made by Jordan; put an end to criminalising the holding of an opinion (Penal Code) (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 as well as to judicial proceedings at the State Security Court against civilians demanding their right to demonstrate peacefully;
7. Guarantee the security of journalists and facilitate their access to peaceful gatherings;
8. Adopt clear, detailed, and binding regulations governing the use of force against protesters, in accordance with the United Nations Basic Principles on the use of force and firearms by law enforcement officials; train law enforcement authorities in the use of force and anti-riot weapons accordingly;
9. Act upon the State's responsibility to protect peaceful demonstrators; 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;
10. 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, especially into the suppression of demonstrations in autumn 2012; punish those responsible and enable victims to obtain redress as well as be given guarantees of non-repetition; and to this end, establish an independent mechanism for monitoring and investigating the behaviour of the security forces.



LEBANON

Introduction

Since the widespread demonstrations of 2005, also known as the “Cedar revolution”, respect for the right of peaceful assembly has significantly improved in Lebanon. Police forces now resort much less to force and carry out their protective role at demonstrations, an indispensable aspect of exercising the right to freedom of peaceful assembly. However, the recent history of Lebanon, its geopolitical situation, and its unique form of representation based on respect for its multi-confessional character make this country a singular case in which respect for human rights is regularly put to the test.

Apart from a few demonstrations calling, in particular, for the establishment of a secular State at the start of 2011, Lebanon has not experienced in the past few years the waves of demonstrations on the scale of other countries of the Euro-Mediterranean region. However, the Syrian conflict has brought new challenges to the fore, particularly relating to the influx of refugees and sometimes interfaith violence, which have caused a resurgence of popular movements. Although most of these demonstrations have been adequately facilitated and protected by the authorities, violations of human rights have also been committed. These mainly involve cases of excessive use of force by the security forces, but also and especially the security forces’ breach of duty to protect demonstrations, particularly in the event of violence between demonstrators and counter-demonstrators.

1. Restrictions Imposed on Freedom of Assembly

Lebanon is a country based on the principle of equality of rights and duties for all citizens without discrimination. The institutional and legal framework enables individuals to express contrasting and sometimes opposing opinions, and to exercise their rights and fundamental freedoms without undue interference by the authorities. In practice, restrictions on exercising the right of peaceful assembly are quite rare, and the organizers of rallies generally respect the procedure. However, in the past it did happen that some demonstrations could be subject to restrictions because of the message that they were trying to disseminate.¹

These restrictions, based on article 346 of the Penal Code, which criminalizes riotous gatherings defined specifically as gatherings “composed of at least seven persons whose objective is to protest against a decision or a measure taken by the public authorities in order to exert pressure”, do not comply with international standards about freedom of peaceful assembly.

In fact, according to the Special Rapporteur on the right to Freedom of association and peaceful assembly, “Any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes “incitement to discrimination, hostility or violence”, in conformity with article 20 of the international Covenant on Civil and Political Rights (ICCPR)”.²

Since the widespread demonstrations of 2005, restrictions are rare, which makes a positive contribution to the exercise of the right to freedom of assembly in Lebanon.

“Since 2005 and the big demonstrations that resulted in the withdrawal of the Syrian army from Lebanon, the Lebanese State has demonstrated its capacity to observe international standards in its management of peaceful gatherings. This makes even more unacceptable the occasions when in recent years this right has not been respected. It is for this reason that we believe it essential for the Lebanese Government to systematically initiate thorough and transparent investigations, in order to clarify those cases where demonstrators were unjustly arrested, beaten or sometimes even killed during demonstrations,” Wadih Al Asmar, representative of the Lebanese Centre for Human Rights.

¹ U.S. State Department, *Country Report on human rights in practice*, chapter on Lebanon, 2013.

² A/HRC/23/39 para. 59.

2. Facilitation of Assemblies by the Authorities

What must – in spite of some reservations³ – be welcomed, is the adoption of a Code of Conduct for the Internal Security Forces in 2012. This provides explicitly for the positive duty of the law enforcement bodies to protect civil liberties, and therefore peaceful assembly. In practice, however, more efforts must still be made in this area because although recent months have witnessed good practices, other cases evidence a lack of police protection against violence committed by non-governmental participants during peaceful demonstrations. Although the situation surrounding some demonstrations can at times be tense, it is the duty of the authorities to take the necessary measures to ensure the protection of the organizers and the participants at such gatherings, in particular when there is a risk of trouble with counter-demonstrators.

Over recent months, various demonstrations, including spontaneous ones, on subjects which could be regarded as sensitive, have been properly managed by the police. In most cases, the organizers notified the authorities of their intention to organize rallies. This has enabled the police and security forces to adequately carry out their protection role, as well as their remit to ensure public safety against the criminal acts of third parties.

For example, various demonstrations calling for the creation of a secular State were held on 27 February 2011 and on the whole the right of peaceful assembly was adequately protected. Certain events held after the beginning of the conflict in Syria in 2011 led to violence between pro-Syrian factions and opponents of Syrian influence in Lebanon, but were quickly brought under control by the police which played its protection role by coming between the demonstrators. On 3 September 2013, a demonstration organized by Palestinian refugees from the Nahr al-Bared camp in front of the offices of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was also given adequate protection by the police who allowed the demonstrators to deliver their message without undue interference.⁴

According to information received, the work of journalists and other observers is not subject to restrictions by the authorities.

In other cases, however, the law enforcement officers have failed in their duty to protect individuals against the delinquent and criminal acts of non-governmental players. On 9 June 2013, a number of rallies were held in the country condemning the participation of Hezbollah in the armed conflict in Syria. Although some of them, such as the demonstrations organized at Sidon Stadium and in the centre of Beirut, were carried out under the protection of the police without conflict or serious incident, a demonstration held outside the Iranian embassy in Beirut led, on the other hand, to serious violence and violation to the right to life, security, and safety. During this student demonstration, the counter-demonstrators favouring Hezbollah, who were armed with sticks, confronted the protesters, resulting in violent clashes on both sides. The organiser of the demonstration, Hashem al-Salman, was beaten up and shot dead during these clashes.⁵

"Hashem was calling for peace and was armed only with his megaphone to defend his ideas. Hardly had a band of individuals armed with sticks arrived at the demonstration that they rushed at the young demonstrators and most of the violence was directed at Hashem. He was violently struck many times on many parts of his body, until he collapsed covered in blood. His assailants stopped the emergency services from helping him; they then pursued him to the hospital, which they only left after obtaining confirmation that he was dead. To date, none of

³ National NGOs have particularly deplored the fact that the Code of Conduct does not contain a specific article enabling the monitoring of proper observance of its provisions, Interview with Act for Human Rights, 2 April 2014.

⁴ More information at: <http://www.maannnews.net/eng/ViewDetails.aspx?ID=626567>

⁵ More information at: <http://www.aljazeera.com/news/middleeast/2013/06/20136910330195585.html>; <http://www.dailystar.com.lb/news/politics/2013/jun-10/219882-death-at-anti-hezbollah-rally-spurs-stability-fears.ashx#axzz2v0vok>

the assassins has been arrested, yet Hashem was killed in broad daylight in a public place, with security forces officers nearby,” the brother of Hashem al-Salman complains.⁶

This occurrence indicates a serious breach of the duty by the authorities to protect demonstrators against acts of violence, including those committed as part of a counter-demonstration. The authorities, who had been notified by the organization about this event, should have foreseen potential trouble and promoted the organization of two demonstrations, if necessary in two different locations.⁷

The authorities should also have intervened much earlier in order to rescue the young demonstrator who had been assaulted, and who remained seriously injured for nearly thirty minutes before an ambulance arrived on the scene. The duty of the State to facilitate and protect peaceful demonstrations in fact includes the responsibility to maintain order as well as provide medical services and other health and safety measures.

3. The Use of Force and Detention

When the situation so requires, and under strict conditions of necessity and proportionality, the police may use force to maintain security and guarantee the protection of demonstrators’ right of peaceful assembly. Any use of force must, however, be proportional to the seriousness of the offence and ascribe to respect for human rights, as particularly set out in the United Nations Code of Conduct for law enforcement officials.⁸ In the last few months, law enforcement agencies may at times have used excessive force.

On 22 October 2012, following the funeral of General Wissam al-Hassan, head of police intelligence services, who was specifically investigating the death of the former Prime Minister Rafiq Hariri, law enforcement officers intervened to restore calm at a violent demonstration which accused the Prime Minister Najib Mikati of seeking to “cover up the crime” of General al-Hassan’s assassination. The law enforcement agencies used tear gas and fired into the air in order to disperse protesters who sought to enter the Grand Serail, the Palace of Government, by force. Given the degree of violence during this demonstration, the internal security forces used force within the limits defined by international law on human rights. These are in fact clear about the use of force which must be “exceptional... to the extent that it is reasonably considered necessary in the circumstances, to prevent a crime, or to arrest, or assist in the legal arrest of offenders or suspects”.

In other cases, however, the police has used excessive force against peaceful demonstrators. This was particularly the case in September 2012 when young demonstrators who were protesting against the adoption of the law on personal status were severely beaten by the police;⁹ or in August 2013 when the internal security forces arrested 14 Sudanese refugees who were protesting in front of the offices of the United Nations High Commissioner for Refugees in Beirut. In the course of this latter incident, violent and humiliating acts, insults, and threats of expulsion and arrest were documented,¹⁰ which shows that the authorities must still make efforts to, on the one hand, promote the exercise of the right of peaceful assembly for all, and on the other hand, remind law enforcement agencies of their duty to respect and protect human dignity and the fundamental rights of every human being.

6 Interview of 20 June 2014; see also <https://now.mmedia.me/lb/en/reportsfeatures/550652-one-year-on-no-justice-for-murdered-anti-hezbollah-activist>

7 According to the United Nations Special Rapporteur on the right to freedom of association and peaceful assembly “in the case of counter-demonstrations (...) they should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial”, A/HRC/20/27 para. 30.

8 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

9 <http://www.lbcgroup.tv/news/52179/LBCINWS0>

10 <http://www.hrw.org/world-report/2013/country-chapters/lebanon>

4. Accountability of Law Enforcement Forces

The death of Hashem al-Salman is the subject of an investigation, but more than a year after the event, few measures have been taken to ensure that the offender(s) is/ are brought to justice. Nine months after the event, the public prosecutor and the investigating judge seemingly have still not visited the scene of the crime. According to information received,¹¹ the hospital reportedly refused to release Hashem al-Salman's clothing to his family, or provide a death certificate stating the cause of death. After several weeks, the family apparently finally obtained a death certificate from the police but no autopsy report was included with it. Given the seriousness of the facts, it is urgent that measures be taken to initiate an independent and impartial investigation, the results of which should be communicated to the family and made public.

"The file relating to Hashem's death has been buried and nobody helps us. I have met with the President, the Ministers of Justice and of the Interior, who promised us that work would be done on this case. But in reality, nothing has been done. Nobody is investigating my brother's death," Hashem al-Salman's brother laments.¹²

In other cases, the authorities have already demonstrated their ability to shed light on violations of the right to demonstrate. In November 2013, customs officials made a violent attack on journalists and civil society activists who had come to protest at the doors of the General Directorate of Customs in Beirut, in support of colleagues who had been physically assaulted by customs officers. On 3 December 2013, the military prosecutor charged an officer and a customs official for having made "use of force and beaten" journalists.¹³

5. Judicial Sanctions against Organisers and Participants in Assemblies

To our knowledge, in recent years, no organizer of or participant in a peaceful gathering has been the subject of prosecution and sanctions by the judicial authorities.

11 Interview with Human Rights Watch, 19 March 2014.

12 See also <https://now.mmedia.me/lb/en/reports/features/550652-one-year-on-no-justice-for-murdered-anti-hezbollah-activist>

13 More information at: <http://en.rsf.org/lebanon-military-court-sentences-reporter-06-12-2013,45548.html>

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 gatherings into line with international law, and the commitments made by Lebanon (see the first part of the Study);
3. 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;
4. 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;
5. Act upon the State's responsibility to protect peaceful demonstrators; ensure compliance with the Internal Security Force's Code of Conduct so 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;
6. 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; apply these principles to the inquest into the death of Hashem al Salman, a young demonstrator killed during a public gathering on 9 June 2013. To this end, establish an independent mechanism for monitoring and investigating the behaviour of the security forces.



LIBYA

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 2014¹ 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

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

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 people⁴ 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

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

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=LB&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=LB&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 established¹⁰ to promote human rights in Libya and document violations, but it still lacks resources and skills.

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.



MOROCCO and WESTERN SAHARA

MOROCCO

Introduction

Within a political context marked by an uncompleted process of reform, social movements have not grown any weaker in recent years. In 2013 and at the start of 2014, all of Morocco's regions experienced many demonstrations, sit-ins, marches and peaceful gatherings organized by various groups. According to a study conducted by the Forum of Alternatives¹ 17,000 sit-ins were recorded in 2012, excluding the '20 February Movement' (M20F) demonstrations which were attended by 320,000 people. For the most part, these rallies are convened neither by political parties, nor by trade unions, nor any officially constituted bodies.

The M20F has lost much of its momentum, but has contributed to galvanising significant dynamic action throughout the whole country. Long is the list of the groups that have mobilised to claim their rights: unemployed graduates, movements associated with the lack of basic infrastructure and living conditions, women who have been victims of the micro-credit system, Soulaliyat Women (from tribes living on communal lands in accordance with customary rights), sub-Saharan migrants, students and teachers in secondary education, trade unions, lawyers, judges, human rights defenders etc.

Faced with these protests, the attitude of the authorities has fluctuated between suppression and tolerance. Observation of the behaviour of the security forces in the face of this wide variety of expressions of discontent indicates the regime taking a grip on concessions made from 2011 onwards.² The "red lines" on sensitive issues such as the monarchy, the territorial integrity of Morocco and Islam still limit the exercise of the freedoms of assembly and expression.

1. Restrictions Imposed on Freedom of Assembly

Article 29 of the 2011 Constitution guarantees the freedoms of assembly and association without any discrimination. However, the reform of the Constitution has not been followed up by the adoption of organic laws implementing its provisions, and repressive laws have not yet been revised.

Some organizations are still prohibited or in practice deprived of legal status, which directly limits their capacity to organize public meetings or to call for demonstrations, to the extent that the law only recognizes this right for legally constituted organisations.³ Many players are thus denied this right, such as ANDCM (National Association of unemployed graduates in Morocco) founded in 1991, ATTAC CADTM MAROC,⁴ several sections of the AMDH (Moroccan Association for Human Rights), the LMDDH (Moroccan League for the defence of human rights), and the IMDH (Moroccan Commission For Human Rights),⁵ or organizations working with migrants such as GADEM.

Another arbitrary practice that has been reported is the sealing off of private homes on the grounds that they have been used to hold "unauthorized" meetings. This is the case of homes belonging to two members of the Islamist movement Al Adl Wal Ihsan (Justice and charity) – its new leader, Mohamed Abbadi, and another member of the movement.⁶

Non-recognized organizations have difficulties in hiring rooms or premises for their activities and meetings and they have to fall back on the support of other organizations to be able to exercise this right. In February

1 Study by the Forum of Alternatives Morocco, *Liberté de reunion et de manifestation au Maroc*, Abderrahmane Rachik, 30 April 2014 and interview with Kamel Lahbib, Forum of Alternatives, 12 March 2014.

2 Interview with Said Tbel, Espace Associatif, 6 March 2014 and Salahedine Lemaizi, ATTAC Maroc, 15 March 2014.

3 See *Regional Study: The right to freedom of assembly in the Euro-Mediterranean region - Part I: Legislation Review*, Euro-Mediterranean Human Rights Network, 2013 (Morocco chapter): http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_MOROCCO1.pdf

4 Press release ATTAC-Morocco, 11 February 2014: ATTAC CADTM MAROC has still not received an acknowledgement. The authorities in Rabat decided in February to appeal against the verdict of the Administrative Tribunal of Rabat which awarded this organization the right to operate lawfully.

5 These three organizations have held press conferences to clarify the violations of which they are victim: AMDH: 20 March 2014 http://www.amdh.org.ma/fr/communiqués/declaration_presse_fr; IMDH, 17 April 2014, <http://www.instance-mdh.org/categories1.html>

6 Press release Human Rights Watch, *Morocco : Stop Sealing House to Punish Activists*, 9 July 2013, <http://www.hrw.org/news/2013/07/09/morocco-stop-sealing-houses-punish-activists>

2014, the third Festival of Resistance and Alternatives, a cultural event which was to be held in the former slaughterhouses of Casablanca, was prohibited.⁷

In practice, many groups do not follow the established legal procedure for gatherings in a public place.⁸ In some cases, groups have received notice of prohibition even though they had not followed the administrative process of notification.⁹

It is important to note that Moroccan case law exempts sit-ins from the duty to notify – court of 1st instance of El Jadida (1996) and Rabat (2000), administrative tribunal of Oujda, administrative court of appeal of Marrakesh (2007).

The administration has the discretionary power to prohibit a meeting or demonstration if it considers that it could jeopardise public safety, without having to give reasons for its decision to ban.¹⁰ Many cases of the banning of peaceful demonstrations have been recorded by human rights organizations, and the most common argument used by the authorities to disperse them is the illegal nature of the gathering: prohibition and suppression of the sit-in at Imzouren on 8 July and 15 December 2013, prohibition on certain organizations to hold their general assembly or other meetings (local section of the AMDH at Midlet on 23 February 2014; the AMDH conference on human rights in Tetouan on 21 July 2012; prohibition on the AMDH to organize a sit-in at Fez the 7 March 2014 to mark international Women's Day; break-up of the AMDH sit-in for international Women's Day at Eljadida on 8 March 2014 during which several female activists were assaulted).

Rallies organised to commemorate the third anniversary of the 20 February were banned or brutally broken up in several locations. In El Jaddida, the commemoration could not take place because the participants were surrounded by the police and could not reach the place where the gathering was planned to be held. This was also the case in Tangiers where the demonstrators had to change the location of their gathering and finally assembled in Beni Makada. Gatherings in Nador and Al Hoceima were also prevented or dispersed at the start.

In some regions, such as in the Rif (North), most demonstrations, sit-ins, marches or gatherings have been banned since June 2012. Associations, such as the Women's Forum, which organized the demonstrations of 8 March 2013 and 2014 had to give explanations to the authorities about the slogans and banners that were going to be used.¹¹

Participation of women at demonstrations

There is no specific obstacle limiting the participation of women at meetings and public gatherings unless they relate to socio-cultural values generally limiting women's participation in public life. In the more traditional or conservative regions, women remain in the background. But this is not the case for movements like M20F where women were at the forefront, even though they were not the majority. They have nevertheless been put under a lot of pressure and have had to fight for their demands for equality to feature alongside demands for dignity, freedom and social justice. The fourth corner stone relating to equality was only included after a year.¹²

7 The Cultural Factory, "These disturbing artists", 26 August 2013, <http://www.abattoirs-casablanca.org/node/258> and press release of the Festival of Resistance and Alternatives, 18 February 2014, <https://www.facebook.com/photo.php?fbid=685615244812848&set=a.330275367013506.73725.328988513808858&type=1&theater>

8 See the Annual Report of the CNDH, 2008, http://www.cndh.org.ma/sites/default/files/documents/Rapport_CCDH_2008_V_francais.pdf

9 Since 2011, groups which have called for demonstrations on social networks have received bans on such demonstrations by post.

10 According to article 13 of the Law 12/0 of 1976.

11 Interview with Zohra Koubia, AFFA-Forum des Femmes, 19 March, 2014.

12 Interview with Nidal Salam Hamdache, AMDH, Rabat, 24 March 2014.

Since the 1990s, Moroccan women have been successfully demanding their rights publicly: campaign for the reform of the Mudawana in 1992-1993, marches in Rabat and Casablanca in March 2000 etc. New coalitions have been formed such as the Feminine Springtime for Democracy and Equality or the Civil Coalition for the application of article 19, which demand the implementation of constitutional provisions aimed at combating the inequality, discrimination and violence of which Moroccan women are the victims.

Protection of Journalists

The behaviour of the law enforcement authorities in respect of journalists differs according to any intention or not to use force to break up the demonstration. When force is used, journalists are kept away and not allowed access, their equipment is sometimes destroyed or confiscated.¹³ The case of Omar Brousky should be pointed out. He is an *Agence France Presse* journalist who was assaulted whilst he was covering an M20F demonstration against the ceremony of allegiance to the king in October 2012. He then found that his accreditation had been withdrawn.¹⁴ The 2013 report by the SNPM (Moroccan national Press Union) on the state of freedom of the press and information in Morocco indicates that, for the period between May 2012 and March 2013, there was an increase in attacks on journalists, and this in the absence of any legal, administrative or professional mechanisms to protect them.¹⁵

2. Facilitation of Assemblies by the Authorities

The behaviour of the security forces varies from non-interference to the excessive use of force to break events up. According to the study carried out by the FMAS,¹⁶ most demonstrations are tolerated and take place without the security forces intervening. It is therefore possible to say that the authorities meet a minimal standard in the facilitation of the right of assembly and demonstration.

Nevertheless, gatherings challenging the “pillars of the kingdom” or, in other words, crossing “red lines”, are subject to repression. Repression is therefore based on the demonstration’s content or message.

This represents a failure by Morocco to abide by its international obligations, since “*any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes “incitement to discrimination, hostility or violence”, in compliance with article 20 of the International Covenant on Civil and Political Rights (ICCPR)*”.¹⁷

Organisations’ management of demonstrations

In the case of demonstrations organized by groups, whether legally constituted or not, the organizations’ marshals keep them under control. In the case of authorized demonstrations, the organizers are also

13 Interviews with Mustapha Hattab, Observatory for Public Freedoms - FMAS -- 24 March 2014, and with Abdelsalam Lassal, AMDH, 26 February 2014.

14 Human Rights Watch, press release of 22 October 2012, <http://www.hrw.org/news/2012/10/22/morocco-restore-afp-reporter-s-accreditation>

15 The main assaults denounced by the Union: July 2012, Youssef Jouhari, correspondent for Assabbah in Tetouan; 8 August 2012, Wahid Mubarak, a journalist for Al Itihad; October 2012, the Al Ahdath team assaulted at a court clerks’ sit-in; 13 November 2012, Mouss Oulahssan (Al Ahdath), Mohamed Mouânis, Mourad Bourja (AIC) and Mohamed Jarfi (Assabah) assaulted during an M20F sit-in in Casablanca; 12 February 2013, Boujemla, journalist for Al Moutaâtaf in Salé; 16 March 2013, Nbarck Amrou, journalist for Attajdid in Rabat; 20 March, 2013, Mohamed Belkacem, journalist for Attajdid in Rabat; May 2013, Hanan Nabli, journalist for Al Michaâl, http://www.snpm.org/document_open.php?id=611&fid_rubrique=3&fid_cat=22

16 Op.cit.

17 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association A/HRC/23/39 para. 59.

liable according to the law,¹⁸ which is a problem because the prime responsibility for protection lies with the State and not with the citizens, who should never be rendered liable for acts committed by others.¹⁹

3. The Use of Force and Detention

Generally, several security forces are involved in breaking up demonstrations: the police, special forces or the gendarmerie in rural areas.

Various reports and press releases of the AMDH²⁰ indicate that the law enforcement authorities use batons and truncheons to put down demonstrations.

The underlying motive for breaking up rallies generally seems to be the message conveyed by the demonstrators, even if in such cases the authorities rely on the illegality of the event or the risk to public order to justify breaking it up. Force is not used as a last resort but systematically as the means of dispersing the demonstration, often without prior warning, which is a violation of legal procedures. The force used does not always respect the proportionality test, involving physical injury to demonstrators, and also sometimes to passers-by, onlookers or journalists.

A few examples illustrate the point. The sit-in of the 2 August 2013 organized in Rabat to protest against the royal pardon granted to Daniel Galván (sentenced for the rape of 11 children at Kenitra) was the subject of a robust intervention, which resulted in dozens of injured and detainees assaulted in police vehicles.

The breaking up of marches on the third anniversary of the M20F movement in February 2014 in Tiznit (100km from Agadir) resulted in a dozen injured.²¹ M20F members are sometimes directly targeted by the police, as during the trade union demonstration of 6 April 2014 in Casablanca, where only the small group of young activists was the subject of a brutal attack followed by arrests.²²

Although there is no specific harassment aimed at women at demonstrations, they have sometimes been victims of violence, insulted and humiliated by law enforcement officers. Some attacks have even resulted in serious injuries.²³

The evidence collected seems to indicate that, over the past two years, the use of force at demonstrations and detention have increased, especially in respect of some groups such as the senior leaders of the unemployed fighting for their right to work,²⁴ members of the National Association of Unemployed Graduates in Morocco (ANDCM),²⁵ students of the UNEM (National Students Union of Morocco) or M20F activists.

18 CNDH, *Annual Report*, 2008.

http://www.cndh.org.ma/sites/default/files/documents/Rapport_CCDH_2008_V_francais.pdf

19 See EMHRN *The right to freedom of assembly in the Euro-Mediterranean region: Legislation Review*, op. cit.

20 AMDH, *Annual Report*, 2012.

21 Abdeslam Lassal, AMDH, interview 26 February 2014.

22 Eleven members were arrested: Amine Lekbabi, Hamza Haddi, Ayoub Boudad, Yousef Bouhlal, Hakim Sarrokh, Harraq Mohamed, Fouad Al- Baz A'aras Mustafa, Abdellatif Essarsri, Abdelghani Zaghmoun and Hamid Alla, nine of them are detained and brought before to the court of first instance in Ain Sebaâ, Casablanca.

23 This is the case of activists from the movement of unemployed graduates, one of whom had a miscarriage after being beaten up.

24 20 leaders were arrested at peaceful demonstrations in Rabat in April 2014, and are currently being held.

25 Interview with Majdi Abdallah (ANDCM). This movement has no legal recognition and has a presence throughout Morocco.

4. Accountability of Law Enforcement Forces

In general, demonstrators who are victims of violence do not have easy access to the courts. When lodging a complaint, the procedure requires a doctors' expert opinion and most requests made by lawyers are refused.²⁶ In general, complaints filed have not been followed up. A coalition of human rights organizations filed a complaint about the attacks on demonstrators on 2 August 2013. The question was raised in the Parliament and the minister of the Interior said that he would do what was necessary but no result has been achieved so far.²⁷

5. Judicial Sanctions against Organisers and Participants in Assemblies

When demonstrations are forcibly dispersed, the law enforcement authorities often make arrests and then release the detainees some hours later. The issue therefore is one of intimidation. However, many cases have given rise to legal proceedings on counts such as: assaulting officials, destroying public property, drug trafficking or undermining the security of the State. Ill-treatment has been reported, as have cases of torture.²⁸

Many students belonging to UNEM, which organised demonstrations denouncing the lack of resources at the universities, have been arrested.²⁹ Trade unionists, M20F activists, defenders of human rights, people who had been detained in the "fight against terrorism", and Saharawi activists have been arrested without Morocco recognising their status as prisoners of conscience. Some are prosecuted under general law³⁰ in order to conceal the political nature of their trial. Political prisoners identified by human rights organizations are reported to number 288 of whom 208 are serving a prison sentence and 80 are in custody or on bail awaiting trial.³¹

Some trials clearly do not meet the standards that would guarantee a fair trial. In the case of the M20F activists detained on the 6 April 2014, the sentences were pronounced purely on the basis of police statements which incriminated them for violence against officers. The 9 activists who refused to sign these statements were sentenced by the correctional court of Ain Sebaa on 22 May to up to one year in prison without remission for violence toward an officer and the organization of a non-notified demonstration, even though the demonstration had been notified by the unions and facilitated by the authorities.³² Several violations of the code of criminal procedure and the right to a defence were noted at their trial.³³

6. Civil Society Initiatives and Good Practices

The right of assembly is at the heart of strategies to defend human rights and the take-over of public places by citizens has increased exponentially since 2011.

In Imider, in the Ouarzazate region, the inhabitants have been protesting since August 2011 against the devastating social and environmental consequences of a mine operated by the SMI (Imider Metallurgy Company) and have set up a permanent camp which all surrounding villages are involved with, organizing a mobile school and ensuring the permanent nature of the sit-in. Several activists have been harassed and arrested, and in October 2012, 5 people were convicted on appeal to a 2 year suspended prison sentence.

26 Interview with Benzekri Abdelkhalek, AMDH, 14 March 2014.

27 Interview with Benzekri Abdelkhalek, AMDH, 18 March 2014.

28 AMDH, *Report on arbitrary detentions*, <http://www.amdh.org.ma/fr>. This report points out the case of Fouad Belbel, secretary general of Tiflet section of the AMDH who was arrested on 10 December 2013 following his support for peaceful demonstrations by citizens for healthy living conditions, tortured, and accused of assaulting a police officer.

29 Students from Kenitra accused of having insulted the law enforcement authorities were sentenced at their trial in first instance to 8 months in prison without remission on 20 January 2014. In Fez, twelve UNEM activists were sentenced on April 21 to 4 months in prison with no remission. In Meknes, five activists were arrested 17 December 2012 and kept in detention until 12 May 2014, when one was sentenced to six months in prison and the other four to three years.

30 Example of Driss Moukaneh of the 20 February movement, a travelling salesman accused of drug trafficking and sentenced to a year in prison without remission.

31 See AMDH's *Point hebdomadaire* n°57, 14 March 2014, <http://amdhpais.org/wordpress/?p=1081> and list of political prisoners and their groups, ASDHOM, 13 March 2014, http://asdhom.org/?page_id=838

32 See EMHRN, 28 May 2014, <http://www.euromedrights.org/eng/2014/05/28/morocco-emhrn-denounces-the-conviction-of-eleven-young-activists/>

33 Solidarity Morocco, 13 June 2014, <http://solidmar.blogspot.com.es/2014/06/m20f-report-au-17-juin-du-proces-en.html>

Another example is that of the Soulaliyat women, members of tribes where discriminatory custom and practice forced them to take action. Supported by civil associations, nearly 1000 women gathered in front of the Parliament in July 2009 and obtained from the Ministry of the Interior the recognition of their right to benefit, in the same way as men, from compensation arising from transfers or sales of collective lands, as well as a better representation in the customary mechanisms of management of collective lands.

Finally, some NGOS³⁴ and the National Human Rights Council (official independent body) respectively researched into social change and made recommendations designed to amend the legal framework and improve the practices of the security forces, as well as mechanisms for appeal in the event of violence. The 'Rabat Call' (*Appel de Rabat*) is a forum gathering around 400 NGOs calling for reform of the legislative framework governing civil society action and freedom of assembly throughout Morocco.

34 Study by FMAS, *Social movements in Morocco: from riot to demonstration*, 2014.

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. Reform law 00/76 on public meetings and demonstrations in compliance with the provisions of the new constitution, international law, and commitments made by Morocco; in particular, lift restrictions relating to groups who are not officially registered and put an end to administrative obstacles that prevent some civil society associations from gaining legal status (see the 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. Terminate certain practices engaged in by the administration such as refusal to issue an acknowledgement that a complaint has been lodged; make sure that restrictions applied are done so in compliance with the law, and abide by the principles of necessity and proportionality, and are communicated in writing to organizers within a time frame that allows for an appeal in court 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. Guarantee the security of journalists and facilitate their access to peaceful gatherings;
8. 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;
9. Act upon the State's responsibility to protect peaceful demonstrators; 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;
10. 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.

Introduction

The “territorial integrity” of Morocco including the Sahara is included within the “red lines” that restrict the freedoms of expression, assembly and association. The approach of the Moroccan authorities is still dominated by the application of a security policy aimed at maintaining control over the territory, contrary to the commitments made during the discussion of Morocco’s universal periodic review report at the Human Rights Council of the United Nations in April 2013.

Despite repeated civil society requests to expand the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) to the protection of human rights, Security Council resolution No. 2152 adopted on 29 April 2014 has not responded to these demands, indirectly encouraging the Moroccan authorities to continue their repressive policies.

However since 2000, the dynamics of demands for rights in Western Sahara have expanded and been strengthened following the “Arab spring” which fostered the emergence of new forms of protest.

1. Restrictions Imposed on Freedom of Assembly

The restrictions on the freedom of association and expression also limit the freedom of assembly in Western Sahara. The Moroccan authorities refuse to give legal recognition to local human rights organizations or associations that support the right to self-determination. These organizations which are not legally recognized, such as the section of the AMDH in Smara, other organizations such as the CODESA (Collective of Saharawi human rights defenders) or even the ASVDG (Sahrawi Association of Victims of human rights violations), do not have access to the public places and can only meet in private. They are also closely monitored by the authorities.

Access by journalists and observers to Western Sahara is strictly controlled. Accredited Moroccan journalists do not generally have access to the territory. Observers or international human rights organizations have to face many barriers: many cases of harassment or even expulsion have been reported.³⁵ Some local human rights activists are subjected to intimidation and harassment, their movements are controlled, their homes attacked, and their cars confiscated. They are also the subject of media campaigns intended to discredit them.

2. Facilitation of Assemblies by the Authorities

The Moroccan authorities do not in any sense facilitate the exercise of the right of peaceful assembly in Western Sahara, seeking rather to stifle protest, especially when international attention is focused on that territory. For example, during the visit of the United Nations special envoy to Western Sahara in October 2013, the town of Laayoune was surrounded by a large number of security officers in order to prevent demonstrations. They resorted to jetting water at the demonstrators to disperse them and the townspeople subsequently had to put up with power cuts.³⁶

Many demonstrations were held in January 2014: action by Saharawi young people on 11 January in Laayoune to show solidarity with political prisoners³⁷ or the 12 January demonstration in Laayoune to demand the right to self-determination,³⁸ but most were broken up.

35 A delegation of Norwegian observers was expelled from Laayoune in December 2013; a delegation of British parliamentarians and activists was harassed in February 2014; access to the territory has been refused to the ad hoc commission of the EU. See CODESA Report, *Violations of human rights in Western Sahara since resolution 2099 of the UN Security Council*, 25 April 2013.

36 Press Release of the Laayoune section of the AMDH, 20 October 2013.

37 Video made by Equipemedia Sahara, 11 January 2014, <https://www.youtube.com/watch?v=vboahzobmb8>

38 APSO INFO, 19 January 2014, <http://apsoinfo.blogspot.com.es/2014/01/em-une-semaine-de-manifestations.html>

3. The Use of Force and Detention

In 2013 and 2014, many demonstrations in the main towns of the Western Sahara, such as Laayoune or Smara, demanding the right to self-determination, the release of political prisoners, or the creation of a mechanism by the United Nations for the protection of human rights in Western Sahara, occasioned an excessive use of force.³⁹

Usually the law enforcement authorities are deployed some two hours before the start of the event and the town is besieged, preventing people from gaining access to the demonstration. The law enforcement authorities do not follow the procedures set out in Law and resort to force without warning nor regard for the principles of necessity, progressiveness and proportionality.

Several types of security forces are involved during demonstrations: police in civilian clothes and in uniform, auxiliary forces, “intervention brigades” (soldiers), gendarmes, and intelligence services. The authorities have at times resorted to informal groups of civilians to suppress or disperse demonstrations (E.g. Gdeim Izik in 2010 and Dakhla 2011).⁴⁰

According to civil society organizations, the security forces resort to throwing stones at the demonstrators, use of wooden or steel batons, edged weapons, vehicles to knock people down, physical violence aimed at the sensitive areas of the body (genitals, face), and insults etc.⁴¹

According to the CODESA report, over the period between 13 April 2013 and 4 April 2014, the suppression of peaceful demonstrations may have caused more than 900 injured, of which 488 were women, 442 were men, 30 were minors and 29 were disabled.⁴²

These repressive practices also affect the Saharawis of Southern Morocco in several places close to the border with Saharawi territory (Tan-tan, Tarfaya, Guelmin, Agadir, Assa etc.) due to the nature of their demands. In May 2013, a demonstration on the occasion of the 40th anniversary of the foundation of the Polisario Front organized by students of the Faculty of Philosophy and Letters at the University of Agadir was violently put down by the police, leaving a dozen injured.⁴³

When forced dispersal of demonstrations and sit-ins occur, the demonstrators are often subjected to intimidation, and ill-treatment, and cases of torture have been reported.⁴⁴ The abuses took place in vans used by the police, auxiliary forces or the gendarmerie, or at their premises and detention centres.

4. Accountability of Law Enforcement Forces

In general, the officers in security forces who are responsible for the violence are not held liable and the authorities do not follow up any complaints filed against them. Sometimes these individuals even benefit from internal promotion, which encourages this repressive policy.⁴⁵ Between 26 April 2013 and 08 April 2014, CODESA received copies of more than 90 complaints, lodged by Saharawi victims to prosecutors at various Moroccan courts, against officers who may have been responsible for violence and ill-treatment, but so far there is no outcome to these complaints.

39 During the period 26 April 2013 to 08 April 2014 CODESA identified 92 peaceful demonstrations which were suppressed by the security services.

40 Interview with Mohamed Salem Lakhal, CODESA, 28 March 2014.

41 Ibid.

42 CODESA Report, *op. cit.*

43 Western Sahara Human Rights Watch, 11 May 2013, <http://www.wshrw.org/en/las-fuerzas-marroquies-cargan-contras-estudiantes-saharauis-en-el-40-aniversario-de-frente-polisario/>

44 For example, the peaceful demonstration on 15 May 2014 in Laayoune: <http://www.wshrw.org/en/otra-manifestacion-saharai-pacifica-atacada-por-la-policia-marroqui/>; or the case of the peaceful gathering of fishermen in the port of Laayoune 11 March 2014 to condemn the fisheries agreement between the EU and Morocco, at which nine fishermen were questioned for several hours and threatened with more severe sanctions if they demonstrated again.

45 The CODESA organization reported as an example the promotion in rank and transfer out of Western Sahara of two Moroccan officials who were the subject of dozens of complaints: Mohamed Nachti, former Pasha of Laayoune and Mohamed Hassouni, former police officer in Laayoune.

5. Judicial Sanctions against Organisers and Participants in Assemblies

Because Saharawi organizations are not legally recognised, demonstrations are usually regarded as illegal and the Moroccan authorities use this pretext to carry out arrests, at virtually every demonstration. In most cases, they give rise to legal proceedings. The authorities sometimes fail to record the exact date of the arrest so as to extend detention. The conditions in detention are generally very difficult and many cases of ill-treatment have been reported.

Demonstrators brought to justice can appeal if a military trial is not involved: but the courts of appeal, like the courts of first instance, do not offer any guarantee of a fair trial: statements made during police interrogation, which may contain “confessions” made under duress, have always been acceptable proof in trials at the expense of material evidence and the attendance of witnesses. Finally, the absence of a lawyer during interrogation in police custody, and the lack of access of human rights observers in the prison environment isolate the detainees and create favourable conditions for ill-treatment.⁴⁶

The punishments are generally very severe, whether handed down by military or civil courts. Mohamed Jgag, for example, was condemned by the Court of Appeal in Agadir to a year in jail for having taken part in a peaceful rally.⁴⁷ Another Saharawi, Kays Hiba, arrested on 7 October 2013 in Guelmim, was sentenced on 20 March 2014 by the court of Agadir to a year in prison without remission.⁴⁸ Between the 17 November 2012 and the 13 March 2014, 81 other cases were brought before the civil courts, 15 verdicts were pronounced ranging from 1 month to 4 years in prison without remission.⁴⁹ Since 2010, more than 210 people have been on bail with regard to the protest camp in Gdeim Izik in 2010. They were detained for periods ranging from 4 weeks to 7 months, then released, and have not yet been tried.

Some Saharawi activists were brought before military courts. Such is the case of 25 Saharawi civilians arrested at Gdeim Izik, who were sentenced by the military court of Rabat (19 February 2013) for violence when security forces intervened to break up the camp on 8 November 2010: 8 were sentenced to life imprisonment, 4 to 30 years in prison, 10 to sentences of between 20 and 25 years in prison and 2 to two years.⁵⁰

The announcement by the Moroccan Government on 14 March 2014 of an amendment to the Law aimed at prohibiting civilians appearing before military courts is a step in the right direction but it has been greeted with scepticism by human rights activists. The bill will cover an examination of the provisions of article 3, which includes a fairly vague definition granting military courts jurisdiction over civilians in cases of “war against the institutions of the State or the safety of persons or of capital” or in the case of attempts to overthrow the regime or to seize any part of the national territory by force.⁵¹

46 Amnesty International, April 29, 2014, <http://www.amnesty.org/en/library/info/MDE29/004/2014/en>

47 ANHRI, 11 February 2014, <http://www.anhri.net>

48 ASDHOM, See *Point hebdomadaire* n°58, 27 March 2014, <http://asdhom.org/?p=83514>

49 ASDHOM, *List of political prisoners and their groups*, http://asdhom.org/?page_id=838

50 EMHRN, *Trial Observation Report*, February 2013, <http://www.euromedrights.org/eng/2013/06/19/the-gdaim-izik-trial-observation-report/>

51 CIHRS, press release of 20 March 2014, <http://www.cihrs.org/?p=8247&lang=en>

Recommendations

The same recommendations are addressed to the Moroccan authorities in respect of Western Sahara, as well as specific recommendations:

1. Implement in every circumstance the duties incumbent upon Morocco as the occupying power of Western Sahara, in application of international law on human rights and international humanitarian law;
2. Ensure that the freedoms of assembly, expression and association can be exercised by any individual or group in the territory of Western Sahara under Moroccan administration even when the views expressed are critical of the policy of the Moroccan authorities;
3. Remove administrative and political obstacles preventing Sahrawi human rights defence associations and other Sahrawi associations from obtaining legal status;
4. Put an end to arbitrary arrests during peaceful demonstrations and also the judicial harassment of activists demanding their right to demonstrate peacefully;
5. Put in place an independent mechanism for the monitoring and investigation of the activities of the security forces in Western Sahara; expedite prompt, independent and impartial investigations in cases of complaint or information on possible violations of human rights committed by law enforcement authorities during operations to maintain order; punish those responsible and allow victims to obtain redress as well as be given guarantees of non-repetition;
6. Put an end to military trials brought against civilians and review the proceedings and sentences handed down by these courts against Sahrawi demonstrators because they do not offer the necessary guarantees of independence and impartiality required of a fair trial according to international law;
7. Facilitate the establishment of international mechanisms to monitor human rights in Western Sahara permanently.



PALESTINE

Introduction

The right to freedom of peaceful assembly is central for Palestinians: it enables them to voice their opinions to Palestinian authorities – the Fatah-led Palestinian Authority (PA) in the West Bank and the Hamas de facto administration in Gaza. This right also plays a decisive role in the occupied territory, as Palestinians have no other means – for instance, through voting – to formulate their aspirations and grievances to the Israeli occupying power.

In practice, the complex legal framework governing freedom of peaceful assembly makes it very difficult for Palestinians to exercise their legitimate rights and freedoms.¹ In recent years, the rights of peaceful assembly of political opponents or those suspected of expressing dissent have frequently been unduly restricted in areas under the full authority of the PA. Protests organised by Fatah supporters or those seen as belonging to the opposition have also been subject to undue restrictions by the Hamas authorities in the Gaza Strip. In the Occupied Palestinian Territory (OPT), the right to freedom of peaceful assembly is at risk: despite the Oslo Accord limiting Israel's security control to parts of the West Bank only, Israeli military orders are largely enforced in the whole West Bank. In the OPT, Israeli soldiers and security forces have repeatedly resorted to unnecessary and disproportionate force against demonstrators, causing grave human rights violations, including extrajudicial killings and serious injuries.

Despite these serious obstacles to the exercise of peaceful assembly, Palestine is today at a critical juncture in its history where violators of internationally recognised human rights law may be soon held accountable. On 2 April 2014, Palestinian President Mahmoud Abbas signed letters of accession to a series of major international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the four Geneva Conventions of 1949. Although it is clear that the Palestinian authorities already have human rights obligations under customary law, this important positive development should pave the way for greater respect of human rights in Palestine.

This report covers human rights violations committed by both Palestinian and Israeli security forces. In the interest of clarity, these violations are treated in successive paragraphs.

1. Restrictions Imposed on Freedom of Assembly

In the West Bank and in Gaza, the Implementing Regulations of the **Palestinian Public Assemblies Law No. 12 of 1998** prohibits the holding of any protest in “areas of tension”. Given the location of the Annexation Wall on Palestinian land and the abundant Israeli military checkpoints, Palestinians face significant challenges to protest as many areas can be considered to be areas “of tension”. On some occasions, demonstrations have also been restricted because the authorities disliked the message they intended to deliver. For instance, in March 2011, the Hamas authorities refused to grant a permit to peaceful protesters calling for political reconciliation and sealed off access to public squares and universities where demonstrations were supposed to take place.²

In the occupied territory, one of the most common restrictions emanates from **Israeli Military Order 101** – stipulating that any gathering of 10 or more persons, in a public or private space, where opinions are voiced for a “political purpose or for a matter that may be construed as political” requires a permit from a military commander – which, de facto prohibits the holding of any spontaneous demonstration. In practice, Palestinians generally do not apply for such a permit from an Israeli military commander as they fear they would never obtain it. In Gaza, Israeli forces have on occasions, as described below, also restricted peaceful assembly and resorted to force to disperse protesters taking part in protests against the Buffer Zone in access-restricted areas.

1 Euro-Mediterranean Human Rights Network (EMHRN), *Regional Study on the Right to Freedom of Assembly in the Euro-Mediterranean Region – Legislative review*, November 2013, Palestine chapter: http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_PALESTINE1.pdf

2 Human Rights Watch, 19 March 2011, <http://www.hrw.org/fr/news/2011/03/19/gaza-stop-suppressing-peaceful-protests>

In 2014, the Euro-Mediterranean Human Rights Network published a report on how restrictions on these fundamental freedoms also affect women.³

2. Facilitation of Assemblies by the Authorities

The **Palestinian legislation** governing public assemblies contains some provisions favouring the holding of peaceful assemblies, in compliance with international standards.⁴ Nevertheless, the political division between the Palestinian Authority in the West Bank and the Hamas-led government in Gaza, from 2007 to June 2014, has led to a worsening environment for the protection of fundamental freedoms in both areas.

The **Israeli legal framework** in the OPT does not foresee facilitating the right of peaceful assembly. Instead, Israeli forces have for years declared areas where demonstrations had been planned as “closed military zones”, blocked the roads leading to these sites, and granted Israeli forces the legal tools to arrest and prosecute peaceful demonstrators. This situation is particularly alarming in villages like Nabi Saleh or Bil’in, declared “closed military zones” by the Israeli authorities for the first time in 2010, after some individuals called for protests against the construction of the Wall or illegal Israeli settlements. From 17 June to 8 July 2011, four planned demonstrations in Nabi Saleh, including a gathering of children in costumes flying kites, were declared an “unlawful assembly” before they took place.⁵ The fact that the order declaring the whole village of Nabi Saleh as a “closed military zone” was signed every week, before the demonstrations could take place⁶ and in absence of violence,⁷ constitutes a blatant violation to the right of peaceful assembly.

Even though some past protests might have resulted in stone throwing by a few protesters, this cannot be used as a pretext for pre-empting every single demonstration, as it would otherwise constitute a collective punishment. This has been highlighted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his country report to Israel and the Occupied Palestinian Territories in 2012. In this report, he expressed concern at allegations that Israel Defence Forces (IDF) “*intimidate and collectively punish villagers on the site of demonstrations through night raids, using sound or gas bombs aimed at villagers’ houses and declaring an entire village a closed military zone*”⁸

Infringements of the right to freedom of peaceful assembly also occur online. On 6 November 2013, the Israeli Occupation Forces arrested several online activists who were calling for a protest in Jerusalem on a Facebook web page. Most of the activists were quickly released, but they were forced to sign pledges promising they would not publish similar calls on social media in the future.⁹

3 EMHRN, *Palestinian women’s rights in EU-Israel and EU-PA relations*, March 2014, http://www.euromedrights.org/eng/wp-content/uploads/2014/03/EN_AdvPaper-On-PalWomen_06MAR2014_WEB.pdf

4 Report of the Special Rapporteur on Freedom of Peaceful Assembly and of Association, Maina Kiai, A/HRC/23/39, para. 49-50, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>

5 B’Tselem, *Show of Force: Israeli Military Conduct in Weekly Demonstrations in a-Nabi Saleh*, September 2011, http://www.btselem.org/download/201109_show_of_force_eng.pdf; Al Haq, *Repression of Non-Violent Protest in the Occupied Palestinian Territory: Case Study on the village of al-Nabi Saleh*, 2011, <http://www.alhaq.org/publications/publications-index/item/repression-of-non-violent-protest-in-the-occupied-palestinian-territory-case-study-on-the-village-of-al-nabi-saleh>

6 See video of a protest held in Nabi Saleh on 15 July 2011: <https://www.youtube.com/watch?v=cFWT5c0eq8M>

7 Fox News, “Palestinian women charged over non-violent protest”, 9 July 2013, <http://www.foxnews.com/world/2013/07/09/palestinian-women-charged-over-non-violent-protest/>

8 UN HRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Addendum - Mission to Israel and the occupied Palestinian territory, 2012, A/HRC/20/17/Add.2, para. 79 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-17-Add2_en.pdf

9 IFEX, “Israeli forces arrest 25 Palestinian online activists”, 15 November 2013, http://www.ifex.org/israel/2013/11/15/online_protest_censored/

Concerning the protection of individuals during protests, it is also of concern that Israeli soldiers and security forces failed in fulfilling their duty to protect Palestinians and their property from violent demonstrators and attacks led by Israeli settlers in villages like Qusra.¹⁰

3. The Use of Force and Detention

Assemblies in **areas under the effective control of the PA and Hamas** have on various occasions been met with excessive force by Palestinian police and security forces.

This was notably the case in Ramallah on 30 June and 1 July 2012 when PA security forces and plain clothed policemen violently responded to a peaceful protest opposing a planned meeting between PA President Mahmoud Abbas and an Israeli politician accused by protesters of being responsible for war crimes. At least six protesters were then hospitalized for injuries sustained from excessive use of force by the police.¹¹ According to the Palestinian Human Rights Organisation Council (PHROC), a coalition of Palestinian human rights NGOs, other breaches of freedom of assembly were committed on the same days, such as blockade of the demonstration route, arrest of peaceful protesters and journalists and degrading and humiliating treatment of detained individuals.¹²

Other examples of excessive use of force include the Palestinian police's violent reaction to a demonstration organised on 28 July 2013 in Ramallah against the decision to return to negotiations with Israel without preconditions. According to reports, peaceful demonstrators were insulted, physically assaulted and pepper sprayed. Some demonstrators were even arrested at Ramallah hospital where they were receiving medical treatment for injuries sustained during the demonstration.¹³

Excessive use of force by Palestinian police forces has also occurred in Gaza. For instance, on 7 November 2012, a peaceful march calling for national reconciliation organised by women organisations was violently dispersed by police officers.¹⁴

These recent examples show that the Palestinian authorities have on occasions failed to comply with international standards related to freedom of peaceful assembly, especially Article 3 of the UN Code of Conduct for Law Enforcement Officials which provides that law enforcement officials should only use force in protests "when strictly necessary".¹⁵

In **areas under Israeli authority**, protests are regularly held against the Israeli occupation and all its adverse consequences on Palestinians. On many occasions, demonstrations begin peacefully and then turn to stone throwing at Israeli soldiers or against the Wall or the military watchtowers, either spontaneously or in reaction to security forces' provocation. In response, Israeli soldiers and security officers make no

10 Amnesty International, *Trigger happy: Israel use of excessive force in the West Bank*, February 2014, page 34, <http://www.amnestyusa.org/pdfs/mde150022014en.pdf>

11 Human Rights Watch, "Palestinian Authority: Hold Police Accountable for Ramallah Beatings", 27 August 2012, <http://www.hrw.org/news/2012/08/27/palestinian-authority-hold-police-accountable-ramallah-beatings>

12 EMHRN and the Palestinian Human Rights Organisations Council's submission to the EU ahead of the EU-PA sub-committee on human rights, good governance and the rule of law, 2012, page 9, http://www.alhaq.org/images/stories/PDF/2012/EMHRN-PRHOC_Statement_ahead_of_the_EU-PA.pdf

13 Al-Haq, "Palestinian Human Rights Organizations Council Calls Upon the Palestinian Authority to Respect Citizens' Rights to Freedom of Expression and Assembly", 6 August 2013, <http://www.alhaq.org/advocacy/topics/palestinian-violations/729-palestinian-human-rights-organisations-council-calls-upon-the-palestinian-authority-to-respect-citizens-rights-to-freedom-of-expression-and-assembly>; European Union press release, "European Union and Palestine hold policy dialogue on human rights, good governance and rule of law", 26 November 2013, http://eeas.europa.eu/delegations/westbank/documents/news/2013/20131126_pr_subcommittee_hr_en.pdf

14 Arabic Network for Human Rights Information (ANHRI), 7 November 2012, <http://anhri.net/?p=104114&lang=en>; Al Monitor, 22 November 2012, <http://www.al-monitor.com/pulse/originals/2013/11/palestinian-division-fatah-hamas-women-protest.html#ixzz35qEJo0Rk>

15 UN Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

distinction between using live ammunition, rubber bullets, tear gas and other crowd control weapons,¹⁶ to disperse unarmed protesters and arrest leaders. In most cases, the Israeli forces' use of force violates the UN Code of Conduct for Law Enforcement Officials. The UN Secretary-General has recently expressed concern regarding frequent and excessive use of force against unarmed demonstrators by Israeli security forces, including live ammunition and "tear gas being intensively used and tear gas canisters being fired as projectiles at protesters, resulting in severe injuries".¹⁷

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), 38 Palestinians were killed in 2013 by Israeli forces, mostly as a result of clashes between Palestinian protesters and Israeli forces. According to OCHA data, not only have violations of the rights to life, liberty and security persisted in the first months of 2014, but repressive practices seem to be escalating.¹⁸

On 24 January 2014, Israeli forces shot and killed Belal Ahmed Iwida, 19, and wounded seven others in the north of Gaza, after protesters ignored warnings to move away from the border fence.¹⁹ On 15 May 2014, two unarmed Palestinian teenagers, Nadim Nawareh and Mohammed Salameh, were shot in the chest with live ammunition while posing no imminent threat to Israeli soldiers, and two others were injured, in a demonstration commemorating the Nakba Day in Betunia.²⁰

These recent examples – which are two of many²¹ – illustrate Israeli total disregard for Palestinian protesters' lives. Even when some protesters may not act peacefully, Israeli soldiers and officers have the legal obligation to protect the right to life while policing assemblies, which is a right that cannot be derogated pursuant to Article 4 of the ICCPR.²² In this context, it is imperative to reiterate that Israel has the obligation to respect international human rights law, as well as international humanitarian law in territories it occupies. Indeed, under international humanitarian law and criminal law, the killing of civilians by Israeli forces as part of the armed conflict constitutes a war crime.

Disproportionate use of force by Israeli forces also results in serious injuries. According to OCHA data, more than 4,000 thousand individuals were injured in 2013. On 21 February 2014 in Hebron, at least 13 Palestinians were seriously injured after Israeli forces violently dispersed a protest marking the 20th anniversary of the Ibrahimi mosque massacre. On many occasions, Israeli forces have fired rubber bullets and thrown tear gas canisters directly at unarmed demonstrators causing injuries²³ and putting individuals at risk of suffocation.²⁴

16 B'Tselem, *Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank*, January 2013, http://www.btselem.org/download/201212_crowd_control_eng.pdf

17 UN General Assembly, Report of the Secretary General, "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem", 2011, A/66/356, para. 20, <http://unispal.un.org/UNISPAL.NSF/0/48843172ED03374F8525792E0060FFDC>

18 OCHA, *Life, liberty and security*, 2013, <http://www.ochaopt.org/content.aspx?id=1010057>

19 Al-Haq, 31 January 2014, <http://www.alhaq.org/documentation/weekly-focuses/775-palestinian-man-shot-dead-in-the-buffer-zone>; Al Mezan Center for Human Rights, 26 January 2014, http://www.mezan.org/en/details.php?id=18292&ddname=assassination&id_dept=9&id2=9&p=center

20 Al-Haq, 24 May 2014, <http://www.alhaq.org/documentation/weekly-focuses/806-evidence-of-wilful-killing-at-al-nakba-day-protest>; B'Tselem, 20 May 2014, http://www.btselem.org/releases/20140520_bitunya_killings_on_nakba_day; Human Rights Watch, 9 June 2014, <http://www.hrw.org/news/2014/06/09/israel-killing-children-apparent-war-crime>

21 *Trigger happy: Israel use of excessive force in the West Bank*, op. cit.; see also the case of a civic activist and a journalist shot during a demonstration in February 2014: Al-Haq, 28 February 2014, <http://www.alhaq.org/documentation/weekly-focuses/785-human-rights-defender-and-journalist-shot-following-a-peaceful-demonstration>

22 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 2011, A/HRC/17/28, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28.pdf>

23 On 27 December 2013, Manal Tamimi was shot in the leg with a rubber-coated bullet from a distance of less than one meter, while she was acting peacefully, see video: <http://nabisahehsolidarity.wordpress.com/2013/12/28/video-israeli-forces-shoot-manal-tamimi-from-close-range/>

24 On 1 January 2011, Jawaher Abu Rahme, died apparently after inhaling tear gas that Israeli soldiers fired at demonstrators in Bil'in. More than one year later, Israeli authorities have yet to disclose the outcome of the investigation into her death.

4. Accountability of Law Enforcement Forces

Following the excessive use of force by **Palestinian police** against peaceful protesters in Ramallah at the end of June and the beginning of July 2012, President Abbas formed an independent investigation committee whilst the Ministry of the Interior also investigated the incidents. The findings of the two bodies reveal that PA police and security forces acted outside the law and used “unnecessary”, “unjustified” and “disproportionate” force against peaceful protesters who posed no risk.²⁵ Some police officers responsible for human rights violations were subjected to disciplinary sanctions, including the Police Commissioner and the Head of the Police Station in Ramallah who were both transferred to other locations. While this is a positive first step, it is disappointing that police officers were not subject to any judicial indictment. The UN Secretary-General also found it “regrettable” “that the work of the committee investigating alleged human rights violations was undermined by the notable omissions regarding accountability”.²⁶

The grave human rights violations committed by **Israeli soldiers and security officers** highlighted above enjoy widespread impunity. Despite the fact that Israel adopted, in April 2011, a policy to investigate every case in which a non-combatant Palestinian in the West Bank is killed, several challenges remain for victims of human rights violations. One of the main obstacles for a Palestinian victim seeking redress is due to the difficulty of accessing Israeli Courts because of court fees as well as continuing restrictions to freedom of movement, especially in the context of Israel’s permanent closure of the Gaza Strip. The human rights organisation Yesh Din concluded that, out of 192 complaints made on behalf of Palestinian victims it monitored, 96.5% of these complaints were closed without indictment.²⁷

Some individual cases are illustrative of this culture of impunity. On 10 September 2013, Israeli military investigators informed that they had closed, without charges, their inquiry into the death of Bassem Abu Rahme, a peaceful protester killed on 17 April 2009 by a tear gas canister fired by Israeli forces during a non-violent protest against the Wall in Bil’in, despite the fact that the incident had been recorded by three separate cameras. On 5 December 2013, two years after Mustapha Tamimi had been killed by a tear-gas canister shot by an Israeli soldier at the end of a demonstration against the Israeli military occupation, the Military Advocate for Operational Matters, Lt. Col. Ronen Hirsch, stated that the canister had been fired “according to the relevant rules and regulations and did not involve any illegality”, and no sanction was ever taken against the soldier who fired nor his superiors.²⁸

These recent examples illustrate the impunity enjoyed by Israeli security forces as well as the failure of Israeli authorities to comply with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law²⁹ and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.³⁰

In this context, it is also regrettable that Israel was the first State to refuse to participate in its scheduled UN Universal Periodic Review (UPR) on 29 January 2013, and when the UPR was eventually held on 29 October 2013 Israel rejected all recommendations concerning the Occupied Palestinian Territory (OPT).

25 Amnesty International, 23 September 2013, <http://www.amnesty.org/en/news/palestinian-authority-must-end-use-excessive-force-policing-protests-2013-09-23>

26 UN General Assembly, “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”, 4 October 2013, A/68/502 para. 46, <http://unispal.un.org/UNISPAL.NSF/0/B0DC2317583FAC9485257C16004A7F44>

27 Yesh Din Volunteers for Human Rights, *Alleged investigation: The failure of investigations into offenses committed by IDF soldiers against Palestinians*, 7 December 2011, <http://yesh-din.org/infoitem.asp?infocatid=165>

28 B’Tselem, “Israeli MAG Corps closes file in Mustafa Tamimi killing, stating the tear-gas canister that killed him was fired legally”, 5 December 2013, http://www.btselem.org/press_releases/20131205_mag_closes_file_on_mustafa_tamimi_killing

29 OHCHR, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, General Assembly resolution 60/147 of 16 December 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

30 UN HRC, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 8 February 2005, E/CN.4/2005/102/Add.1, http://ap.ohchr.org/documents/alldocs.aspx?doc_id=10800

5. Judicial Sanctions against Organisers and Participants in Assemblies

Acts of intimidation, threats and retaliation against individuals organising or taking part in assemblies are routinely committed by **Israeli soldiers and officers** in Palestine. Severe judicial sanctions are also imposed. For example, on 29 May 2012, an Israeli military court – which does not satisfy the requirements of a fair trial³¹ – sentenced Bassem Tamimi to 13 months imprisonment, which he had already served, as well as a 17-month suspended sentence for leading illegal demonstrations in Nabi Saleh. Bassem Tamimi had been arrested 11 times before this sentence but he had never been convicted of committing any crime.³² Other cases have been documented in recent years, such as the arbitrary arrest and detention of Hassan Karajah or the judicial harassment against Issa Amro.³³

6. Civil Society Initiatives and Good Practices

The Palestinian police force is funded and trained by the European Union Co-ordinating Office for Palestinian Police Support (EUPOL-COPPS). Although this collaboration, initiated in 2006, could be a good practice to promote human rights in Palestine, the situation described in this study shows that EUPOL-COPPS still has a long way to go to attain the objectives set in its mandate, that is to “contribute to the establishment of sustainable and effective policing arrangements and to advise Palestinian counterparts on criminal justice and rule of law related aspects under Palestinian ownership, in accordance with the best international standards and in co-operation with the EU institution-building programmes conducted by the European Commission and with other international efforts in the wider context of the security sector, including criminal justice reform”.³⁴

On civil society’s side, different NGOs monitor protests and human rights violations in the policing of assemblies. For example, the Association for Civil Rights in Israel launched in May 2013 an online “Information Center for Demonstrators in the Occupied Territories” containing a vast range of theoretical and practical information on the rights of protesters. It is available in Arabic, English and Hebrew.³⁵

31 UN HRC, General comment n.32, *Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, <http://www.refworld.org/docid/478b2b2f2.html>

32 Human Rights Watch, 30 May 2012, <http://www.hrw.org/fr/node/107511>

33 In March 2013, a group of UN Special Rapporteurs expressed concern at the arbitrary arrest and detention of Hassan Karajah, a civic worker at the Campaign “Stop The Wall”, after his association had organised peaceful protests: 27 March 2013, https://spdb.ohchr.org/hrdb/24th/public_-UA_Israel_27.03.13_%284.2013%29.pdf. In August 2013, other UN independent experts denounced the arbitrary arrest and ill-treatment in detention of Issa Amro, who had organised protests in Hebron, was badly ill-treated in detention, and left lying on a stretcher while members of the Israeli Security Forces took photos and threatened to shoot him. He was only hospitalized more than five hours after this grave incident. Issa Amro had been arrested and detained 20 times in 2012, and six times between January and August 2013, although he has never engaged in violence, nor been charged with any crime: OHCHR, 13 August 2013, <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=13626&LangID=E>

34 EU Co-ordinating Office for Palestinian Police Support (EUPOL COPPS): <http://eupolcoppes.eu/en/content/what-eupol-coppes>

35 <http://www.acri.org.il/en/2013/05/09/info-center-protest/>

Recommendations

Recommendations to the Palestinian authorities:

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. Ratify and implement the provisions contained in the International Covenant on civil and political rights, the International Covenant on economic, social and cultural rights and the Rome Statute establishing the International Criminal Court;
3. Reform the rules for the application of Act No. 12 (1998) on public gatherings and those articles in force in Gaza and the West Bank relating to assembly in the 1936 and 1960 Criminal Codes, so that they comply with international law (see the first part of the Study);
4. Ensure that the notification procedure provided for by law is transparent, accessible and not unduly onerous, and that the administrative authorities comply with the law when it is implemented;
5. Make sure that restrictions imposed on public meetings comply with the law, abide by the principles of need 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;
6. Ensure that the authorities are always open to dialogue with the assembly organizers (both prior to and during gatherings) and where such dialogue occurs, that its purpose is to better facilitate the right of peaceful assembly;
7. Adopt clear, detailed and binding regulations governing the use of force against protesters, in accordance with the United Nations Basic Principles on the use of force and firearms by law enforcement officials; train law enforcement authorities in the use of force and anti-riot weapons accordingly;
8. Act upon the State's duty to protect peaceful demonstrators; ensure that any use of force by law enforcement officers follows the principles of last resort, need, progressiveness and proportionality; ensure that lethal force is strictly a last resort and used as a defence against an imminent threat endangering human lives;
9. 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;
10. Implement the recommendations set out in the reports of the Ministry of the Interior and the independent commission of inquiry about the excessive use of force against peaceful demonstrators in Ramallah on 30 June and 1 July 2012.

Recommendations to the Israeli authorities:

1. Comply with the provisions of international law on human rights and international humanitarian law relating to the status of an occupying power;

2. Accept and implement the recommendations relating to public freedoms contained in the Universal Periodic Review of the United Nations Council for Human Rights in 2013, including the recommendations related to the occupied territory;
3. In particular, repeal Military Order no.101, and apply Israeli or Palestinian civil law to public meetings and demonstrations in the occupied territory, once their compliance with international law is guaranteed;
4. Revise the rules applying to law enforcement authorities so as to bring them into line with the United Nations Basic Principles on the use of force and firearms by law enforcement officials; train the officers of security forces in how to apply them;
5. Release any individual who has been the victim of arbitrary arrest, suffered prosecution or conviction for taking part in a peaceful demonstration;
6. Stop the harassment of peaceful activists, especially in the villages declared as being “closed military zones”;
7. Adopt and implement the recommendations of the 2013 Turkel Commission about new methods of investigation in the event of violation of the law;
8. Expedite prompt, independent and impartial investigations in cases of violation of human rights, particularly in the event of the death of demonstrators, arbitrary arrest, torture and ill-treatment; ensure that those responsible are prosecuted for such acts and enable victims to obtain redress as well as be given guarantees of non-repetition;
9. Put in place an independent mechanism for monitoring and investigating the behaviour of the security forces during operations to maintain order in the occupied territory.



SYRIA

Introduction

In March 2011, unprecedented peaceful protests emerged in Syria to demand economic, social and political reforms, in the wake of the democratic uprisings in other Arab countries. State response was brutal and deadly. While women, men and children were exercising their right of peaceful assembly, grave human rights violations amounting to international crimes, including murders of peaceful protesters, large scale arbitrary detentions, enforced disappearances, torture and other inhumane acts, were widely and systematically committed by State authorities against civilians. The repression triggered an escalation which resulted in a military conflict, dire humanitarian crisis and grave human rights violations on a wide scale.

The United Nations' Independent International Commission of Inquiry on Syria, established in August 2011, stated as early as November 2011 that crimes against humanity had likely been committed in different locations of the country, particularly in the context of the repression of public protests.¹ The Syrian crisis is therefore directly related to the constant refusal of the Syrian authorities to tolerate freedoms of expression and peaceful assembly, and reflects the inability of the Syrian regime to provide a political rather than a security response to the demands expressed by protesters.

As of 2014, the country is war-torn and the conflict is resulting in a large scale destabilization of the MENA region. Peaceful protests have almost ceased while armed groups, including foreign-backed extremist entities have taken over a large part of the Syrian territory. Meanwhile, a great number of those who have bravely exercised their legitimate right to demand democratic reforms have been routinely exposed to serious human rights violations. Dozens of thousands of Syrians who joined anti-governmental protests only saved their lives by joining the ranks of millions of refugees in neighbouring countries, without any perspective of return over the short run. As a result of the dramatic evolution of the situation in Syria, peaceful dissenting voices which played a critical part in structuring the movement of protest are facing huge challenges to be heard beyond the rumble of the conflict.

1. The Repression of Peaceful Protests between Human Rights Violations and International Crimes

Between 2011 and 2014, the situation in Syria has evolved from a situation where State authorities made excessive use of force against peaceful protesters to an internal armed conflict. As a result, domestic regulations, international human rights law and international humanitarian law principles may be relevant to qualify violations and international crimes committed against peaceful protesters.

Since the Baath party took over in Syria in the 1960's, a set of authoritarian regulations and practices severely restricts the possibility for individuals to exercise their fundamental freedoms, including freedom of peaceful assembly. Legal reforms² enacted at domestic level since 2011, including lifting the state of emergency, adoption of a new constitution and a revised law on peaceful assembly, did not genuinely result in changes in practice. Draconian security control on public freedoms has been maintained and the disproportionate use of force by governmental security forces against peaceful protesters has continued to take place. Systematic violations of freedom of assembly also constitute blatant violations of international human rights commitments of the Syrian government voluntarily.

The use of excessive force by State security apparatus and their affiliated militias - known in Syria as 'Shabiha' - against the overwhelmingly peaceful protest movement did not prevent it from rapidly spreading to a number of regions in the country. Between March and September 2011, the repeated use of live bullets against unarmed crowds, without warning, resulted in the killing of hundreds of

1 1st report of the Commission of Inquiry on the Syrian Arab Republic, 23 November 2011, A/HRC/S-17/2/Add.1.

2 See the first part of this Euro-Mediterranean Human Rights Network (EMHRN) regional study on freedom of peaceful assembly, 2013, available at: http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_FULL-REPORT_WEB_26NOV2013.pdf; See also the EMHRN Annual Reports on Freedom of Association in the Euro-Mediterranean Region, available at: <http://www.euromedrights.org/eng/2012/10/19/annual-reviews-on-freedom-of-association-in-the-euro-mediterranean-region/>

demonstrators. The emergence of patterns of violations against peaceful protestors across the country clearly indicates that those were largely committed under instigation or at least with the consent of the State authorities.³ A number of members in the military and security forces decided to defect – often publicly-, and started self-organizing in order to protect protesters.

International human rights law clearly states that even where acts of sporadic violence might have erupted during a protest, it is the State authorities' duty to remove the violent demonstrator(s) from the gathering, as sporadic violence "does not deprive peaceful individuals of their right to freedom of peaceful assembly".⁴

In summer 2012 the situation reached a point where the constitutive items of an armed conflict were met according to the International Committee of the Red Cross (ICRC).⁵ Under international law, a situation of internal armed conflict triggers obligations for all warring parties to uphold International Humanitarian Law. However, this qualification does not suspend international commitments of the State, meaning that the Syrian government remains bound by international human rights law principles⁶.

While deliberately violating the right to life of civilians⁷ involved in peaceful protests in a widespread and systematic manner, Syrian officials, members of security forces and supporting militias not only engage the responsibility of the government at international level, but they also render themselves accountable for war crimes and crimes against humanity. Any person involved in international crimes should be held accountable in the future and prosecuted as individual throughout relevant mechanisms at domestic or international level such as International Courts.

2. Facilitation of Pro Governmental Demonstrations

The development of the situation in Syria evidences the politically-motivated scheme according to which the Syrian authorities would facilitate or repress public assemblies. Before and after 2011, the authorities have been facilitating mass demonstrations in support of the government.

The organization of pro-governmental demonstrations is channelled through a wide range of State-controlled groups including state administrations, Baath party and professional corporations (workers unions, students unions etc.), schools, universities, mosques and churches. During the "massirat"⁸ marches, participants are gathered in "waves" according to the organization they belong to, which facilitates the counting and monitoring by the authorities of persons who attended – and retaliation against those who do not. The preparation and coverage of these marches is ensured by powerful means of communication, through State media, supportive private media, and social networks. The day of the rally, State-controlled media broadcast patriotic songs and programs and live coverage of the event.

Pro-governmental "massirat" marches are organized in areas where governmental forces are able to ensure a strong security set-up, in regions known to be areas where the population is supportive of the government. It must also be noted that the Syrian authorities do not only organize "massirat" in Syria, but

3 Committee Against Torture, *Consideration by the Committee against Torture of the implementation of the Convention in the Syrian Arab Republic in the absence of a special report requested pursuant to article 19, paragraph 1, in fine*, 29 June 2012, CAT/C/SYR/CO/1/Add.2 para .18.

4 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, A/HRC/20/27 para. 25

5 See: <http://www.reuters.com/article/2012/07/14/us-syria-crisis-icrc-idUSBRE86D09H20120714>

6 According to the International Court of Justice, human rights law continues to apply in armed conflict, while the laws governing armed conflict apply as *lex specialis* in relation to the conduct of hostilities. See: International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 106. See also: 3rd report of the Commission of Inquiry on the Syrian Arab Republic, 15 August 2012, A/HRC/21/50.

7 See the Report A/HRC/17/28 of the Special Rapporteur on extrajudicial, summary or arbitrary executions, "Protecting the right to life in the context of policing assemblies", 23 May 2011.

8 Syrians use two different wordings to refer to pro- and anti-governmental protests. "Massirat" are protests in favour of the government, while "Mozaharat" are known to be anti-governmental protests.

use similar means to make sure that a number of Syrian citizens based abroad organize pro-regime protests as it is notably the case in most European countries.

3. Levelled Repression against Anti-Governmental Protests

While most anti-governmental protests in Syria have been met with excessive and often lethal force, the government's repression was not totally indiscriminate. Reports from diverse regions in Syria indicate that the level of repression was differentiated according to a political strategy. The government seemingly chose to heavily target certain communities in areas considered as opposition strongholds, while softer means (such as non-lethal tear gas) were used in areas believed to be reluctant to regime change (in particular in areas where religious minority groups are dominant).

This strategy seems to have been used by the government in order to avoid multiplying opposition fronts for instance in areas such as Golan and Soueidah (where the Druze community is an important component of the population). The situation in the predominantly Kurdish-populated region of Hasakeh provides another example of this strategy.

The region of Hasakeh has an historical record of anti-governmental protests due to the denial of cultural, economic and social rights of this Kurdish community by the Baath party since its accession to power. In 2011, the Hasakeh region has been the theatre of important anti-governmental protests, but State authorities refrained from harshly repressing protesters. The mobilization was mainly fostered by youth and informal groups, at the expense of Kurdish political organizations despite their strong rooting in the region. In October 2011, the assassination of Kurdish opposition leader Meshaal Tammo by an unidentified armed group resulted in immense popular protests, and several protestors were killed by governmental forces. The government subsequently decided to withdraw from most of the area, offering Kurdish political forces the chance to exert their control upon this territory. In particular, the Union Democratic Party (PYD) progressively took over security control and took measures to curtail protests, such as a prior permission system, using arbitrary arrests and non-lethal force to discourage protestors. Protests have nonetheless continued to take place with little interference from the de facto local authorities. In 2014, the area turned into a battlefield for armed groups trying to impose their political and military grip. Very few protests consequently take place in this region, except for traditional ceremonies or specific events as it was the case after activist Mohamed Mohamed was killed by the Islamic State in Irak and the Levant (ISIL) in May 2014.

In other regions clearly siding with the peaceful opposition movement, the authorities from the beginning argued they were fighting 'terrorists' and deliberately fired at unarmed protesters, massively arrested activists, and escalated retaliations in the form of extreme collective punishment such as aircraft bombings and the use of chemical weapons on civil areas. This situation prevailed in areas such as Damascus outskirts, Hama and Homs. For instance, organized protest movements in Homs and Aleppo universities in 2012 were met with fierce repression.⁹

⁹ See Syrian Network for Human Rights, *Syrian Government Violations Against University Student like Kill, Torture to Death, Arrest, Threaten, and Expelled of University*, http://sn4hr.org/public_html/wp-content/pdf/english/university%20student%20like%20kill.pdf; see also HRW, *Safe No More: Students and Schools Under Attack in Syria*, June 2013, <http://www.hrw.org/sites/default/files/reports/syria0613webwcover.pdf>

4. Main Patterns of Violations Exerted by Governmental Forces and Affiliated Militias

Specific patterns of violations committed against peaceful protestors over the different stages of the conflict must therefore be considered in the wider context of crimes perpetrated by the warring parties in Syria, a number of those amounting to war crimes and crimes against humanity. This report will mainly emphasize patterns of violations directly committed against peaceful protestors, but it must be noted that most of the gravest crimes committed against the civilian population since 2011 have targeted communities who took part in anti-governmental protests.

Use of lethal force against peaceful protestors

One of the gravest patterns of violations committed between 2011 and 2013 lies in the systematic and indiscriminate use of lethal force against unarmed protestors in areas under the control of the regime. In March 2011, when the first protests emerged in the governorate of Deraa (South), State security forces and affiliated militias conducted coordinated actions to end protests by using most violent means.¹⁰ In April 2011, Amnesty International estimated that a majority amongst the 171 cases of extra judicial killings documented during demonstrations seemed to have been caused by live ammunition fired by the security forces.¹¹ Between March and December 2011, the Syrian NGO Violations Documentation Center documented 3754 civilians killed by shooting during protests and gatherings. The number includes 144 persons shot by snipers, 343 children (including 50 girls) and more than 130 women.¹²

By killing and injuring unarmed protestors in a widespread and systematic manner, Syrian State authorities blatantly violated norms related to peaceful assembly, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which affirm that the use of lethal force is only permissible as a last resort in exceptional and narrowly-defined circumstances to protect life.¹³

In November 2011, the UN Independent International Commission of Inquiry on Syria reported the orders that were given to an army battalion on 1 May 2011:

"Our commanding officer told us that there were armed conspirators and terrorists attacking civilians and burning Government buildings. We went into Telbisa on that day. We did not see any armed group. The protestors called for freedom. They carried olive branches and marched with their children. We were ordered to either disperse the crowd or eliminate everybody, including children. The orders were to fire in the air and immediately after to shoot at people. No time was allowed between one action and the other. We opened fire; I was there. We used machine guns and other weapons. There were many people on the ground, injured or killed," one soldier said.¹⁴

10 See <http://www.hrw.org/news/2011/03/24/syria-security-forces-kill-dozens-protesters>; See also the testimony of activist Ayman al-Aswad (in French) at: <http://syrie.blog.lemonde.fr/2014/03/10/syrie-temoignage-de-lactiviste-ayman-al-aswad-sur-le-debut-de-la-revolution-syrienne-a-daraa/>

11 <http://www.amnesty.org/en/for-media/press-releases/death-toll-rises-amid-fresh-syrian-protests-2011-04-08>; See also <http://www.amnesty.org/en/news-and-updates/syria-video-points-%E2%80%98shoot-kill%E2%80%99-policy-security-forces-2011-05-26>

12 See <http://www.vdc-sy.info/>

13 Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury (...) In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

14 1st report of the Commission of Inquiry on the Syrian Arab Republic, *op. cit.*, para. 43.

Large scale policy of arbitrary detention

As the first protests started, an important number of individuals calling for, participating in, or simply monitoring the demonstrations became under State surveillance, threats and persecution.

Human rights organisations have documented countless cases of civilians who were arbitrarily deprived of their liberty in the first weeks of the uprising.¹⁵ A man, who defected from the political security branch of Aleppo in March 2012, told the UN Commission of Inquiry that “officers received orders to arrest every young male and adolescent between 16 and 40 years old that participated in demonstrations”,¹⁶ revealing systematic and indiscriminate attacks against civilians, in blatant violation of international human rights law.

While protests spread across the country, home and office raids were conducted in a very large scale and thousands of individuals were subjected to enforced disappearances, arbitrary arrests and detention without charges or with politically motivated criminal charges. In the same time, Syrian authorities exerted all efforts to stifle independent civil society groups monitoring the events and to black out news on the repression carried out. Bloggers, lawyers, civil society activists, journalists and opposition figures were arrested.¹⁷

Syrian civil society groups estimate that more than 53000 persons were arbitrarily detained¹⁸ since the beginning of the uprising, thousands of them still being detained. In most cases, suspects were held incommunicado without their families being notified about their arrest or whereabouts, in violation of international human rights law. By 16 April 2011, less than one month after the protest in Deraa, the EMHRN was able to record the names of 700 persons who were arbitrarily detained.¹⁹ The UN Commission of Inquiry stated that “enforced disappearances [have been] employed by the Government to silence the opposition and spread fear amongst relatives and friends of demonstrators, activists and bloggers.”²⁰

One of the most emblematic cases of arbitrary detention of civil society activists is the arrest of prominent human rights activist Mazen Darwish, head of the Syrian Centre for Media and Freedom of Expression (SCM), who was arrested on 16 February 2012 along with members of the Centre during a raid of the Syrian security apparatus on SCM premises. While several activists were released before their trial, M. Darwish and his colleagues Hani Zitani and Hussein Ghreer were kept for more than a year *incommunicado* in an unknown location. Since its transfer to the Adraa central prison of Damascus, the group is being prosecuted in front of the Anti-terrorist court in relation with the Centre’s activities of documentation and advocacy. Lawyers were also heavily targeted, particularly those defending prisoners of conscience and peaceful protesters, as the case of prominent lawyer Khalil Maatouk, arrested by governmental security forces in October 2012 and disappeared since then.

The campaign ‘Free Syria’s silenced voices’²¹ initiated by a group of international human rights organizations monitors more than 50 cases of civil activists, aid workers, journalists and HRDs detained either by governmental or non-governmental actors, sometimes incommunicado. It is believed that a number of these activists have been extensively tortured, and that some may have been killed in custody.

15 See <http://www.euromedrights.org/eng/page/5/?cat=534>;

See also <http://www.amnesty.org/en/library/info/MDE24/019/2011/en>, 6 May 2011; and <https://www.hrw.org/news/2011/07/20/syria-mass-arrest-campaign-intensifies>, 20 July 2011.

16 7th Report of the Commission of Inquiry on the Syrian Arab Republic, 12 February 2014, A/HRC/25/65, Annex IV, para. 16.

17 EMHRN statement, 5 May 2011, <http://www.euromedrights.org/eng/2011/05/05/syria-put-an-end-now-to-arbitrary-detentions-and-enforced-disappearances/>

18 See the Violations Documentation Center, statistics of detainees <http://www.vdc-sy.info/index.php/en/detainees>

19 EMHRN statement, 15 April 2011, <http://www.euromedrights.org/eng/2011/04/15/syria-call-for-an-independent-and-impartial-investigation-into-severe-human-rights-violations/>; See also joint urgent appeal by UN special rapporteurs, 17 June 2011, https://spdb.ohchr.org/hrdb/19th/UA_Syria_17.06.11_%287.2011%29.pdf

20 7th Report of Commission of Inquiry on Syria, *op. cit.*, Annex IV, para. 12.

21 The campaign is a joint initiative of Amnesty International, the Euro-Mediterranean Human Rights Network, the FIDH, Frontline Defenders, Human Rights Watch and Reporters without Borders; see <http://free-syrian-voices.org/>

Systematic and widespread use of torture

Torture and other forms of ill-treatment, including severe beatings, electroshocks, deprivation of sleep, water and food, and sexual violence has been rampant in official and unofficial detention facilities, at checkpoints and during house raids. Syrian and international human rights organisations have documented hundreds of cases of torture and ill-treatment committed by governmental security forces and affiliated militias.²²

The Violations Documentation Center documented more than 4000 persons killed under torture. VDC estimated that a majority of those were arrested in relation with their participation in or support to peaceful anti-governmental protests.²³

Hamza Al Khateeb, aged 13, who was tortured to death in detention in May 2011 and whose body was returned to his family with broken bones, burn marks, gunshot wounds and mutilated genitals became the dreadful symbol of the cruelties practiced in detention facilities. In February 2013, the UN Commission of Inquiry on Syria expressed “grave concern that, in the majority of cases reported, beatings were a prelude to executions.”²⁴

Sexual torture against men, women and children has also been reportedly committed on a large scale. Sexual assaults, which have been used as a weapon of war,²⁵ will have a long-lasting effect of psychological trauma on victims and their communities.²⁶

One year after the start of the protests, the UN Committee against Torture stated that “the Committee is deeply concerned at consistent, credible, documented and corroborated allegations about the existence of widespread and systematic violations of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment against the civilian population of the Syrian Arab Republic committed by the authorities of the State party and by militias (e.g. shabiha) acting at the instigation or with the consent or the acquiescence of the authorities of the State party.”²⁷

Targeting medical workers

Another disturbing pattern lies in the repression of medical and aid workers by the Syrian government. Arbitrary arrests, torture and unfair trials of medical workers suspected to treat persons wounded during protests were conducted by governmental authorities in a systematic manner since 2011 on the basis of alleged “support to terrorist organizations”.²⁸

“[The interrogator] asked: ‘do you want to be tortured or do you want to talk?’ ... He accused me and my colleagues of treating the wounded without reporting them to the authorities, and asked me for the names of the wounded,” one nurse reported.

Furthermore, according to the UN Independent International Commission of Inquiry on Syria, dated 23 November 2011, “A number of cases were documented of injured people who were taken to military hospitals, where they were beaten and tortured during interrogation. Torture and killings reportedly

22 3rd Report of the Commission of Inquiry on the Syrian Arab Republic, *op. cit.*, Annex VIII, para. 8-22; and <https://www.hrw.org/news/2011/04/15/syria-rampant-torture-protesters>

23 See <http://www.vdc-sy.info/>

24 4th Report of the Commission of Inquiry on the Syrian Arab Republic, 5 February 2013, A/HRC/22/59, para. 95.

25 See also a comprehensive report from the newspaper Le Monde, 6 March 2013, (in French), http://www.lemonde.fr/proche-orient/article/2014/03/04/syrie-le-viol-arme-de-destruction-massive_4377603_3218.html

26 3rd report of the Commission of Inquiry on the Syrian Arab Republic, *op. cit.*, Annex IV.

27 Committee Against Torture, 29 June 2012, *op. cit.*, para. 18.

28 Amnesty International, *Health crisis: Syrian government targets the wounded and health workers*, 24 October 2011.

notably took place in the Homs Military Hospital by security forces dressed as doctors and allegedly acting with the complicity of medical personnel.”²⁹

Over the course of the conflict, the deliberate targeting of medical facilities caused the devastation of the health system in Syria and prevented a great number of persons from accessing vital health care. Hundreds of field hospitals set by civil society groups to rescue victims of the repression were deliberately targeted in a widespread and systematic manner by governmental forces.³⁰

Gender-based violence

Women have played an important role in the movement of protests and were often at the forefront of protests, especially in 2011. Women were not spared by the repression and faced similar violations as men, but also gender-specific abuses. In a report³¹ published in 2013, the EMHRN unfolded the main patterns of violations against women, particularly in detention centres, including sexual assaults. Research conducted clearly indicates that gender-specific patterns have emerged in certain security branches detention facilities under the jurisdiction of the Syrian government, particularly after summer 2012. The report documented grave offences ranging from sexual violence, including rapes, to summary executions.

*“Lina stayed for about a month in the house of her abductors in a Homs neighbourhood, where she was tortured with burning cigarette butts, severely beaten and raped by her abductors and their friends. Lina underwent abortion and still receives intensive psychological treatment, as she suffers from severe post-traumatic stress”.*³²

5. Judicial Sanctions against Organisers and Participants in Assemblies

Dozens of thousands of protesters have been arrested since 2011, of which many remain in custody. Many human rights defenders and peaceful activists have also been arrested for their work in documenting and monitoring protests and abuses. Although many detainees are kept incommunicado for long periods, a number of protesters were prosecuted before military courts which fall short of international fair trial principles such as the Anti-terrorism court or field courts.

International human rights groups have monitored some cases of prominent human rights defenders condemned by such courts. In several cases, the defence lawyers had no opportunity to present arguments or evidence, no witnesses were heard, and sentences were established based on testimonies obtained under torture. Some defendants were not even informed of the charges and the sentence pronounced against them and remained in detention while their families were refused the right to visit them.

6. Syrian Civil Society Initiatives

Despite the fact that the Syrian government never allowed civil society groups to operate in an independent manner, Syrian civil society has demonstrated an extraordinary capacity to develop innovative means of mobilization both at domestic and international levels. As soon as the repression

29 1st report of the Commission of Inquiry on the Syrian Arab Republic, *op. cit.*, para. 50.

30 Physicians for Human Rights (PHR) stated that government forces committed 90 percent of the confirmed 150 attacks on 124 facilities between March 2011 and March 2014, which have devastated the country's health system. See PHR statement: <http://physiciansforhumanrights.org/press/press-releases/new-map-shows-government-forces-deliberately-attacking-syrias-medical-system.html#sthash.uqXvmVyB.dpuf> and interactive map tracking these violations.

31 EMHRN, *Violence against women, bleeding wound in the Syrian conflict*, November 2013 <http://www.euromedrights.org/eng/wp-content/uploads/2013/11/Doc-report-VAW-Syria.pdf>

32 *Ibid.*

started, a number of groups emerged to report on events and document violations against protesters and civilians.

Since the beginning of the uprising, protests have been organized on Fridays after the prayer, as these venues were the only place where people could gather without intervention of the security forces. The Syrian government reacted by imposing heavy security set-up to prevent demonstrations. In this context, protesters developed practices to pursue the movement while protecting themselves, as notably exposed in the “Guidebook of the Syrian protester”³³ issued in 2011.

New practices such as “**sudden protests**”, consisting in flash-gatherings of a limited group of reliable people spread in the country.

An activist recalls organizing a ‘sudden protest’ in May 2012 in Berze, Damascus after the “Houla massacre” took place. *“The starting signal was a Quran Surah that I would recite after the Friday prayer in the mosque. Others were supposed to repeat it and start the demonstration. After the prayer, I recited the surah we had chosen, and complete silence fell on the place. At this moment, I recognized someone in the crowd I knew was an activist and it gave me some courage, so I repeated the surah in a loud voice. Silence became heavier, and I saw someone getting out quickly with a mobile phone. I was ready to escape, thinking he would call security forces. Then a group of people started chanting ‘Allah Akbar’ and the crowd went out of the mosque brandishing signs such as “the people are standing in the streets” and “Bashar must give in”. We marched for an hour, until I received a text message giving signal for dispersion and we all vanished according to our plan. No one was hurt nor arrested that day thanks to the good coordination amongst activists”*³⁴

Another practice developed by civil activists was that of ‘**colored protests**’. As major security measures were taken in Damascus to prevent any protest, civil activists decided to meet in a discrete and silent way, by wearing an outfit of the same color and passing in a designated area at a defined time. However security forces soon started targeting these gatherings as well.³⁵ In 2011 in Damascus and Aleppo activists also have repeatedly dropped red color in some fountains to symbolize the bloodshed committed by the regime. **Slogans and cartoons** are another distinctive feature in the mobilization in Syria, as great creativity and humor have been deployed. Groups were created on social media to discuss names to be given for every Friday protest, and some places such as the village of Kafar Nobel in Idlib province or Deir el Zor became famous with producing humorous slogans and signs which they published on Facebook and other social media.³⁶

Graphic and symbolic re-appropriation of public space has gradually been used as a means to spread political messages in the public sphere, by painting graffiti over the cities walls or symbolically changing the names of streets and squares to honor key figures or symbolic events of the “revolution”.

Women demonstrations were also organized in the early stage of the movement in a bid to defeat the regime’s propaganda about “Salafists” conducting the protests. Later on, in 2012 as the repression did not allow these gatherings to take place in safe conditions, a group of women from Damascus, called “The Sham Free Women”, filmed a demonstration at home – with their faces covered, published the video on YouTube and were imitated by others.³⁷ In other instances, women have openly demonstrated in small groups for example in Raqaa against the ISIL in April 2014.

It must eventually be emphasized that immense efforts have been developed from the early days of the uprising to **document demonstrations and the repression they faced**. While the organizers of the

33 The guidebook was published at *Al Ahrar* and *Al Moudass* blogs.

34 Testimony collected by the EMHRN with a Damascus activist who chose to remain anonymous for security reasons, May 2014.

35 The practice ended in 2011, after the arrest of one activist who was wearing a violet shirt on one of the colored reunion’s day.

36 Facebook .com/pages/kartoneh-From-Deir-Eezoar

37 Other groups that performed Women’s home demonstrations were “The coalition of Damascus free women”, “The female revolutionaries of Daraa”, “The Syrian female revolutionaries”, etc.

protests organized systematic video footage of the protests, emerging groups started collecting all data in relation with violations committed. Local human rights groups such as the Violation Documentation Center in Syria (VDC), set up in April 2011 by prominent human rights lawyer Razan Zaitouneh, or the Syrian Network for Human Rights (SNHR) provide daily information on casualties and human rights violations, in Arabic and English³⁸ and have become a primary source of information on the situation in Syria for international human rights organizations and decision makers.

7. The Lack of Accountability, Major Fuel of Violations

More than three years after the start of the protests, the use of torture on a large scale, summary executions, arbitrary arrests and enforced disappearances appears as a deliberate State policy aimed to deter, punish and radicalize protesters and entire communities. None of these grave human rights violations have been subject to an impartial investigation at any level, and international human rights bodies such as the UN Independent International Commission of Inquiry were not allowed to access the country to investigate independently.

The Syrian authorities have been denying abuses or crimes committed by security forces, while repeatedly stating all human rights violations are carried out by “terrorist armed groups”. On the contrary, those who legitimately refused to execute illegal orders were subjected to reprisals, which also target families. In June 2011, the Syrian government claimed it had unfolded a mass grave with the remains of around ten security personnel who were allegedly killed by “armed gangs”. This statement was questioned by the UN High Commissioner for Human Rights, which estimated that “these might be the bodies of military deserters or officers who disobeyed orders.”³⁹

The Syrian authorities have constantly failed to combat impunity and investigate grave human rights violations, despite extensive documentation published by Syrian and international human rights groups, including the COI. The principle of complementarity of international criminal jurisdictions to domestic prosecution entails that the international community should take steps to ensure accountability for the crimes committed since 2011. At this date however, the referral of the situation in Syria to the International Criminal Court by the UN Security Council is hampered by the repeated use of veto by permanent members Russia and China.

38 See Violations Documentation Center in Syria at: <http://www.vdc-sy.info/index.php/en/home>

39 Statement of Ms. Navi Pillay, United Nations High Commissioner for Human Rights to the Introduction of preliminary report on the situation of human rights in the Syrian Arab Republic, Human Rights Council, 15 June 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11156&LangID=E>

Recommendations

In the day of writing of this report, Syria has become the theatre of a raging civil war which undermines the stability of the whole Middle East region and beyond. The international community has failed to impose a political process, as acknowledged in a sign of utter discouragement by Lakhdar Brahimi, special UN peace envoy for Syria, who resigned from his position in May 2014. The country is facing an unprecedented humanitarian crisis, with an estimated number of casualties beyond 150 000, several millions of refugees and internally displaced persons, and the basic socio-economic infrastructure in the country devastated. Moreover, the violence of the conflict has started to deeply erode the social fabric of the society, which is endangered by a growing sectarianism under combined influence of the Syrian regime and foreign players. Extremist groups such as the Islamic State in Iraq and Sham (ISIS) are trying to impose security and social control over the population. The crisis has gone out of control as the State does not exert authority on his borders anymore, meaning that a complete re-shaping of the MENA region cannot be excluded in the near future.

Only a politically negotiated solution involving all relevant parties may end suffering endured by the civilian population and set the ground for a transition in Syria. The situation in Syria should be referred by competent bodies to international criminal jurisdictions such as the International Criminal Court, in complementarity with other mechanisms that should be set by the Syrian people at domestic level. In order to be sustainable, the transitional process should ensure accountability for gross human rights violations committed by all warring parties, reparation for the victims, memorialization for the future and institutional reform to avoid repetition of these violations. Any future political entity emerging in Syria should ensure that the rights to freedom of expression and peaceful assembly are effectively protected, as to remember that the denial of these fundamental freedoms was the main cause for the uprising against the regime of Bashar Al Assad.



TUNISIA

Introduction

In the recent history of Tunisia, popular gatherings have played a key role in the country's revolutionary process and democratic transition. Before 2011, demonstrations were systematically repressed, as was the case with the protest movement in the Redeyef mining basin in 2008.

The Tunisian people have since regained the practical exercise of their rights, but change to the legal framework will not occur until laws complying with the provisions of the constitution are adopted.¹ During the first stage of the country's transition, retention of the repressive legal framework of previous times enabled the executive to continue suppressing freedom.

In the face of unfolding political violence, which culminated in the assassination of two left-wing opposition leaders, Chokri Belaid and Mohamed Brahmi, on 6 February and 25 July 2013 respectively, civil society and opposition parties have taken strong action which has helped change the course of the transition, leading to the formation of a "technical" government, the adoption of the new constitution, and a timetable for new elections.

The Constitution adopted in January 2014 is an outcome of the constant battle waged by Tunisian civil society in order to ensure that the text protects human rights and fundamental freedoms, and in particular those rights and freedoms won by women.

The constitution recognizes and guarantees the freedoms of opinion and expression, association and peaceful assembly, as well as the right of access to information. It provides for the creation of a national authority for human rights responsible for ensuring the respect of human rights and for investigating violations. It also guarantees the primacy of international law and makes reference to international conventions and norms.

1. Restrictions Imposed on Freedom of Assembly

Public Meetings

It should be noted that, in practice, the restrictive provisions of the 1969 Act still in force are generally not applied. Civil society organizations can hold public meetings freely and are not subject to unreasonable restrictions.

In general, organizers comply with the prior notification procedure out of concern for their protection (from violent interventions by groups hostile to their activities) rather than for fear of administrative sanctions.

Demonstrations

Even if official prohibition is infrequent, the government formed after the elections of 23 October 2011 tried, on several occasions, to limit the exercise of the right to demonstrate. On 9 April 2012, the government banned a demonstration of commemoration on Bourguiba Avenue in Tunis, and proceeded to violently disperse it (with the assistance of civilian militias) when it took place in spite of the ban. The appeal against the ban, lodged by the organizers at the administrative tribunal, went in their favour. However, the decision was issued only after the event had taken place, because of the slowness of the procedure.

The case of the refugees

In the absence of a legislative framework covering the right of asylum, refugees find themselves in a legal vacuum and are therefore vulnerable with regard to the exercise of their rights and freedoms. At the beginning of February 2014, a score of refugees from Libya who had been in the Choucha refugee camp since 2011 (a camp officially closed in July 2013) organized a sit-in for a week in front of the delegation

¹ The transitional provisions of the Constitution guarantee that only the assembly emerging from the election process would have the competence to propose the relevant organic law except with regards to the electoral law, the establishment of commissions with limited powers, the system of transitional justice and bodies arising from all laws adopted by the national constituent assembly. MARSAD, *Transitional provisions*, Article 148, <http://www.marsad.tn/fr/constitution/5/article/148>

of the European Union in Tunis demanding a solution to their situation. The demonstrators were eventually arrested and taken to the Wardiya detention centre, which is reserved for irregular migrants.

2. Facilitation of assemblies by the authorities

The lack of protection of demonstrators, for which security services are responsible, was evident at most of the demonstrations held in Tunisia during and after the revolution until mid-2013. The police was guilty of direct repression during the revolution, which caused 240 deaths. They then failed in their duty to protect peaceful demonstrators confronted with violent assault by Salafist groups, the Leagues for the Protection of the Revolution (LPRs),² and militias of certain political parties.³ This violence led, in particular, to the death of Lotfi Naguedh, the regional co-ordinator of the Nida Tounes Party in Tataouine (south east Tunisia) on 18 October 2012. He was lynched during clashes between his followers and those sympathising with the Islamist party Ennahda, which was in power at the time.

When two opposing demonstrations have encountered each other, law enforcement authorities have on several occasions failed to intervene to protect peaceful demonstrators and avoid confrontation between opposite sides.

This was the case in Tunis on 4 December 2012 during the annual commemoration of the assassination of trade unionist Farhat Hached. Organised by the UGTT (General Tunisian Workers Union), the commemoration was attacked by pro-government supporters. In the complete absence of security forces, the violence resulted in a score of injured.⁴

Since the end of 2013 the LPRs no longer take centre stage, even though they have not been completely neutralised. In March 2014, the leader of the Kram militia, Imed Dghij, was arrested after inciting violence against the trade union of the security forces.⁵

Since July 2013, social action has declined even though political and socio-economic challenges continue, and a turning away from political violence has been noted. The law enforcement authorities have gradually taken control of security, representing a significant progress in the full exercise of civil rights.

Access by the media and the protection of journalists at demonstrations

Between October 2012 and October 2013, the Tunis Centre for Press Freedom⁶ counted more than 250 attacks on journalists: censorship, verbal and physical assaults, prison and kidnap attempts. During this time, those mainly responsible for the attacks were the security services of certain social or political organisations and also the LPRs, but few were brought before the courts. In addition, the LPRs spread messages of hatred against journalists which has severely damaged the image of the press in public opinion.⁷ Some women journalists have also said that they were assaulted and harassed.⁸

In the name of the fight against terrorism, the security forces banned media coverage of unauthorised demonstrations. On 28 January 2014, journalists were physically and verbally attacked by the security forces, who tried to take away their camera equipment when they were covering a sit-in by members

2 These are self-proclaimed groups who use violent methods against political opponents, trade unionists, artists, NGO activists, etc. who have so far acted with impunity.

3 EMHRN, *Regional Study, The Right to Freedom of Assembly in the Euro-Mediterranean Region – Part I: Legislative framework*, 2013 (Tunisia chapter): http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_TUNISIA1.pdf

4 World Organisation Against Torture (OMCT), 13 December 2012, <http://www.omct.org/urgent-campaigns/urgent-interventions/tunisia/2012/12/d22089/>

5 Al Huffington Post Maghreb, 10 March 2014, http://www.huffpostmaghreb.com/2014/03/10/tunisie-ligue-protection-revolution_n_4935225.html

6 The Tunis Centre for Press Freedom has set up a monitoring body which publishes monthly reports on assaults on journalists: <http://www.ctlj.org/index.php/en>

7 A video from the Tunis Centre for Press Freedom shows that the LPRs have even made up songs about the media called “media of shame”; interview with Ahlem Bousserwell, a journalist at the Tunis Centre for Press Freedom, 14 March 2014.

8 Report by the Tunis Centre for Press Freedom, April 2013.

of the LPRs at the Casbah.⁹ The officials justified their action on the basis of decree-law 50/1978 dated 26 January 1978 relating to the arrangements for the state of emergency, as they considered that the journalists were covering a movement “that was illegal and capable of disturbing public order”.

There therefore exists an overly dogmatic practice of restricting journalists’ access to gatherings, and indeed of resorting to direct aggression, depending on the nature of the message or the identity of the organisers of these events. This cannot be justified in a democratic society concerned with pluralism and freedom of expression and information.

Participation of women

Women have extensively taken part in demonstrations and in campaigning for action over the last three years since the start of the revolution.¹⁰ They have not been subjected to systematic violence by security forces although some isolated incidents have occurred. They have however been especially targeted by militias and LPRs and have particularly been subjected to campaigns of defamation and harassment on social networks.¹¹ Political and civil society activists have been subjected to physical violence by Islamist groups during demonstrations.

Organising public meetings and demonstrations was a strategy much used by feminist organisations to defend the rights they had acquired in the face of conservative political forces, and to obtain significant improvements such as the removal by the Tunisian state of its reservations to the Convention on the Elimination of Discrimination against Women (CEDAW), finally effective as of 2014, and the inclusion of women’s rights in the constitution.

3. The Use of Force and Detention

Resorting to force at demonstrations has, in many cases, been linked to the context of political tension and polarisation which marked 2012 and 2013, when some peaceful demonstrations were broken up by force and authorities declared a state of emergency in certain regions. In the regions that had been neglected by the Ben Ali regime and which were the source of the uprising in 2011, such as Sidi Bouzid, Kasserine, Gafsa, Jendouba and El Kef, political and social frustration continue and are the cause of frequently repressed protest movements.

In 2012, many demonstrations in various towns across the country were subject to an excessive use of force (Al-Omrane, Hammam al-Anf, Sidi Bouzid, Djerba).

One of the most violently repressive episodes occurred in November 2012 in Siliana, during demonstrations held by the UGTT and which brought together thousands of people calling for the resignation of the provincial governor and the release of 13 people detained for over a year without trial. Anti-riot police of the Public Order Brigades used truncheons and tear gas, and fired shotgun pellets to disperse the demonstrators. Siliana hospital recorded 210 wounded by shotgun pellets, 20 of whom had eye injuries.¹² Several journalists were injured as well whilst others were prevented from filming.¹³

⁹ Report by the Tunis Centre for Press Freedom, February 2014.

¹⁰ Interview with Dalila M’Sadek, Doustourna, 3 March 2014.

¹¹ Interview with Saida Rached, ATFD (Tunisian Association of Democrat Women), 20 March 2014.

¹² The UN High Commissioner for Human Rights identified cases of bullet wounds to the head, back and face as well as eye injuries which in some case could cause blindness. The *Report of the UN High Commissioner for Human Rights* (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12848&LangID=E>) re-echoes the findings of Amnesty International according to which many injuries at Siliana were likely to have been caused by shotgun pellets.

¹³ Amnesty International, 30 November 2012: <http://www.amnesty.org/es/library/asset/MDE30/012/2012/es/0fb86350-c779-45ea-a9c2-2ceb489dfa0b/mde300122012en.html>. David Thomson, a journalist with France 24, was covering the events in Siliana when he and his colleague Handi Tlili were fired on from above.

On 10 January 2013, security forces fired tear gas and rubber bullets at young people in Ben Guerdane. They were peacefully demonstrating against the deterioration of the economic situation.¹⁴ On 19 May 2013, security forces fired real bullets and shotgun pellets at Salafist groups during riots in Tunis' Intilaka and Ettadhamen districts, killing one person and injuring four others. In autumn 2013, spontaneous demonstrations throughout the country also gave rise to violent repression in some cases and attacks targeting women were reported.¹⁵

The social protests in the centre and south of the country in early 2014 (Kasserine, Thala, Ben Guerdane and Tataouine), which at times degenerated into riots, show that grievances are still legion and that the bad practices of the security forces in the maintenance of order have not fundamentally changed.¹⁶

In general, the intervention of security forces at rallies has not given rise to arrests. Most of the demonstrators arrested were released almost immediately.

The example of the sit-in at Le Bardo, July 2013

The assassination on 25 July 2013 of political leader Mohamed Brahmi led to protest demonstrations throughout the country, as well as a serious political crisis. On 26 July, 42 members of the constituent assembly suspended their participation, demanded its dissolution and began a sit-in in front of the assembly building in Bardo square. The demonstrations of support that followed, particularly those on 27 July following the funeral of Mohamed Brahmi, were violently suppressed by the police who were positioned between the demonstrators and pro-government supporters. Despite the peaceful nature of the rallies, the police used tear gas on both groups, injuring many people including Deputy Noomane Fehri.

In addition, those taking part in the Bardo square were attacked several times by LPRs, while the law enforcement authorities hesitated between protection and suppression. Journalists were attacked and their equipment confiscated. One demonstrator, Mohamed Bel Mufti, was killed in Gafsa on 27 July by a tear gas bomb fired by the police into one of the peaceful rallies protesting Brahmi's assassination.

It is interesting to note, however, that it was this sit-in and the national protest movement which accelerated political change in Tunisia, decreased the level of violence and enabled the transition process to get back on track with the adoption of the new constitution in January 2014 and the planning of elections for October 2014.

The gradual improvement in control of the security sector by the State and the decline of the influence of political parties over the security forces may indicate an improvement of the behaviour of the security forces during demonstrations. Increased respect for citizens' rights will require profound reform of the security sector and the establishment of training programs for officers.

4. Accountability of Law Enforcement Forces

The disproportionate use of force against demonstrators has so far given rise to no condemnation of police officers or members of militias. Some interesting initiatives have seen the light of day, but without consequences in law at the moment:

14 Arab Network for Human Rights Information (ANHRI), 12 January 2013, <http://anhri.net/?p=104335&lang=en>

15 Human Rights Watch, *Annual Report 2014*, <http://www.hrw.org/world-report/2014/country-chapters/tunisia>

16 See Le Monde, 8 January 2014, http://www.lemonde.fr/tunisie/article/2014/01/08/tunisie-heurts-entre-policiers-et-manifestants-dans-la-region-de-kasserine_4344667_1466522.html; and Nawaat, 18 March 2014, <http://nawaat.org/portail/2014/03/18/sit-in-du-destin-a-tataouine-et-crise-de-ben-guerdane-bassin-minier-2-0/>

Under pressure from civil society, a commission of inquiry was set up by the National Constituent Assembly to look into the repression of the demonstration that took place on Bourguiba Avenue in Tunis on 9 April 2012, but it has yet to publish a report on the internal investigation carried out and no result has been made public. The members of the commission resigned in April 2013 because it did not have the authority and the competence necessary to carry out its purpose properly.¹⁷

Another commission of inquiry was set up by the Assembly regarding the events in Siliana in 2012, but it has so far issued no report on its activities nor made public any outcome.

Tunisian civil society therefore set up an independent commission of inquiry, consisting of members of the journalists' trade union, the LTDH (Tunisian League for the Defence of Human Rights), the FTDES (Tunisian Forum for Economic and Social Rights), lawyers, and activists. It published an extensive report,¹⁸ made recommendations to the authorities about support for the victims, and more generally about the economic development of the very marginalized region of Siliana. The report stressed that there had been no follow-up to complaints filed by the victims and their families.

In December 2013, the National Constituent Assembly adopted a law on transitional justice, providing for the creation of a Truth and Dignity Commission to investigate abuses in Tunisia from July 1955 to 2013, and for the creation of specialized courts within the judicial system to try cases of serious ill-treatment committed during this period. The law sets out reparation mechanisms for the victims, institutional reforms, mechanisms to monitor public servants, and reconciliation at the national level.¹⁹

5. Judicial Sanctions against Organisers and Participants in Assemblies

A number of demonstrators have been prosecuted since the beginning of the revolution: 130 indictment files have been identified across the country, especially between 2011 and 2012, for offences such as the training of a gang, defamation, public disorder and violence against the police.²⁰ Several young people from Bouzayen in the governorate (province) of Sidi Bouzid have been prosecuted for organizing and taking part in a sit-in after the assassination of Mohamed Brahmi in July 2013.²¹ These lawsuits are in stark contrast with the lack of effort made so far in bringing to justice those responsible for the repression of the popular uprising under the Ben Ali regime and the impunity enjoyed by the originators of political violence perpetrated after the revolution.²²

6. Civil Society Initiatives and Good Practices

Tunisian civil society has been particularly active since 2011, acting as watchdog of the governments which have led the transition process since the fall of Ben Ali and playing a key role in demonstrations calling for democratic reforms and denouncing abuses. For example, committees monitoring the repression of demonstrations by the police have been set up,²³ as well as civil society commissions of inquiry into issues such as the events in Siliana or the ill-treatment of women during the revolution.

17 International Freedom of Expression Exchange (IFEX), 29 July 2013, https://www.ifex.org/tunisia/2013/07/29/teargas_attacks/ and interview with Lotfi Azzouz, Amnesty International Tunisia, 19 March 2014.

18 Interview with Alaa Talbi, FTDES, 4 March 2014.

19 Human Rights Watch, 22 May 2014, <http://www.hrw.org/news/2014/05/22/tunisia-hope-justice-past-abuses>

20 Nawaat, list of the accused (in Arabic), <http://nawaat.org/portail/wp-content/uploads/2014/05/brule-poste-de-police-tunisie-liste-accuses-2.pdf>

21 Nawaat, 5 June 2014, <http://nawaat.org/portail/2014/06/05/la-criminalisation-des-mouvements-sociaux-en-tunisie-est-elle-une-reponse-a-la-crise/>

22 FIDH, 23 May 2014, <http://www.fidh.org/fr/maghreb-moyen-orient/tunisie/15377-tunisie-mettre-fin-a-l-acharnement-judiciaire-et-policier-contre-les>

23 FTDES has created a Tunisian social monitoring body whose purpose is to analyse social movements and it has established committees for monitoring the repression of demonstrations.

Civic action, in particular through the occupation of public places, has been fundamental to the entrenchment of the transition process. Civil society has actively contributed to all its crucial steps, including the monitoring of elections, the preparation of the Constitution, the formation of a technical government in 2013, etc.

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 meetings, rallies, and demonstrations into line with the new provisions of the Tunisian Constitution and international law as well as the commitments made by Tunisia; (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 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 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. Implement the State's responsibility to protect peaceful demonstrators, and particularly ensure that women can effectively exercise their right of assembly without fear of intimidation, harassment or violence;
7. Guarantee the security of journalists and facilitate their access to peaceful gatherings;
8. Reform the security sector in Tunisia: define clear lines of responsibility, bring the various security forces under control, and disband parallel armed forces and militias such as the "Leagues for the protection of the revolution";
9. Adopt clear, detailed, and binding rules regarding 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 law enforcement bodies in the use of force and anti-riot weapons accordingly;
10. 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;
11. 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 and be given guarantees of non-repetition; to this end, establish an independent mechanism for monitoring and investigating the behaviour of the security forces.



TURKEY

Introduction

In June 2013 Turkey has been at the forefront of media attention due to an unprecedented massive protest movement that started in defence of the Gezi Park in Istanbul, rapidly evolving into a contest against governmental policies and in promotion of democratic reforms. These events highlighted the inability of Turkish authorities to handle demonstrations while respecting human rights, a situation that has been repeatedly denounced by the European Court of Human Rights.

Indeed, the ‘Gezi Park’ demonstrations – that actually developed throughout the whole country—by their historical scale, have shed light and come to symbolize both the innovative practices of social movements and the long-standing repressive practices of the authorities against freedom of assembly in Turkey.

Civil mobilization and protests are not new in Turkey and trends can be established over many years. The social fabric and civil organizations are strong and bear a long history of struggling for human rights. In recent years, types of protest and their means of mobilization have diversified, with claims ranging from public freedoms to environmental protection and access to public services. As in most countries, social media have come to play a crucial role, which is illustrated by the recent attempts of Turkish authorities to pass laws curtailing their use.¹

As Turkey is a member to the European Convention of Human Rights, numerous cases concerning article 11 of this convention – on freedom of assembly — have been judged by the European Court of Human Rights (ECtHR). This important case law and the recurrence of condemnation by the ECtHR show that Turkey has been reluctant in changing its laws and practices with regard to the rights of peaceful assembly and expression.

1. Restrictions Imposed on Freedom of Assembly

The law 2911 that governs public meetings, assemblies and marches sets a mandatory prior declaration procedure (48 hours in advance) for all kinds of assemblies, which de facto outlaws spontaneous and undeclared assemblies.

Furthermore, the law imposes onerous restrictions on freedom of expression, penalizing the display of “symbols of illegal organisations, uniforms with these symbols, chanting illegal slogans, carrying illegal posters, signs, pictures etc.” (Article 23). The concepts are undefined and can give rise to very broad interpretation (see Part 1 of the Study on the Legislative Framework).² Requiring beforehand the copies of posters, statements and slogans, apart from being burdensome, is a clear way of applying censorship based on political criteria when reviewing notifications of assemblies depending on the message they convey, in particular for assemblies related to minorities’ rights, controversial issues such as the Kurdish issue, the Armenian genocide etc. or that openly criticize governmental policies.

On many documented occasions, authorities have imposed blanket restrictions on assemblies in the main squares such as Taksim square in Istanbul, where Mayday demonstrations have been banned between 1977 and 2009 and again since 2013. In these cases, authorities usually do not give explanation of the reason for the ban, a pre-emptive measure that falls short of international law as it de facto suppresses the right of peaceful assembly. Indeed, as stated by the Special Rapporteur on the rights to Freedom of peaceful assembly and of association, “only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”.³ Hence, “blanket bans, are intrinsically disproportionate and discriminatory measures.”⁴

1 See the attempt of the telecommunication authorities to ban ‘Twitter’ and ‘YouTube’, and its recusal by the Constitutional court <http://www.bbc.com/news/world-europe-26873603>; <http://time.com/2820984/youtube-turkey-ban-lifted/>

2 EMHRN, *Regional Study: The right to freedom of assembly in the Euro-Mediterranean region Part I: Legislation Review*; 2013. See Turkey chapter: http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_TURKEY1.pdf

3 *First Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 21 mai 2012, A/HRC/20/27, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

4 *Second Report of the UN Special Rapporteur on FOAA*, 24 avril 2013, A/HRC/23/39, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf

On the other hand, activists denounce that there is no real and effective remedy available against restrictions or ban decisions, by way of delays in administrative courts processes or simply because the appeal is denied on the ground that “there is no need for investigation”. There is no record of an administrative decision reversing a ban or restriction of an assembly.⁵

Spontaneous and undeclared assemblies are often dispersed with no consideration for their size, peacefulness or non-disruptive character. This was the case with the small environmentalist camp set up in Gezi Park, near Taksim Square in Istanbul, in late May 2013, that was dispersed with excessive use of force, and so were the subsequent protests held in Taksim square and elsewhere in the country,⁶ from massive peaceful marches, to public meetings held by lawyers⁷ and even the peaceful and individual ‘standing man protests’. This is despite international human rights standards that insist on the need to show tolerance towards peaceful assemblies even when procedural requirements are not respected,⁸ and in any case to apply the principles of necessity and proportionality for police intervention and the dispersal of protesters.

Undue interferences with freedom of assembly also take the form of pre-emptive restrictions of freedom of movement to prevent people from reaching the place of a protest, sometime with drastic sweeping measures such as those taken in early June 2013 when authorities banned vehicular traffic on the Bosphorus Bridge and stopped public and private transportation going to Taksim and its area (metro, tram and cross-Bosphorus ferry boats),⁹ also stopping pedestrian access to Taksim area with police checkpoints. Some of these measures were repeated on 31 May 2014 on the anniversary of the 2013 protests.

Turkey has been found by the European Court of Human Rights (ECtHR) in breach of freedom of assembly in at least 58 cases. The Court has in particular stated that, “*where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention [that protects freedom of assembly] is not to be deprived of all substance*”.¹⁰ In particular, the Court has found that the Turkish authorities did not meet the standards of article 11 due to the premature, disproportionate and unnecessary intervention of the police in the context of demonstrations and marches.¹¹

2. Facilitation of Assemblies by the Authorities

As evidenced above, Turkish authorities still have to make important progress for the facilitation of peaceful protest. Authorities reportedly try to impose broader restrictions than those provided for by law, as their bargaining power is stronger than that of organizers and no judicial remedy is available to the latter.

For example, in the case of public statements, which do not require prior notification (and is thus a strategy often used by civil organizations to organize public gatherings without facing governmental restrictions), authorities tend to consider that restrictions can be imposed when the event is foreseen to attract a large crowd. They have for example published circulars to ban the event once they have been informed of it unofficially, as happened in Ankara in the case of the demonstrations against the “4+4+4 Government’s draft bill on Education”, held on 28-29 March 2012.¹²

5 Interviews with M. Lami Özgen, president of the KESK (Confederation of Public Service Workers), M. Üstün Bol, member of the Board of Directors of the association Mazlumder, and İsmet Meydan, spokesperson of a trade unions platform, 2014.

6 See EMHRN *Mission Report on the protest movement in Turkey and its repression*, 2013, <http://www.euromedrights.org/eng/2014/01/24/mission-report-on-the-protest-movement-in-turkey-and-its-repression/>

7 On 12 June 2013, 44 lawyers were detained and some of them beaten, by police forces inside the Istanbul courthouse while they were making a press statement denouncing the police crack-down on protesters.

8 See, for example, *Resolution 1947 of the Parliamentary Assembly of the Council of Europe* on 27 June 2013, para. 5

9 See EMHRN *Mission Report on the protest movement in Turkey and its repression*, *op. cit.*

10 See *Oya Otaman v. Turkey*, 5 December 2006, para. 42; *Izci v Turkey*, para. 67 and 89.

11 See *Disk and Kesk v. Turkey*, 27 November 2012, para. 37; *Izci v Turkey*, para. 67.

12 See <http://bianet.org/english/education/137248-4-4-4-makes-20-7-billion-liras-at-least>

The authorities' stance towards un-notified or spontaneous gatherings varies without a clear standard. For instance, while many public statements and sit-ins have been tolerated for years in Yüksel Caddesi and Güven Park facing the Kızılay central square of Ankara, such activities were not permitted in Taksim Square and Gezi Park in İstanbul in recent years. Cumhuriyet Meydani (Republic Square) in Antalya, in southern Turkey, and Cumhuriyet Parki (Republic Park) in Kocaeli, in the Marmara region of Turkey, have been closed for demonstration for 17 and 7 years respectively.

During public assemblies, security forces can play a provocative role by their sole presence, instead of facilitating and protecting the assembly. The infiltration of plain clothes/ undercover officers has been denounced as a provocation by CSOs who report that they are known for recurring to violence. To the contrary, civil organizations have pointed out that the presence of their own stewards or even uniformed police officers helps de-escalating tension.¹³

The rhetoric of the 'internal enemy' is significant of a general attitude that considers protesters as a threat and not as citizens exercising a fundamental democratic right. This is evidenced by the very high number of anti-terrorism procedures brought against protesters for minor offenses (*see part 5. Judicial Sanctions*), or in official speeches.

During the 'Gezi Park' protest movement of 2013, public messages by the Istanbul governor and the Prime Minister, but also text messages sent to thousands of police officers on their cell phones by the Istanbul Riot Police Provincial Directorate Chief, praising police forces as "*heroes*" fighting for their country against "*enemies*" also paved the way for abuse and excessive use of force, as security officers felt they were legitimately fighting "*terrorists*".¹⁴

Journalists are not specifically protected by security forces when they cover demonstrations, and can be victims of police violence in case of forceful dispersal. According to the Turkish Journalists Union (TGS), during the first weeks of the 'Gezi Park' protests in 2013, 24 journalists were injured and 8 were arrested.¹⁵ In 2014, during the protests commemorating the 2013 Gezi Park events, at least 6 journalists were injured, harassed or even detained in Istanbul and Ankara according to the TGS, including prominent journalist Ahmet Şık, recipient of UNESCO's 2014 World Press Freedom Prize, who was beaten by police while covering protests in Istanbul on 1 June.¹⁶

3. The Use of Force and Detention

Over the years, Turkey has been repeatedly condemned by the European Court of Human Rights (ECtHR) for its excessive use of force in the dispersal of largely peaceful protests. Despite improving legislation aimed at framing more strictly police intervention and use of 'less-than-lethal' weapons such as tear gas,¹⁷ these regulations and their implementation still falls short of international standards.

One of the main issues is the tendency to consider un-notified assemblies as illegal, hence commonly proceeding to their dispersal. Other 'reasons' argued by authorities to forcefully disperse assemblies are 'illegal' slogans or signs, or the fact that a few protesters throw stones at security forces. However, even in the last case, it is the State authorities' duty to remove the violent demonstrators from the gathering

¹³ Interview with M. Lami Özgen, President of KESK, *op. cit.*

¹⁴ Interview with representatives of the Police trade union Emniyet-Sen, July 2013, quoted in EMHRN *Mission Report on the protest movement in Turkey and its repression*, *op. cit.*

¹⁵ See <http://everywheretaksim.net/bianet-journalists-protest-police-violence/>

¹⁶ See International Federation of Journalists, 2 June 2014, <http://www.ifj.org/nc/news-single-view/backpid/1/article/six-journalists-targeted-by-turkish-police/>

¹⁷ See EMHRN, *Regional Study: The right to freedom of assembly in the Euro-Mediterranean region Part I: Legislation Review; 2013*; Turkey chapter, *op. cit.*

instead of imposing a collective punishment on all protesters, as sporadic violence does not deprive peaceful individuals of their right to freedom of peaceful assembly.¹⁸

In many instances the police intervene with violent means without warning. They usually use sticks to kick people, throw pressurized water and fire plastic bullets and tear gas at demonstrators, which commonly result in injured protesters, sometimes in fatal casualties.

Firearms have been less used in recent years; however, several protesters have been killed or wounded by live ammunition in 2013 and 2014 (cases of Ethem Sarısülük, shot on 1 June 2013 in Ankara;¹⁹ two protesters shot in a protests in Istanbul on May 2014;²⁰ and a Kurdish demonstrator shot dead and at least two others wounded on 19 August 2014 in the town of Lice).²¹

There is a punitive dimension in the use of indiscriminate and extensive force against peaceful protesters, as highlighted by the president of the trade union federation KESK, M. Lami Özgen: *"For example, while we were dispersing on May 1, 2013 in İstanbul the law enforcement officers used pepper gas. Also on May, 1 of 2014 while we were negotiating with law enforcement officials as presidents of DİŞK [Confederation of Progressive Trade Unions] and KESK, they used gas. In general the law enforcement forces carry out the dispersion not by negotiating but by using violence".*

Numerous examples can be made in the south eastern provinces of Turkey, mainly populated by Kurdish population, where protest demonstrations are frequent and political tension is high, and security forces commonly recur to violence to disperse gatherings. Even in case of confrontation between violent protesters who throw stones and the police, security forces ought to respect the principles of necessity and proportionality. Instead, according to the ECtHR, the current Turkish legal framework and law enforcement forces training do not offer the adequate level of protection of the right to life.²²

The extent of police violence used during the Gezi Park protests in 2013 is another striking example of this. At least six persons died during or due to the repression of the demonstrations. The direct firing of tear gas canisters at protesters' bodies caused most of the hundred head traumas and 11 eye losses reported by the Turkish Medical Association (TTB), and also led to the death of at least 2 protesters. The massive use of tear gas (130.000 cartridges were used during the first 20 days of demonstrations) resulted in suffering for thousands of people.

In total, between 31 May and 10 July 2013 8121 persons requested medical assistance, according to the TTB. People were wounded in 13 different cities throughout Turkey, evidencing a nation-wide pattern of excessive use of force. During the dispersal of Gezi Park protests, the authorities also largely failed to facilitate and even directly interfered with medical care by firing tear gas inside makeshift clinics, arresting doctors and blocking accesses and exits to the demonstration locations.²³

18 See ECtHR, *Gün and others v. Turkey*, judgment of 18 June 2013: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122059#{%22itemid%22:\[%22001-122059%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122059#{%22itemid%22:[%22001-122059%22]}); and also the *First Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, *op. cit.*

19 See EMHRN *Mission Report on the protest movement in Turkey and its repression*, *op. cit.*

20 See <http://www.reuters.com/article/2014/05/23/us-turkey-protests-idUSBREA4L17620140523>

21 See <http://www.afp.com/en/news/kurdish-protester-killed-turkey-clashes-over-pkk-statue>

22 See ECtHR *Ataykaya v. Turkey*, judgment of 22 July 2014, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145710#{%22itemid%22:\[%22001-145710%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-145710#{%22itemid%22:[%22001-145710%22]}); and *Abdullah Yaşa v. Turkey*, judgment of 16 July 2013, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122368#{%22itemid%22:\[%22001-122368%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122368#{%22itemid%22:[%22001-122368%22]})

23 See EMHRN *Mission Report on the protest movement in Turkey and its repression*, *op. cit.*

Human rights organizations have documented that, in the policing of Gezi Park demonstrations from May to July 2013, Turkish security forces committed violations of the right to life, the prohibition of torture, inhuman or degrading treatments, the right to liberty, and freedom of peaceful assembly.²⁴

The Commissioner for Human Rights of the Council of Europe, M. Nils Muižnieks, following his visit to Turkey in July 2013, outlined “a structural problem in the policing of demonstrations in Turkey. In a judgment delivered on 23 July 2013, the ECtHR itself recognised the systemic nature of these problems, on the basis of over forty judgments against Turkey and 130 pending applications²⁵. It noted that the common feature of these cases was “the authorities’ failure to show a certain degree of tolerance towards peaceful gatherings and, in some cases, the precipitate use of physical force, including tear gas”²⁶

4. Accountability of Law Enforcement Forces

The Turkish legislation is the first obstacle to accountability of public agents, as permission from their superiors is required to prosecute public officials.²⁷ This permission requirement was lifted in case of accusation of torture (by law 4778 of 2003), however, complaints are too often filed as ‘ill treatment’ to bypass this reform, or a simple administrative investigation is launched, generally without effect.

In its 2014 judgment *Ataykaya v. Turkey*, the ECtHR denounced that Turkish authorities had ‘deliberately created a situation of impunity’. It recalled its previous judgments (*Abdullah Yaşa v. Turkey* and *İzci v. Turkey*) highlighting that it had already urged Turkish authorities to put in place a system that guaranteed adequate training and control of law enforcement personnel during the policing of protest, and an *ex post facto* examination of necessity, proportionality and reasons for the use of force, especially on peaceful protesters.²⁸

Similar impunity is observed following the Gezi Park protest movement of 2013. None of the complaints lodged by injured protesters have led to the identification and accountability of security officers. Judicial proceedings against police officers for the deaths of protesters Ethem Sarisuluk, Ali Ismail Korkmaz and Berkin Elvan are ongoing, but accumulate delays and irregularities.²⁹

The Ombudsman office and the National Human Rights Institute, two governmental institutions created in 2012, have received numerous complaints following the Gezi protest movement. However, their response was low-key and is not showing a significant change in the culture of impunity for human rights violations. The NHRI has not communicated publicly on its investigations and has failed to convene for some time.

The Ombudsman published a report in December 2013, concluding that police had made “excessive use of force” in response to demonstrations, and admitting violations of the prohibition of torture and ill-treatment, of freedom of expression and assembly and of other fundamental rights. Recommendations include reforming Law 2911 on demonstrations in line with international human rights standards, ensuring accountability of law-enforcement officers and extensively training security forces in how to handle

24 See Amnesty International, *Gezi Park protests – Brutal denial of Right to Peaceful Assembly in Turkey*, October 2013: <http://www.amnesty.org/fr/library/asset/EUR44/022/2013/en/0ba8c4cc-b059-4b88-9c52-8fbd652c6766/eur440222013en.pdf>; and Human Rights Watch, July 2013 <http://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas>;

25 See *İzci v. Turkey*, judgment of 23 July 2013: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122885#{%22ite mid%22:\[%22001-122885%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122885#{%22ite mid%22:[%22001-122885%22]})

26 *Report of the Commissioner for Human Rights of the Council of Europe*, M. Nils Muižnieks, following his visit to Turkey from 1 to 5 July 2013, para. 43, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2395759&SecMode=1&DocId=2079692&Usage=2>

27 Pursuant to provisions of Law No 4483 and article 129 of the Constitution; see EMHRN *Regional Study on Freedom of assembly*, Turkey chapter, *op. cit.*

28 See *Ataykaya v. Turkey*, 22 July 2014, *op. cit.*, para.72.

29 See FIDH, *Turkey: Gezi, one year on*, 2014, p. 19-23: http://www.fidh.org/IMG/pdf/turkey_avril_2014_uk_web.pdf;

Amnesty International: <http://humanrightsturkey.org/tag/ethem-sarisuluk/>;

<http://livewire.amnesty.org/2014/02/03/justice-for-gezi-park-protestor-a-long-way-off-as-trial-of-police-officers-makes-a-chaotic-start/> and EMHRN *Mission Report on the protest movement in Turkey and its repression*, *op. cit.*

protests while respecting human rights. However, some of the recommendations contained in the report show a worrying bias when judging the protest movement as illegitimate and recommending the authorities to “alleviate protests before they become mass demonstrations so as to prevent the legitimization of illegal groups”.³⁰ The Ombudsman’s recommendations to Turkish authorities are not binding, and have not yet translated into concrete measures or a time line for action.

5. Judicial Sanctions against Organisers and Participants in Assemblies

Not only do Turkish authorities too often fail to facilitate freedom of assembly, and commit violations when policing demonstrations, but protesters also often have to face dire consequences for their participation in peaceful gatherings. Judicial proceedings have been initiated against peaceful activists and human rights defenders for many years, especially against those critical to the government or defending minorities’ rights, in particular Kurds.

The Anti-Terror Law (ATL) and provisions of the Penal code allow for the criminalization of peaceful activism by assimilating certain actions and messages to propaganda or membership of terrorist organizations. These provisions have particularly targeted Kurdish or pro-Kurdish activists. For example, since the so called ‘anti-KCK’³¹ operation started in 2009, more than 8000 people have reportedly been taken into police custody, with more than half having been charged and remanded in pre-trial detention, sometimes for years without trial, in at least 11 provinces, and accused of terrorism on the sole basis of their participation in public meetings, peaceful marches, membership in associations or for their writings or statements.³²

The application of anti-terrorism provisions result in very long prison sentences, for acts of throwing stones in protests, or for peaceful participation in protests deemed by authorities to be ideologically supportive of the PKK. According to Human Rights Watch, the majority of adults convicted under these laws have received prison terms of between seven and 15 years. Child protestors also commonly received prison sentences of between four and five years, until legal amendments more favorable to under-age defendants were passed in 2010 and 2013.³³

According to the annual Reports of the Human Rights Association (IHD) of Turkey, figures of prosecutions of demonstrators in the past years have worryingly increased: there were 18 cases filed against 205 demonstrators in 2009; 24 cases against 761 demonstrators in 2010; 139 cases were filed against 1031 people in 2011; in 2012, 21 cases were filed against 484 people, and finally in 2013 a total 103 cases were filed for 50 underage demonstrators and a total of 3773 persons.

According to figures gathered by the Security Directorate under the Ministry of Interior between June and September 2013, 5341 people were put in custody in relation with the Gezi Park movement.³⁴ A large majority of them were subsequently prosecuted. In March 2014, the Human Rights Foundation of Turkey registered 82 cases against 5235 individuals.³⁵

On 12 June 2014, the trial of more than 26 members of the Taksim Solidarity Platform began. The defendants, including the President of the Istanbul Chamber of Doctors, architects, lawyers and engineers, face lengthy prison terms for their part in leading the protests a year ago, with the prosecutor calling for 13-year jail terms for the five main suspects. The charges include founding a criminal group, violating public order and organising illegal protests through social media.

30 Unofficial translation, Ombudsman’s report (in Turkish), 2013: <http://www.ombudsman.gov.tr/contents/files/2013-90.pdf>

31 The KCK is the Union of Kurdistan Communities. By virtue of gathering all Kurdish groupings including the PKK (Party of Kurdistan Workers), the KCK is considered by the authorities as a terrorist network.

32 See FIDH/OMCT, *Turkey: Human Rights Defenders, Guilty Until Proven Innocent*, 2012: <http://www.fidh.org/IMG/pdf/obsrapporttr05062012eng.pdf>; see also the case of Osman İşçi, EMHRN Executive Committee member, <http://www.euromedrights.org/eng/2012/06/29/turkey-confirmed-pre-trial-detention-for-human-rights-defender-osman-isci-and-27-trade-union-members/>

33 See Human Rights Watch, *Protesting as a Terrorist Offense*, 2010; <http://www.hrw.org/sites/default/files/reports/turkey1110webwcover.pdf>

34 See Bianet, *Police Releases Gezi Resistance Report*, November 2013, <http://www.bianet.org/english/crisis/151583-police-releases-gezi-resistance-report>

35 See FIDH, *Turkey: Gezi, one year on; op. cit.*

"The only goal of this case is to scare people," declared Baki Boğa, the President of IHD Istanbul Branch. "They want to show that anyone, regardless of their age, profession or background, can be prosecuted for being a protester. This is a politically motivated case aimed at completely wiping out the dissenting voices in Turkey."

Some protesters were also charged on the basis of social media communications, for example, 29 people were indicted for inciting riots via Twitter during the May 2013 demonstrations. Evidence described in the indictment included tweets that merely relayed information about the Gezi park protests or called for emergency services or other medical aid for protesters.³⁶

Another highly disturbing feature of the criminalization of protest is the crack-down on medical staff that provided emergency help to injured protesters on the streets or in the makeshift medical premises during the Gezi Park events. After being directly targeted by security forces during the event, doctors and medical students have later been subjected to an administrative investigation by the Ministry of Health on account of having given medical care to "persons injured in illegal demonstrations" at "volunteer infirmaries" without seeking the permission of the Ministry of Health.³⁷

In January 2014, the Turkish government passed Law no. 6514 that criminalizes "delivering unauthorized health services". Sanctions for offenders include imprisonment from 1 to 3 years and monetary fine up to about 900,000 USD. This bill has been widely criticized by international human rights bodies and NGOs.³⁸

Judicial proceedings are ongoing against physicians and Executive board members of local Chambers of Doctors in Ankara, Istanbul, Hatay, and in the Kırklareli province.³⁹

6. Civil Society Initiatives and Good Practices

After Turkey was recognised as a candidate to membership in the European Union in 2004, the efforts made by human rights organisations to promote and protect human rights and freedoms have achieved significant progress in the past several years. The law on associations, part of the reforms that have been adopted, now allows associations to function without major interferences from the authorities. Despite this, as observed above, there are still a number of obstacles to the enjoyment of freedom of association in Turkey, and especially to the exercise of freedom of assembly.

Turkey has a very developed civil society and a long history of peaceful protest. Some human rights organisations have been working tirelessly for more than 20 years and earned international recognition of their expertise in documenting human rights violations. Civil society organizations have also developed networks to share information and coordinate action, such as the Human Rights Joint Platform, or the 'Taksim Solidarity Platform' that was set to fight urban development projects in Istanbul such as the destruction of the Gezi Park, and became one of the main actors of the 2013 protests.

During the 2013 protest movement, that mobilized an unprecedented participation across Turkey, CSOs, informal groups and individuals showed extraordinary creativity in organizing protests, from the occupation

36 See Human Rights Watch, 2 Sept. 2014: <http://www.hrw.org/news/2014/09/02/turkey-internet-freedom-rights-sharp-decline>

37 Investigation carried out under the order no. 2013-01-071/2256. See Turkish Medical Association (TTB): <http://www.ttb.org.tr/en/index.php/tuem-haberler-blog/179-ttb/1215-physicians-wait-neither-for-permission-nor-order-to-serve-humanity>; <http://www.ttb.org.tr/en/index.php/tuem-haberler-blog/179-ttb/1220-ba>

38 See Physicians for Human Rights, <http://physiciansforhumanrights.org/press/press-releases/turkey-passes-bill-that-criminalizes-emergency-medical-care.html>; the UN Special Rapporteur on the right to health, <https://www.un.org/apps/news/story.asp?NewsID=46695&Cr=turkey&Cr1=#.U2j0oXf3Fkh>; and the World Medical Association: https://s3.amazonaws.com/PHR_other/We-must-unite-against-health-law-that-threatens-medical-neutrality-in-Turkey.pdf

39 See Turkish Medical Association, <http://www.ttb.org.tr/en/index.php/tuem-haberler-blog/179-ttb/1234-gezi>

of Gezi park and its broad-scale social and cultural activities, to daily ‘park assemblies’ in Istanbul and Ankara that lasted for months, to ‘standing man’ protests etc. Social media were extensively used to foster mobilization despite the risks of surveillance and prosecution. Beyond the holding of daily protests during several weeks in May-June 2013, groups also organized on-the-spot medical care for injured protesters, with volunteer medical staff giving emergency care in makeshift clinics set up in hotels, cafes, malls, sometimes in hiding to avoid further repression.

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. Reform law No. 2911 relating to rallies and demonstrations so as to comply with international law and the recommendations of the European Court of Human Rights, in accordance with the commitments made by Turkey (see the first part of the Study);
3. Put an end to the application of the provisions of the anti-terrorism law and the use of special courts in respect of peaceful demonstrators;
4. Ensure that the notification procedure provided for by law is transparent, accessible and not unduly onerous, and that the administrative authorities comply with the law when it is implemented;
5. Make sure that restrictions imposed comply with the law, respect the principles of need 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;
6. Ensure that the authorities are always open to dialogue with the assembly organizers (both prior to and during gatherings) and where such dialogue occurs, that its purpose is to better facilitate the right of peaceful assembly;
7. Put an end to arbitrary arrests during peaceful demonstrations and to the judicial and administrative harassment of citizens demanding their right to demonstrate peacefully;
8. Comply with the State's duty to protect peaceful demonstrators, and particularly refrain from hindering medical care for those in need, and ensure that women can effectively exercise their right of assembly without the fear of intimidation, harassment or violence;
9. Guarantee the safety of journalists and facilitate their access to peaceful gatherings;
10. Adopt clear, detailed and binding regulations governing the use of force against protesters, following the recommendations of the European Court of Human Rights in its recent judgments, and in accordance with the United Nations Basic Principles on the use of force and firearms by law enforcement officials; train law enforcement authorities 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, need, progressiveness and proportionality; ensure that lethal force is strictly a last resort and used as a defence against an imminent threat endangering human lives;
12. Remove legal obstacles preventing investigations and prosecutions of officials responsible for applying the law, in particular by revising Article 129 (6) of the Constitution and law no. 4483/1999;
13. 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.



THE EUROPEAN UNION

Introduction

All 47 member states of the Council of Europe have signed up to the European Convention on Human Rights and are subject to the jurisdiction of the European Court of Human Rights. Articles 10 and 11 of the European Convention on Human Rights protect the freedom of expression, assembly and association.

The rights provided for in Article 10 and 11 require member states not only to tolerate, but also to actively facilitate social participation and protest. As detailed in Part 1 of this Report,¹ the European Convention considers the right of freedom of peaceful assembly as fundamental. Member states are required to put in place adequate mechanisms and procedures to ensure such freedom can be enjoyed in practice and is not subject to undue bureaucratic regulation. Indeed, people should be able to enjoy this right, as far as possible, without interference. Anything not specifically forbidden by the law should be presumed to be permissible. Preference must always be given to the least intrusive means of imposing restrictions.

Member states must not only allow dissenting voices to be heard, but they must give such voices the legal and physical space in which they can be heard. "If the freedom of expression is the grievance system of democracies, the right to protest and peaceful assembly is democracy's megaphone. It is the tool of the poor and the marginalised, those who do not have access to the levers of power and influence and those who need to take to the streets to make their voices heard."²

Protest is a healthy, democratic exercise, crucial to good governance and accountability. It is a social good which democratic states should protect and promote. Despite this, in recent years, many European member states have viewed protest as, at best, an inconvenience to be controlled or discouraged and at worst a threat to be suppressed.

This chapter seeks to review whether in practice the European countries protect and promote freedom of assembly or whether the reality on the ground reveals a number of shortfalls. Given the necessary space restraints of this report, this chapter does not seek to provide a detailed overview of each member states' recent record on the protection and promotion of the freedom of assembly but instead seeks to identify common trends across Europe and to propose recommendations.

Since the economic crisis started in 2008, Europe has witnessed a significant increase in street protests, sit-ins, demonstrations and occupations. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association reported that the UK sees an average of ten to fifteen demonstrations per day.³ France has an average of ten per day and Athens, four and a half demonstrations a day between May 2010 and March 2014. 20,210 demonstrations were held across Greece within the same four years.⁴ According to data provided by the Spanish government, there were more than 14700 demonstrations held in their country during 2012. According to the Delegate's Office in Madrid, that city alone saw 3419 demonstrations during 2012 and 4354 in 2013.⁵

In response to austerity measures, people have been taking to the streets to protest. Many have sought to express their objections to the massive cuts being made to public services by the governments of member states. They have often not only demanded a change in government but also a different way of governing. Although the protests across Europe have been organised by a wide range of often vastly different political

1 EMHRN, *Regional Study: The right to freedom of assembly in the Euro-Mediterranean region Part I: Legislation Review*, 2013. See Europe chapter: http://www.euromedrights.org/eng/wp-content/uploads/2013/11/FOA2013_EN_THE-EUROPEAN-UNION1.pdf

2 See *Take Back the Streets: Repression and criminalization of protest around the world*, 2013: https://www.aclu.org/files/assets/global_protest_suppression_report_inclo.pdf

3 In London, there are around 4000 protests per year, see the *Report of the UN Special Rapporteur on freedom of peaceful assembly in the UK*, A/HRC/23/39/Add.1, 29 May 2013: http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session23/a-hrc-23-39-add1_en.pdf

4 See *Waging Non Violence*, 30 April 2014: <http://wagingnonviolence.org/experiments/recession-responsible-20000-demonstrations-greece-4-years/>

5 See Amnesty International, *Spain: The Right to Protest under Threat*, 2014: http://www.amnesty.org.uk/sites/default/files/spain-the_right_to_protest_under_threat_0.pdf; There may of course be significant country differences in recording practices (in terms of what is actually counted as a public 'assembly' or 'demonstration'). As such, these figures should not of themselves be viewed as directly comparable. Nor do they necessarily reflect the relative level of protest activity (and even less, the strength of civil society) in each country.

movements, they have also arguably shared a common thread - that those protesting no longer trust the corporate and political elite that they consider to be ruling their countries.

This recent period of increased political activism follows a time, from 9/11 onwards, when many member states have restricted the ability of people to lawfully dissent and organise assemblies to express criticism and opposition to decisions and actions taken by their governments. The aftermath of 9/11 saw many member states introduce broad anti-terrorist laws, including tools of surveillance, arrest, search and detention, which as time has passed, have been increasingly redirected towards peaceful political activity and domestic dissent.

The response by European authorities to increased social activism has been mixed but, overall, the region has seen a worrying tendency of state bodies to transform individuals exercising a fundamental democratic right - the right to protest - into a perceived threat that requires a forceful response. The interferences by member states in the right to protest have, at times, been direct: mass arrests, unlawful detentions and the illegal use of force. At other times they have been less direct: the criminalisation of protest movements, denials of permits, the imposition of administrative hurdles and the persecution and prosecution of protestors.

1. Social Media and Innovative Forms of Protest

The emergence of social media has resulted in a fundamental change to the ability of individuals and groups to organise assemblies. It has also resulted in a fundamental change in the reporting of assemblies and the states' response to them. Never before has it been so easy for individuals and groups to communicate with a large number of other individuals and groups. Almost instantaneously, activists can be mobilised as feeds from the protests inform sympathisers about what is happening. On Twitter, individuals can follow an occupation in the UK while communicating with protestors in Hungary. Making these links across state borders enables those engaging in protests not only to gain support from others but also to share advice on how best to avoid state repression.

Those engaging in, or observing, the freedom of assembly can now live-stream, to blogs and niche websites, exactly what is happening at any given demonstration. Mainstream news networks are no longer able to effectively control the narrative. This pressure has also resulted in mainstream networks increasingly, over recent years, reporting unedited protest coverage.

Social media has also made it easier for the authorities to monitor political activists and attempt to disrupt their activities. Human rights lawyer John Cooper QC commented, about the UK, that "people involved in public protest should use social media to their strengths, like getting their message across. But they should not use them for things like discussing tactics. [If they were to do that...] they might as well be having a tactical meeting with their opponents sitting in and listening."⁶ Political activists have been responding to these concerns. For example, former members of the UK Occupy movement, which set up a protest camp outside St Paul's Cathedral in London from October 2011 until February 2012, held a "cryptoparty", with the aim of arming those who want to carry out protests online with the necessary skills to maintain their anonymity.

An example of mass mobilisation facilitated through by social media in Europe is the 15M movement in Spain. The 15M movement emerged following a demonstration organised on 15 May 2011 which called for more participatory democracy and a movement away from the traditional bi-party system. It was started by a group who organised themselves via online social networks and who decided to camp out in Puerta del Sol Square in Madrid. This initial camp was very successful and the movement spread across Spain, giving rise to a series of rallies, protests and encampments in different squares, in as many as fifty-eight towns in the country.

The movement also spread across national borders. In late May 2011, multiple call-outs appeared in social media (especially Facebook) urging people to protest peacefully on 25 May 2011 or to occupy

⁶ See *The Independent*, 1 October 2012: <http://www.independent.co.uk/news/uk/crime/activists-warned-to-watch-what-they-say-as-social-media-monitoring-becomes-next-big-thing-in-law-enforcement-8191977.html>

public spaces like the 15M movement. In Greece for example, on 25 May 2011, in solidarity with the 15M movement, people protested in central squares in over 38 different cities. In Athens, after a rally had taken place, a group of protestors decided to remain in Syntagma Square overnight. This initial occupation turned into a long-term encampment that played a leading role in the collective mobilisations throughout the country. Occupy London also confirmed that its call for a mass march and occupation of land in central London was in solidarity with the 15M movement as well as with Occupy Wall Street.

In Bulgaria, in February 2013 more than one hundred thousand people took to the streets of Sofia calling for the end of poverty, unemployment, corruption and electricity price rises. The centre-right government of Boiko Borisov resigned and a government of the Bulgarian socialists came to power. On 14 June 2013, the new Parliament appointed Delyan Peevski as head of the State Agency for National Security. This appointment was not acceptable to those who had successfully brought down the former government, so hours after the decision was announced, thousands of people, called together via social media, demanded his resignation. Within a month, his appointment had been reversed.

The opportunities provided by social media have also encouraged and facilitated the increasingly creative approach to protests by political movements across Europe. No longer is it assumed that street demonstrations are necessarily the most effective method. For example, in Madrid in April 2012, the protest group Toma el Metro organised a simultaneous pulling of the emergency brakes on thirteen trains located on nine different lines of the city's underground. This was a protest against the 40% increase in the price of public transportation tickets over the last three years.

Also in Spain, in November 2012, the social movement Platform for those Affected by the Mortgage Crisis (PAM) which brings together people having difficulty paying their mortgages, or in the process of foreclosure, with those who support their cause, began a series of protest actions aimed directly at the politicians and majority party members. These actions, known as *escraches* (doorstep demonstrations) took place outside the offices of the Popular Party or near the homes of its politicians and called on the individuals being targeted to represent the interest of people in mortgage difficulties.

In December 2012, UK Uncut organised the simultaneous occupations of forty Starbucks coffee shops across the UK, converting them into creches for young children. They were protesting about the aggressive accounting measures that allowed Starbucks to pay minimal corporation tax in UK while the government complained that lack of public funds meant they had no option but to implement huge cuts to public services which were having a disproportionately negative impact on women. In response to the announcement about the action, Starbucks said they would overpay the tax they owed in the UK by £20 million for the next two years.

2. The Facilitation of Minorities' Right to Freedom of Assembly: The Case of Same-Sex Pride Parades

Pride parades have been a controversial issue in some central European countries and we include it here as an example of how minority rights interact with the right of assembly. Some European authorities in response to potential violent opposition to those advocating for lesbian, gay, bisexual, transgender and queer rights, have failed to protect and safeguard a minority's right of assembly.

In Poland, in 2005, the authorities prohibited a gay pride parade in Warsaw because of a missing traffic organisation plan. This decision triggered several critical court decisions by the Polish Constitutional Court and the European Court of Human Rights. Similarly in Hungary, the authorities banned the Budapest Pride in 2011 and 2012. The decision to ban the parade in 2011, because of the impossibility to reroute traffic, was struck down by the Hungarian Metropolitan Court, which reaffirmed the importance of the freedom of expression and the right of peaceful assembly. Despite this ruling, the police decided to ban the 2012 parade for the same reasons as before. The police said they had used their discretion to balance conflicting liberties, and decided that permitting the participants freedom of assembly would disproportionately restrict nonparticipant's freedom of movement. Again, this decision was successfully challenged in the

courts and the march went ahead. But the disregard by the Hungarian authorities of the 2011 Court decision is disturbing and suggests the tendency to restricting the right to peaceful assembly, rather than seek to safeguard it against violent opposition.⁷

In Serbia, the Belgrade Pride Parade was banned in 2011, 2012, and 2013 and de facto banned by a last minute change of location in 2009. While the parade took place in 2010, it was heavily protected by the police but escalated into violence. The Minister of Interior has therefore argued that the parade constitutes a high security risk and that even the most severe police escort would not be able to protect the participants. In 2013, in response to the ban, organisations spontaneously held a midnight march which was eventually protected by the police who rushed to the scene.⁸ A challenge to the bans in 2009, 2011, 2012 and 2013 has also been communicated to the government of Serbia by the European Court of Human Rights.⁹ It is a very welcome development that the 2014 Belgrade Pride was facilitated and protected by a strong police presence on 28 September 2014.

3. Restrictions Imposed on Assemblies in Practice

Some European governments have responded to this increased activism by introducing legislative changes limiting the right to assembly and/or using existing legislation, passed for other purposes, to restrict the right to protest.

In Greece, in 2013, decree number 120 amended decree number 141 of 1991 by introducing restrictions on the right to the freedom of public assembly. The amended decree reads that “in towns with a population of more than 100,000 inhabitants, taking up the whole roadway and the complete halt to vehicle movement by meetings which are particularly small in number compared to the importance of the precise route assuring the needs of motor traffic as well as the needs of the town’s social and economic life, are not permitted.”

In 2013, the Spanish government started a procedure to amend its Criminal Code and the Organic Law on the Protection of Public Safety. Both texts would have a direct impact on the exercise of the freedom of expression and assembly. The reform of the Criminal Code introduces several modifications concerning “crimes against public order”, and in particular considers aggravating circumstances if the crime is committed during a demonstration or rally, with penalties that could result in up to six years in prison. Similarly, the offences of “interrupting telecommunications or public transport in a way which alters their normal functioning” would no longer require damage to be caused.¹⁰ The new draft Organic Law on the Protection of Public Safety, which was sent to Congress in July, would impose if adopted heavy administrative penalties, divided into three types of breaches, for participating in spontaneous protests and for different types of behaviours during non-violent protests, such as insulting or disrespecting law enforcement officers as well as using of images of police. The bill considers as “very serious breaches”, punishable by a fine of up to €600.000, all meetings or demonstrations which have not been notified and which take place in or near what is considered “establishments that provide basic services to the community.” This includes nuclear power plants as well as ports, airports and other transport infrastructure. It also proposes that interrupting public events, as well as planning or participating in spontaneous protests in front of national and regional parliaments that cause important disruption to public order, should be treated as “serious breaches”, subject to fines up to €30.000.¹¹

7 See *Take Back the Streets: Repression and criminalization of protest around the world*, 2013, op. cit.

8 See Prof Dr Anne Peters and Dr Isabelle Ley, *Comparative Study: Freedom of Peaceful Assembly in Europe*, 2014: http://www.venice.coe.int/files/Assemblies_Report_12March2014.pdf

9 *Đorđević and others v Serbia* (Application no. 5591/10), communicated on 25 June 2014.

10 See Draft Law, Congress of the Deputies, 4 October 2013: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-66-1.PDF#page=1

11 See Draft Law, Congress of the Deputies, 25 July 2014: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-105-1.PDF#page=1

These proposals directly violate the Spanish authorities' obligation to protect and promote freedom of assembly. Public protests, by their very nature, often entail disruption to traffic and the ordinary use of public space. The law should not criminalise such disturbances when they occur in the context of a legitimate exercise of the rights to peaceful assembly and freedom of expression and have not involved acts of violence, damage to property or disproportionate harm to the human rights of others.

Some member states have responded to the increased activism with the introduction of blanket bans in certain areas of particular cities. In March 2014, the Greek government prohibited meetings in the centre of Athens, from 8 am to 7 pm, pushing them to the outskirts of the city.¹² In Hungary, "operational zones" imposed by the police are used to forbid demonstrations in unwanted areas such as the vicinity of the President's home.¹³ The Police Reform and Social Responsibility Act 2011, in the UK, imposes tight restrictions on peaceful protests in Parliament Square. It makes it a crime to engage in "prohibited activity" in the Square when a police or local authority officer directs someone not to do so. Directions to cease doing a prohibited activity, or not to start to do one, can last up to ninety days. The prohibited activities include operating amplified noise equipment without authorisation, erecting a tent or using any sleeping equipment to sleep overnight in the area.¹⁴ In Spain, in 2012, the Ministry of Interior issued a circular to all police stations instructing them not to allow gatherings less than three hundred metres from the dwellings of public officials and politicians.¹⁵

In the UK, anti-terrorist legislation has been used to curb the freedom of assembly. A search power created by Parliament to combat terrorism was applied to demonstrators protesting against an arms fair in London's Dockland. Section 44 of the Terrorism Act 2000 gave the police the power to search members of the public even where there was no cause to suspect that the individuals being searched were connected with terrorism or engaged in illegal acts.

In 2003, Kevin Gillan, a protestor, and Pennie Quinton, a journalist, attended a protest against the exhibition and conference, Defence Systems Equipment International, in London. They were searched by police under section 44. Both individuals challenged their searches as having nothing to do with terrorism and the European Court of Human Rights found in their favour.¹⁶ The stop and search powers included in the Terrorism Act have since been repealed and replaced by section 47A Terrorism Act 2000.¹⁷

This attempt to criminalise the activities of those engaged in demonstrations is not restricted to the UK. In Spain, for example, Plataforma En Pie (Stand Up Platform) called in September 2012 for a massive demonstration to be held in Madrid, in front of the Congress, under the slogan "Surround the Congress". Its purpose was to directly address the Congress' Deputies about perceived injustices. The 25 September ("25S") Coordinating Body published its call on social media sites and made clear that it intended the demonstration to be peaceful. Despite its peaceful nature, the police responded with force resulting in sixty people being injured and thirty-five individuals arrested.

When appearing before the Congress of Deputies' International Committee on 26 September 2012, the Director General of Police justified the police's action by the existence of movements and organisations that resort to violence, "as in the case of 25S", and argued that "a crime was committed against Parliament". The judge, however, was not convinced. He concluded he was unable to establish any infringements of the Criminal Code.¹⁸ He noted that the call to demonstrate had not made reference to any form of violent action, that there had been no disruption to the normal activities of the Chamber, and that in contrast with what the police report said, there was no prior intention by those engaged in the protest to violently enter Congress.¹⁹

12 See *Reuters*, 31 March 2014: <http://uk.reuters.com/article/2014/03/31/uk-greece-ecofin-protests-idUKBREA2U0XV20140331>

13 See Prof Dr Anne Peters and Dr Isabelle Ley, *Comparative Study: Freedom of Peaceful Assembly in Europe*, op. cit.

14 See *Protest around parliament*: <https://www.liberty-human-rights.org.uk/human-rights/free-speech-and-protest/protest/protest-around-parliament>

15 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

16 *Gillan and Quinton v. the United Kingdom*, no 4158/05, ECHR 2010: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#%7B%22itemid%22:%5B%22001-96585%22%5D%7D>

17 See *Take Back the Streets: Repression and criminalization of protest around the world*, op. cit.

18 See *Take Back the Streets: Repression and criminalization of protest around the world*, op. cit.

19 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

The monitoring of, and collection of data about, protestors is also arguably part of this pattern of criminalising protestors. The anonymity of those engaging in demonstrations is being denied in many member states. The UK operates a “domestic extremists” database which includes many peaceful demonstrators. Belgium, Denmark, France and Hungary prohibit the concealment of faces in order to allow for easy identification of participants. Spain is proposing to introduce a similar ban. All such measures interfere with an individual’s right to free assembly and expression, especially since covering one’s face may be a form of symbolic expression, or indeed, may be motivated by legitimate concerns about individual safety.

On 6 March 2014, the UK’s Home Secretary Theresa May announced a public inquiry into the work of an undercover police unit called the Special Demonstration Squad (SDS) which was set up in the UK in 1968. Its aim was to infiltrate and survey political groups and obtain “accurate intelligence” about their members. The “radical” groups infiltrated by the SDS included anti-Vietnam protests, the campaign against apartheid in South Africa, the women-only peace camp at Greenham Common, Youth Against Racism, and campaigns which called for reform of the police. Sexual relationships between undercover officers and activists appear to have been used to glean intelligence. There is evidence to suggest that the information collected by the Police was shared with private companies, who used the information in their recruitment decisions.²⁰

The affair of the “five Roanne activists” is considered illustrative of the harassment to which activists can be subjected in France. The five Roanne union members were arrested for having tagged a wall during a demonstration to support retirement rights on 23 September 2010. They were later released but received a summons for a DNA test. They refused to submit to this test and were arrested again as a result. The Court of Roanne acquitted them in December 2013 but this decision was appealed by the Prosecutor. As a “successive offence” the refusal to submit to the DNA test was a sufficient reason to be sentenced. More recently, during anti same-sex marriage demonstrations in June 2013, a demonstrator was arrested and summoned to appear in court for refusing to have a DNA sample taken. He was sentenced to pay a fine of one thousand euros. The gathering of genetic information of detained protesters even when they are not charged, or are later condoned, is a common practice that is worryingly increasing in France.²¹

In a letter addressed to the Minister of Justice, several associations²² called for a modification of the national database based on the precedent set by the European Court of Human Rights on 18 April 2013²³, whereby the Court recalled that data must be pertinent and non-excessive in relation to the purpose for which it is recorded. Despite this, the current expansion of genetic filing practices entails a risk of stigmatising persons who committed no criminal offense by putting them in the same category as sexual delinquents.

4. The Excessive Use of Force and Detention in Policing Assemblies

There have, unfortunately, been many instances during last few years in which law enforcement officials have used excessive force or have otherwise ill-treated protesters, particularly when dispersing assemblies and protests. This has been the case even when the majority of those gathered have been peacefully exercising their right to assemble.

Demonstrations in France have been the scenes of increasingly violent confrontations between protestors and the police. On 22 February 2014, seventy people were hospitalised at a demonstration in Nantes. The assembly was protesting against the project to build an airport in the near-by location of Notre-Dame-des-Landes. Two of the individuals taken to the hospital were blinded by a “flaskball” while they were marching. In June 2013, a demonstration against same-sex marriage in Paris resulted

20 Rob Evans and Paul Lewis, *Undercover: The True Story of Britain’s Secret Police*, 2013.

21 See *Le Monde*, 19 June 2013: http://www.lemonde.fr/societe/article/2013/06/19/un-opposant-au-mariage-homosexuel-condamne-a-deux-mois-ferme_3433017_3224.html

22 Human Rights League, the French Judges’ Union, the French Lawyers’ Union, Creis Terminal and the Cecil.

23 European Court of Human Rights “*M. K. c France*” affair, 18 April 2013, n° 19522/09: [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-118597#{%22itemid%22:\[%22001-118597%22\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-118597#{%22itemid%22:[%22001-118597%22]})

in the intervention of law enforcements forces using tear gas on demonstrators. Four people were injured and several hundred arrested.

Amongst the material at the disposal of the riot squads in France is the “usual” arsenal of tear gas, clubs and stun grenades or flashbangs. However, a more recent generation of “non-lethal” or “less than lethal” incapacitating weapons have also been introduced. These include electroshock weapons, “flasball” and rubber bullet single shot launchers. Designed not to seriously wound or kill the target, these “non-lethal” weapons supposedly provide authorities with an intermediate solution between physical intervention and firearms. They aim to enable the police to remain at a safe distance from a violent mob or to neutralise a dangerous person. However, in practice, regular incidents²⁴ reveal they are a source of danger and can cause serious injuries to demonstrators.²⁵ Despite this, no modification of the French penal code has taken place since their introduction and no regulatory supervision is required to use them.

Several grave incidents have pushed the French Ombudsman to recommend that the use of these weapons be prohibited or more strictly controlled for the policing of demonstrations²⁶. Some examples include the cases of Virginie Barriel, a student, who was violently arrested in April 2005 in Lyon by three plainclothes policemen during a marching musical demonstration through the city, and a Taser electroshock weapon was used against her. In light of the circumstances, the proportionality of this act is disputable. In July 2009 in Montreuil, five persons including Joachim Gatti, a 34-year-old filmmaker, were shot at with flashball guns during a protest demonstration against the evacuation of squatters. Gatti was seriously wounded and lost sight in his right eye. In December 2013 in Grenoble, Quentin Charron, a professional 31-year-old fireman was seriously wounded by a flashball gun during a gathering of firemen and lost use of his eye. In February 2014 in Nantes, Quentin Torselli, a 29-year-old carpenter, and Damien T., a 25-year-old mason, were blinded after being shot at with flashball guns during an environmentalist demonstration against the construction of a new airport.

In Barcelona on 27 May 2011, police officers used batons and rubber bullets against demonstrators who peacefully occupied the Plaça Catalunya square. Those demonstrating did not appear to pose any apparent threat to law enforcement officials or the public. Indeed, the police deployed their personnel, without prior notification, against the 15M demonstrators, arguing the square needed to be temporarily evacuated “in the interests of sanitation”. The protestors sat down, trying to block the police vehicles and the municipal cleaning service from entering the area. But the police forced their way in with baton charges and smoke canisters. One hundred individuals were injured, twenty seven of whom were policeman; the rest were members of public.²⁷

Video footage, pictures, press reports and witness testimonies also point to the repeated use of an excessive use of force by the Greek police during the demonstrations organised against the austerity measures in May and June 2011 in Athens. On 11 May 2011, unofficial sources report that thirty protestors sought hospital treatment, including two who were seriously injured. Police sources report that fifteen of their officers were injured. Pictures published in the media and video footage corroborate the testimonies of many who were injured while attending these demonstrations, that riot police officers were aiming at

24 It is noteworthy that the European Court of Human Rights recently found a violation of Article 3 ECHR in the (non-protest) case of *Georgiev and Others v Bulgaria* (Application no. 51284/09, judgment of 30 September 2014), regarding the use of electroshock weapons. The Court noted (at para.73) that it was particularly unsatisfactory that the prosecuting authorities concluded, relying only on the statements of the police officers involved in the operation, that the applicants had disobeyed the police officers’ orders in a manner which required the use of physical force: “To make such an assumption runs contrary to the principle under Article 3 that, when the police confront an individual, recourse by them to physical force which had not been made strictly necessary by the individual’s own conduct is in principle an infringement of his or her rights.”

25 This is unsurprising when you consider the capabilities of this equipment. The *Brugger and Thomet* GL 06 40 x 46 single shot launcher, for example, is able to fire rubber bullets at individuals while “Taser” electroshock weapons deliver electrical shocks of several tens of thousands of volts.

26 Report dated 28 May 2013 on the use of non-lethal weapons by the French police and gendarmerie (Taser X26® electroshock gun, Flash-Ball superpro®, and 40 x 46 Brügger & Thomet GL-06 single-shot launcher).

27 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

individuals' heads and using the handle of their batons to hit them, and on occasions beat and kicked people lying on the ground who were posing no threat.²⁸

More recently, in June 2014, Greek cleaning workers reported that they had been beaten up and bruised by riot police after they tried to protest peacefully against mass redundancies in central Athens. The protestors, mostly women aged forty five to sixty had lost their jobs at the Ministry of Finance as a result of the austerity measures implemented by the Greek government.²⁹

As previously mentioned, in January 2012, several demonstrations took place in Bucharest, Romania, triggered by austerity measures and a reform proposal aiming at partially privatising the health care system, but then widened to include general discontent against government policies. Although the demonstrations were generally peaceful, some violent incidents were reported. There are several documented incidents of police officers using excessive force against peaceful demonstrators who were not offering any resistance. The Bucharest based human rights organisation, APADOR - Helsinki Committee, has documented several cases of abuses against individuals carried out by the police and concludes that some of the law enforcement officers' actions were arbitrary and disproportionate to the given situations.³⁰

In addition to the increased use of excessive force, some European countries have also seen a **rise in the use of kettling and arrest seemingly to detain individuals intending to, or taking part, in assemblies**. Typically, individuals are arrested and detained for a short period of time and then released without charge. These arrests not only prevent individuals from taking part in demonstrations but such practices have also a chilling effect on those who wish to engage in demonstrations in the region.

In 2009, in Germany, the public prosecution service announced that 955 of the 1,474 preliminary investigations initiated by police in relation to individuals who had taken part in demonstrations against the G8 summit held the year before, had been dropped for lack of evidence. Legal teams present at the protests described the high number of arrests and low conviction rate as a scandal that showed many arrests were unwarranted and violated the right to demonstrate.³¹

In the UK, a number of individuals who were arrested in 2012, prior to the royal wedding between Kate Middleton and Prince William, unsuccessfully challenged their "pre-emptive" arrests in the High Court in London. Fifteen protestors were arrested at various locations in the city, while going to attend a "Not the Royal Wedding" street party. The individuals were taken into custody and held until the royal couple had been officially married. They were then released without charge. The court did not consider such actions unlawful.³²

During the COP15 demonstration in Copenhagen in 2009, the Danish police preventively detained 1.900 persons. Many of those held subsequently filed court cases on the legality of their detentions. The High Court found in favour of the majority of the plaintiffs, whom it said had been subjected to illegal detention. It also held that the conditions during some of the interventions had been demeaning and in conflict with human rights, including freedom of expression, freedom of assembly, personal freedom and protection against demeaning treatment. In response, the Danish Institute of Human

28 See Amnesty International, 16 June 2011: <http://www.amnesty.org/en/for-media/press-releases/greece-urged-not-use-excessive-force-during-protests-2011-06-16>

29 See Amnesty International, 13 June 2014: <http://www.amnesty.org/en/news/protesting-cleaners-beaten-and-bruised-police-greece-impunity-persists-2014-06-13>

30 See Amnesty International, *Policing Demonstrations in the European Union*, 2012: <http://www.amnesty.org.uk/sites/default/files/eu-police.pdf>

31 See Statewatch Analysis, *Policing Protests in Switzerland, Germany and Italy*, 2008: <http://www.statewatch.org/analyses/no-68-eu-policing-protests.pdf>

32 See *Hicks & Others v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin) and subsequently [2014] EWCA Civ 3; See *Guardian*, 18 July 2012: <http://www.theguardian.com/uk/2012/jul/18/royal-wedding-protesters-lose-case>

Rights has called for the Police Act regulations to be revised to limit the scope and duration of any preventative detention.³³

In France, the controversial practice of kettling was used by the police on 26 January 2011, in relation to a protest against a meeting at the Automobile Club of Paris. No dispersal order was issued, instead, seventy peaceful demonstrators were kettled by military riot police. They were then arrested, searched, detained in a police bus and transported to a police station before being released without charge. According to the police department, the peaceful demonstrators were arrested to “verify their identity”. But, according to the law, such arrest may only be authorised if the citizen refuses to disclose his identity upon request and according to witnesses and videos of the events, the demonstrators were not even asked for their identity before being arrested. Once arrested it is also reported that individuals were not advised of their rights to a phone call or to have the prosecutor informed of their detention.³⁴

Similarly on 26 May 2011, a demonstration was organised in the Place de la Rotonde to protest against the G8 meeting in Deauville and no dispersal order was issued. Instead the demonstrators were kettled by riot police and plain clothed police officers. Ninety five demonstrators were arrested, searched, detained in a police bus and transported to police stations before being released without charge. Again, it is reported that these individuals were not advised of their rights and did not receive the mandatory police report following release, which states the reasons for detention.³⁵

5. Accountability of Law Enforcement Forces

These examples of acts of violence and repression are compounded by the lack of accountability on the part of law enforcement agencies in cases of alleged abuses. Investigations into complaints against police officers and other authorities are not always thorough, impartial or effective. Sometimes, no investigation is initiated at all. Many European justice systems appear unwilling or unable to undertake the serious investigations necessary to hold powerful state actors accountable for their actions.

In Spain, 390 complaints were lodged about the excessive use of force in relation to the evacuation of the Placa Catalunya. The *Sindic de Greuges* (the Ombudsman in Catalunya) called upon the Autonomous Catalan Government to carry out an internal investigation into the disproportionate use of force and, where appropriate, to punish those responsible. Amnesty International also approached the Councillor of the Interior of the Autonomous Catalan Government, calling on him to conduct an investigation into the events. Amnesty received a response from the Councillor in which he recognised that there may have been problems with the way the police operation was implemented, and announced that he was going to order a detailed investigation in order to examine what happened and to avoid the repetition of mistakes.³⁶ Although the findings of the investigation conducted by the Catalan government were never made public, the *Sindic de Greuges* issued a resolution including general recommendations on the use of excessive force.³⁷

In April 2013, the 15M Legal Committee submitted a document to the Ministry of the Interior accompanied by photographs and video footage showing that police officers were not wearing their identity badges as required while policing demonstrations, and requesting that disciplinary proceedings be opened about this matter. In May 2013, the State Secretary for Security replied, with a brief letter, stating that disciplinary proceedings could not be opened because it was not possible to identify the officers concerned.³⁸

In Greece, following the anti-austerity demonstrations during May 2011, in Athens, several individuals filed complaints about the police’s use of force against them. For example, Yiannis Kafkas sustained near fatal head injuries after he was beaten by riot police. Yiannis said he was hit with one of the fire extinguishers that some of the riot police carried with them. He remained in hospital for twenty days, after emergency surgery, ten of which were in intensive care. In February 2012, nine months after a criminal investigation into the case was initiated, the police inquiry was completed and the findings submitted to the Prosecutor.

33 See *Human Rights in Denmark, Status 2013*: <http://www.humanrights.dk/publications/status-2013-human-rights-denmark>

34 See *European Court of Human Rights News*, 10 June 2011: <http://echrnews.wordpress.com/2011/10/06/freedompeacefulassembly/>

35 *Ibid.*

36 See Amnesty International, *Spain: The Right to Protest under Threat*, op. cit.

37 See http://www.sindic.cat/resolucions/Root/html/R_0314811.htm

38 See Amnesty International, *Spain: The Right to Protest under Threat*, op.cit

However, at the time of writing, as far as the researchers are aware, no further progress has been made with this case.³⁹

In France, to date, no police officer who has shot and wounded a demonstrator has been held criminally responsible for the charges pressed against him. In the case of Pierre Douillard, wounded in Nantes in 2007, the policeman in question, whose identity had been clearly established, was acquitted because he was obeying orders. In Montreuil, in the Joachim Gatti case, the National Committee on Security Ethics expressed concern over the “carelessness” and “serious professional negligence” and requested disciplinary sanctions.⁴⁰ After years of proceedings, 3 policemen will finally be referred to penal court for “deliberate and organized violence”, and the trial should take place by the end of 2014. This is an encouraging, however too isolated case of penal proceeding against police officers for excessive use of force against protesters.

In response to the lack of proper criminal accountability, some victims of excessive force by the police in France have now decided to seek civil accountability instead. Clement Alexandre, wounded by a “flasball” gun during the annual music festival in Paris in 2009 abandoned penal legal proceedings and decided to directly accuse the Chief of Police before an administrative court in October 2012. The proceedings established a firm link between his wound and the “flasball”.⁴¹

The ten year anniversary of the 2001 G8 summit in Italy saw Amnesty International release a statement condemning the impunity of those who committed human rights violations during the demonstrations in Genoa, calling it “an intolerable stain on Italy’s...record”. Amnesty wrote that there is a sizeable body of evidence which shows that protesters were ill-treated by law enforcement officers both during the street demonstrations and at the Armando Diaz school and the Bolzaneto temporary detention facility.⁴²

Amnesty provides examples of people being struck with batons, punched, kicked and hit with pieces of furniture and, as a result of these abuses, ending up with life-threatening conditions. However, as the crime of torture is not foreseen in Italian domestic legislation, officers who might have been charged with this offence have not been prosecuted. Moreover, the prosecution of other criminal offences with which officers were charged, were time-barred (due to prescription of these crimes, considering the very long proceedings), and none of those convicted were suspended from duty pending appeal.

Scores of other law enforcement officers believed to have participated in assaults could not be identified because their faces were hidden by masks, scarves or riot helmets and they wore no numbers or name tags. Amnesty concluded that “Italian authorities had failed to establish effective mechanisms to prevent police ill-treatment or to adopt concrete measures to ensure effective investigation, and where appropriate, prosecution, of all law enforcement agents involved in torture, ill-treatment, excessive or arbitrary use of force and other human rights violations” and called on this impunity to stop.

39 See Amnesty International, *Policing Demonstrations in the European Union*, op.cit

40 See *Le Figaro*, 10 March 2010: <http://www.lefigaro.fr/actualite-france/2010/03/10/01016-20100310ARTFIG00586-l-usage-du-flash-ball-doit-rester-exceptionnel.php>

41 See <http://faceauxarmesdelapolice.wordpress.com/>

42 See Amnesty International, *Italy: Impunity for Violations Committed on the Occasion of the 2001 Genoa G8 Summit an Intolerable Stain on Italy’s Human Rights Record*, 2011: <https://www.amnesty.org/fr/library/info/EUR30/013/2011/en>

Recommendations

The EMHRN calls on the governments of the European Union member States to take immediate action to:

1. Review domestic legislation to ensure any administrative or legal regulations that could restrict protest are demonstrably necessary and proportionate; carefully monitor the implementation of these laws and policies to ensure they are not being implemented in a discriminatory or unnecessarily restrictive manner;
2. Ensure that the authorities are always open to dialogue with the assembly organizers (both prior to and during gatherings) and where such dialogue occurs, that it is voluntary and its purpose is to better facilitate the right of peaceful assembly;
3. Put an end to arbitrary arrests during peaceful demonstrations and to the judicial and administrative harassment of citizens demanding their right to demonstrate peacefully;
4. Explicitly recognise that individuals who are exercising their right of peaceful assembly continue to receive protection, even when others within a crowd commit acts of violence.
5. Take all necessary measures to prevent the use of excessive force and other human rights violations by law enforcement officials during demonstrations, including the introduction of proper regulation regarding the use of “less lethal” weapons; train law enforcement authorities in the use of force and anti-riot weapons accordingly;
6. Ensure that prompt, thorough, impartial and effective investigations are carried out into allegations of the use of excessive force and other human rights violations by law enforcement officials, and that disciplinary and criminal proceedings are initiated where appropriate, those responsible are punished and victims are able to obtain redress and receive guarantees of non-repetition; to this end, establish an independent mechanism for monitoring and investigating the behaviour of the security forces where it does not exist;
7. Scrutinise, amend and initiate training programmes on the lawful use of force during demonstrations, including on respect for human rights.



"Protest against the economy cuts, Barcelona, 15 June 2011."
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Freedom of Assembly under Threat is the second part of the regional study on the freedom of assembly in the Euro-Mediterranean region. It completes the first part's assessment of the legislative framework of the right of assembly published in 2013 by analysing the implementation of laws and the exercise of the freedom of assembly and demonstration in practice.

This report confirms the findings which were already discernible from the analysis of the laws, namely, that in most southern and eastern Mediterranean countries the authorities do not comply with the recommendations of international human rights bodies for the protection and promotion of the freedom of assembly. In most of these countries, meetings and demonstrations - especially when they are critical of the authorities - are viewed by States as a political and security risk to be contained, and not as a constitutive phenomenon of democratic life and a right whose exercise the authorities must facilitate.

The recent developments in the Maghreb and the Middle East show that the use of public spaces for the purposes of collective free expression and demands by the citizens has assumed great importance. Mass movements have, in some countries, led to regime overthrow, and in others, forced the authorities to make reforms (not always as democratic as expected), or by contrast, revealed the darkest side of dictators who are ready to commit the worst abuses in order to stay in power, as in Syria.

Almost everywhere, the reaction of the authorities has been the repression, often bloody, of protest movements. Everywhere there is an excessive and illegal use of force and a lack of tolerance for peaceful assemblies on the pretext that procedures have not been respected, and public order or the smooth functioning of institutions have been disrupted. Many obstacles are put in place, at times leading to the arrest of the organizers and the participants, and ending up with judicial proceedings whose consequences sometimes lead to years of imprisonment. Unfortunately, another characteristic common to the countries of the region is the almost total impunity enjoyed by political leaders and officers of the security forces for the abuses committed in the context of operations to maintain order at demonstrations, whether it be unjustified interference in the freedom of assembly, the injuries and deaths caused by the excessive use of force, ill-treatments or even arbitrary arrests and detentions. There is still a long way to go in protecting and promoting freedom of assembly and demonstration. This would include a redefinition of democracy, not as a formal institutional system through which public participation is limited to electoral consultations, but as a space of permanent debate where opposition, differing and minority views can be publicly and peacefully expressed.

In Europe also, if the respect for civil liberties is the rule rather than the exception, many restrictions and obstacles to the freedom of assembly are a reminder that rights must be constantly defended and exercised on pain of losing their substance. The growing criminalization of social and protest movements, the extension of the monitoring of citizens, as well as the excessive use of force against demonstrations, are worrying phenomena which challenge the state of democracy in Europe and are a call to build bridges across the Mediterranean so as to share experiences and cultivate solidarity throughout the region with the aim of deeply rooting democratic rights and processes in the South as well as the North.



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Freedom of Assembly under Threat
Muzzling dissent in the Euro-Mediterranean region
Part II: Practices
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