



"Egyptian soldiers protect the Republican guard headquarter
in Cairo, 5 July, 2013."
by Pierre Terdjman/Agence Cosmos

EGYPT

PRESENTATION

This country review is part of a larger study on **Freedom of assembly in the Euro-Mediterranean region** in the present time, presented in two parts: **I- Legislative review**, and **II- Practice of freedom of assembly**. Part I of the regional study was published in November 2013, and Part II will be published in 2014.

The full Regional study on Freedom of Assembly in the Euro-Mediterranean Region is available [here](#). It presents international standards protecting this fundamental right, and proceeds to analyzing the legal frameworks and their compliance to international human rights standards in 13 countries of the Mediterranean and the European Union: [the EU as region](#), [Spain](#), [the United Kingdom](#), [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Turkey](#).

In order to develop the assessment of national legislations in comparison to international standards and the practical implications of legal provisions concerning freedom of assembly, objective indicators were used as a reference throughout this study, together with a gender-sensitive approach to detect whether women enjoy freedom of assembly to the same extent as men, or if they are more specifically affected by restrictions.

This study is based on a process of consultation and participation involving members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 organizations and institutions of human rights defense based in 30 countries as well as individual members. It thus reflects the efforts of a researcher recruited in the country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of other civil society organizations and experts.

Accordingly, the objective of this study is to provide Human Rights defenders and civil society organizations, international organizations and state institutions, with an analysis that allows them to assess national policies in their country and compare them to those of other countries and to international conventions, in order to advocate for relevant reforms and help improve the situation of freedom of assembly in the countries of the Euro-Mediterranean area.

Introduction

Two and a half years after Egypt's revolution, the transition towards democracy and the rule of law is in a tight spot. Popular dissatisfaction regarding the political and economic performance of President Mohammad Morsi and the Muslim Brotherhood enormously escalated and led to his ouster by the military after a massive popular uprising on June 30, 2013. In its short experience in power, the Muslim Brotherhood significantly concentrated power and did not improve the rule of law and human rights situation of the country. Human rights defenders were marginalized during the transition and have been subjected to a smear campaign, harassment and negative propaganda. On November 22, 2012, President Morsi enacted extraordinary measures allowing the Constituent Assembly to hastily finalize the Constitution and putting it into public referendum. Many of the Constitution's provisions fall short of international human rights norms (For example on Freedom of assembly, as will be shown here), and it consolidates the Islamic nature of the State. This constitution was suspended after President Morsi's destitution. In July 2013, the President of the Supreme Constitutional Court swore in as an interim president and appointed a representative cabinet to lead the new transitional period until the constitution is amended and new parliamentary and presidential elections are held.

After February 2011 and the ousting of President Mubarak, Egypt's post-revolutionary authorities maintained the legal and security pillars of the former authoritarian regime without meaningful reforms. Following the revolution, Egypt experienced some progress in political participation. This was manifested in the establishment of dozens of new political parties and the occurrence of competitive parliamentary and presidential elections. However, successive governments have repeatedly stifled other human rights such as freedom of assembly and association, freedom of expression and the rights of women and religious minorities.

The Egyptian law contains massive restrictions on the right to peaceful assembly, inherited from the colonial period and extended by Egyptian rulers. Nevertheless, since the last decade, political activists and protesters often take the risk and challenge these immense regulations. Instead of reviewing these draconian regulations, the transitional governments of the Supreme Council of the Armed Forces - SCAF (January 2011 - June 2012) and later the Muslim Brotherhood have used these regulations to curb critics. In numerous incidents since 2011, Armed Forces and the Police used excessive and lethal force to disperse protesters and strikers. Hundreds of Egyptians were killed and seriously injured during these incidents and the state has failed so far to investigate these killings. Female protesters have been repeatedly exposed to brutal sexual violence by state and non-state actors. The brutal confrontation with protesters has continued under President Morsi with an increasing role given to regime's supporters who attacked and intimidated demonstrators with full impunity.

In early 2013, under President Morsi, the government proposed a draft law which contains draconian restrictions on the right to peaceful assembly. As a response, the UN Special Rapporteurs publicly condemned this draft in March 2013¹, but the draft law has not been withdrawn.

1. General Legal Framework

Egypt has ratified the **main international instruments** protecting freedom of peaceful assembly, such as the International Covenant on Civil and Political Rights (Article 21),² and the African Charter on Human and Peoples' Rights (Article 10).³ Egypt has also signed the Universal Declaration of Human Rights (Article 20/1). Thus, Egypt is committed, in accordance with its Constitution and ratified treaties, to maintaining the right of citizens to peaceful assembly.

According to the **Constitution**, international treaties and agreements do not take precedence over domestic law but have the force of law after they are signed, ratified and published according to the established procedure (Article 145). This provision is problematic as it contradicts the nature of the obligations brought forth by international human rights treaties, whereby governments pledge to introduce measures and domestic legislation compatible with their contractual obligations. The applicability of international treaties in Egypt is thus not guaranteed.

Successive Egyptian constitutions have addressed and incorporated the right to peaceful assembly as a public freedom. Article 50 of the current Constitution states:

Citizens have the right to organize public meetings, processions and peaceful demonstrations, unarmed and based on the notification regulated by law. The right to private assembly is guaranteed without the need for prior notice. Security personnel shall not attend or intercept such private meetings.

Freedom of assembly is regulated and in many instances restricted by several laws and provisions that will be detailed later on:

1 Statement by the UN Special Rapporteurs on freedom of peaceful assembly and of association, on human rights defenders, and on freedom of opinion and expression on 28 March 2013: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13190>

2 Egypt signed this convention on August 4 in accordance with Republican Decision no. 536 of 1981 issued on October 1, 1981, and ratified it on 14 January 1982. The convention was published in the Official Gazette issue no. 15 on April 15, 1982.

3 Egypt signed the charter on November 16, 1981 in accordance with Republican Decision no. 77 of 1984 and ratified on 20 March 1984, however, it was only published in the Official Gazette issue no. 17 on April 23, 1992.

- ▶ Law No.10 of 1914 on public assembly.
- ▶ Law No.37 of 1958 establishing the Penal Code
- ▶ Law No.162 of 1958 on the State of Emergency
- ▶ Decree No. 34 of 2011 on Criminalization of Assaults on the Freedom to Work and Vandalism against Facilities
- ▶ Law No.85 of 1949 on Maintaining Order in Educational Institutions
- ▶ Law No. 109 of 1971 on Police Force
- ▶ Minister of the Interior's Decision No. 156 of 1964 on the Use of Firearms.

The Law Governing the Right of Peaceful Assembly⁴

This law was promulgated under the Constitution of 1923, a time when the country had no legislative councils,⁵ along with a handful of extraordinary laws including Martial Law,⁶ and the amendment of the Penal Code to criminalize strikes in state institutions.⁷

The law of 1923 guarantees the freedom to hold public meetings and demonstrations on public roads for all citizens. According to this law,⁸ *"A meeting shall be considered public if the governor, director or the police authority believes that the meeting is not a genuine private meeting considering its subject matter, the number of invitations or the method of their distribution or any other circumstance. In this case, the governor, director or the police authority must notify the organizer of the meeting to follow the procedures established herein"*.

Spontaneous gatherings are not regulated in law no. 14 of 1923 and, therefore, are outlawed.

2. Procedures

The law no. 14 of 1923 equates **public meetings and demonstrations** in numerous articles, subjecting both to procedures and restrictions that are almost identical.

Article 2 requires that the governor's office or public security department be **notified at least three days before** the meeting is held, and 24 hours before electoral meetings. Article 3 describes the content of such notification including the meeting's date and venue as well as members of

4 Law no. 14 of 1923 on public meetings and demonstrations on public roads, published in the Official Gazette on June 4, 1923 and amended by Law no. 28 of 1923, published in the Official Gazette on March 21, 1929.

5 The first representative council convened on March 15, 1924.

6 Law no. 15 of 1923, published in the Official Gazette on June 28, 1923.

7 Law no. 37 of 1923, published in the Official Gazette on September 13, 1923.

8 Article 8 of the law, amended by Law no. 28 of 1929.

the committee responsible for maintaining order, preventing infringements of applicable laws, maintaining the meeting's capacity as set out in the notification, and preventing any speech that contradicts public order or morality or involves incitement to crimes (Article 6).

Accordingly, the law does not oblige concerned authorities to receive the notification or **confirm receipt of such notification** to meeting organizers. This means that meeting participants can be penalized for lacking proof of the submission of the notification.

Both prior restrictions imposed on organizers (see below), as well as the uncertainty attached to the notification procedure, entail grave breaches of freedom of assembly pursuant to international norms and good practices.⁹ Moreover, in line with the presumption in favor of holding peaceful assemblies, the Assembly Law should include an exemption from prior notification in special circumstances when an immediate response in the form of a demonstration may be justified, as many national legal frameworks foresee.¹⁰

Law no. 14 of 1923 does not provide for **mechanisms of negotiation** between the authorities and event organizers or participants, contradicting international recommendations.¹¹

3. Restrictions

The law no. 14 of 1923 gives the executive authority absolute power to ban any meeting or demonstration if the authority considers such meeting or demonstration as disturbing public order or security because of its purpose, venue, circumstances, or other serious reason. The executive authority shall inform the organizers at least six hours before the event's scheduled time. Nonetheless, electoral meetings may not be banned.

The organizers may appeal the ban to the minister of the interior (Article 4).¹²

The law restricts the freedom of peaceful assembly for the time and place specified of the meeting, and bans meetings in places of worship, schools and on government properties. Meetings may not extend beyond 11:00 p.m. except with the permission of the security apparatus (Article 5).

9 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, 20th session, A/HRC/20/27, para. 24-32, 39-42.

10 See OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, para. 4.2; also *supra* note 11, para. 29.

11 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Human Rights Council, 23rd session, A/HRC/23/39, para. 45.

12 According to international standards on freedom of assembly, organizers should be granted the possibility of an expedited appeal procedure, see *supra* note 11, para. 42.

In addition to the constraints set forth in the law no. 14 of 1923, **several other laws restrict the right of citizens to participate and express collectively.**

The State of Emergency¹³ constitutes the pinnacle of suppressing public freedoms. The emergency law vests gigantic powers in administrative authorities and the security apparatus. In particular, Article 3 empowers the emergency authority to take extraordinary measures to restrict freedom of assembly, movement, residence, and passage through certain places or at certain times; arrest and detain suspects and individuals who endanger public security; and search persons and places without compliance with the provisions of the Code of Criminal Procedure.

The state of emergency was enacted continuously in Egypt since 1981 until it was lifted in May 2011. However, the last declaration of the state of emergency in Egypt was issued by President Mohamed Morsi under Decree No. 45 of 2013 in Suez cities (Ismailia, Suez, and Port Said). This state of emergency was limited to 1 month starting on 27 January 2013.

The Law on Criminalization of Assaults on the Freedom to Work and Vandalism against Facilities¹⁴ of 2011: In response to the increasing social and economic protests following the fall of Mubarak, the Supreme Council of the Armed Forces (SCAF) issued a single-article decree under the state of emergency known as the “Law Criminalizing Strikes and Sit-ins”. It criminalizes participants in strikes and gatherings that, under the state of emergency, “*Obstruct or impede the work of a state institution, public authority or public or private business*” and gatherings involving very vague crimes such as “*Harming national unity or social peace, disrupting public order or security, damaging public or private capital, buildings or property or occupying or seizing the same*” or whoever “*Incites, advocates for or promotes any of the aforementioned acts, even if the act does not materialize*”.

The Law on Maintaining Order in Educational Institutions¹⁵ forbids students in schools, colleges and other educational institutions to hold meetings without prior permission from competent university authorities and demonstrations (Article 1).

4. Protection

The Constitution protects the rights and freedoms set forth therein, including the right of peaceful assembly, from attempts aimed at disabling or compromising them. Theoretically, it prevents any law regulating the exercise of these rights from affecting their essence,¹⁶ and considers any attack on these rights and freedoms a crime. According to the Constitution, the State guarantees fair compensation for those whose rights have been attacked.¹⁷

13 Law no. 162 of 1958 published in the Official Gazette on September 28, 1958.

14 Legislative Decree no. 34 of 2011, published in the Official Gazette on April 12, 2011, Issue no. 14 a (A).

15 Law no. 85 of 1949, published in the Official Gazette no. 93 on July 21, 1949.

16 Article 81 of the Constitution.

17 Article 82 of the Constitution.

However, in contradiction with the spirit and letter of these provisions, the law governing the Right of Peaceful Assembly no. 14 of 1923 does not guarantee the protection of assembly participants; instead it holds them responsible for all of the “crimes” committed during the meeting.¹⁸

This law gives the executive authority absolute power to disband the meeting or disperse the demonstration on very loose grounds (including “*in the case that a committee was not formed or failed to perform its function*”).¹⁹

The Police Force Law²⁰ regulates the use of force by law-enforcement agents. Article 102 of the Police Force Law empowers police to use force to the extent necessary for the performance of their duty if force is the only way to perform this duty. It further empowers police to use fire power to disband gatherings and demonstrations if public security is at risk after warning the crowd to disperse. The order to use fire power in this case shall be issued by a commander who must be obeyed, but the Law does not strictly define what is “*The extent necessary for the performance of their duty*” nor does it set proportionality and progressivity principles.

A Minister of the Interior’s Decision on the Use of Firearms²¹ allows the use of firearms against assemblies and demonstrators in order to disband them, after a first vocal warning. The decision explicitly states that “*The unit shall shoot at [the demonstrators] periodically*”, with pellet rifles first, and then with live bullets and rapid firing “when necessary”.

Such provisions fail to meet international principles, according to which firearms may only be employed to protect life of others or in self-defence and only when less extreme means are insufficient to achieve such aims.²²

5. Sanctions

Penalties Provided for by Law no. 14 of 1923:

Law no. 14 of 1923 punishes **organizers of meetings and demonstrations** with imprisonment not exceeding six months and/or a fine not exceeding 100 Egyptian pounds if the meeting or

18 According to the Special Rapporteur on the right to freedom of peaceful assembly and association, the European Court of Human Rights and the OSCE/OIDHR Panel of Experts, States have a positive obligation to protect peaceful assemblies, including the protection of participants from agents provocateurs and counter-demonstrators; organizers should not assume this obligation.

19 Decisions to disband a peaceful assembly, without any illegal conduct, constitute a disproportionate restriction. In any case, in the dispersal of assemblies that are unlawful but non-violent, the use of force should be restricted to the minimum extent necessary (see UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

20 Law no. 109 of 1971, published in the Official Gazette no. 45 continued (B) on November 11, 1971.

21 Decision no. 156 of 1964, published in the Official Gazette no. 72, on March 29, 1964.

22 See UN Basic Principles on the use of force and firearms by law enforcement officials, art. 9.

demonstration was not notified or despite a ban order, whether the organizers were informed thereof or not (Article 11/1). The law provides for the imprisonment of a maximum of one month and/or a maximum fine of 20 pounds for **whoever participates or attempts to do so** despite police warning in a meeting, procession or demonstration organized without a notification or banned by an order or whoever disobeys the order to disband.

It is worth noting that these crimes fall within the **jurisdiction of the criminal court**, and can be appealed through the Court of Cassation.

An extraordinary Assembly Law²³ was promulgated under the British protectorate over Egypt during World War I, giving the security forces very broad powers to curtail public freedoms. The law was amended and doubles the maximum penalty prescribed for any crime if committed by a crowd member as stipulated in Articles 1 and 2 (Article 3 a).

The law also penalizes the assembly of five or more persons even if no crime is committed, whenever public authority agents, in their discretion, believe that such assembly could jeopardize the public peace. In this case, the public authority agents order the assembly to disperse. Failure to comply is punishable by imprisonment not exceeding six months or a fine not exceeding twenty pounds (Article 1). The law does not identify the criteria for disturbing public peace.

In practice, this law is used to punish protesters, alleging that they join gatherings with the intent of committing crimes, even when such alleged “crimes” are limited to interrupting traffic. Prosecutors use this law because it provides for penalties harsher than those prescribed in Law no. 14 of 1923.

The Penal Code²⁴ contains numerous articles that sanction penalties of up to life in prison for acts that take place during peaceful assemblies and demonstrations. These acts include “*preventing any of the State’s institutions or public authorities from exercising its works, or encroaching on the personal freedom of citizens or other freedoms and public rights as guaranteed by the constitution or the law, or impairing national unity or social peace (Article 86 a); attempting to overthrow or change the constitution of the country, its republican system or the form of the government (Article 87); deliberately destroying public buildings or property appropriated for governmental departments or public utilities (Article 90); advocating for the domination of one social class over other classes, destroying a social class, or overthrowing the basic social or economic systems of*

23 Law no. 10 of 1914, published in the Official Gazette on October 18, 1914 and amended through Decision no. 87 of 1968 issued by the President of the United Arab Republic and published in the Official Gazette on December 19, 1968, Issue no. 51.

24 Law no. 58 of 1937 published in the Official Gazette no. 71 dated August 5, 1937 and entered into force as of October 15, 1937.

the state or any of the basic systems of the social community (Article 98A); possessing written documents or printed matter containing advocacy or propagation of the aforementioned (Article 98 a); insulting a public official/civil servant, a law officer or any person charged with a public service while on duty or because of their duty (Article 133); interrupting traffic (Article 167)". These are extremely large reasons to harshly punish acts that can be protected under freedom of expression and assembly.²⁵

The Law on Criminalization of Assaults on the Freedom to Work and Vandalism against Facilities²⁶ of 2011 punishes participants in strikes and gatherings that “*obstructs or impedes the work of a state institution, public authority or public or private business*” to imprisonment (undefined) and/or a fine of a minimum of 20,000 pounds, as well as whoever incites or advocates for this activity.

It also punishes with imprisonment for a minimum of one year and/or a fine of a minimum of 100,000 pounds (approximately 11.000 euros) if the crime involves “*vandalizing any means of production, harming national unity or social peace, disrupting public order or security, damaging public or private capital, buildings or property or occupying or seizing the same*”.

Under the Law on Maintaining Order in Educational Institutions, the disciplinary punishments for students who hold demonstrations or unauthorized meetings range between verbal and written notice and expulsion from the university (Article 126).

6. Gender Equality and Freedom of Assembly

With regards to **women’s rights protection and exercise**, differently from the 1971 Constitution, the new Constitution adopted in December 2012 by around 20% of Egyptian voters²⁷ has erased the mention of gender equality. This opens the door for additional discriminatory laws against women in the future, and for discrimination in practice. In this context, the fact that the present Constitution does not mention international conventions as a superior source of legislation is worrisome, combined with calls from some Islamists to withdraw from the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is worrisome.

²⁵ See *supra* note 12, paras. 109-112; also *supra* note 11 paras. 29 and 31.

²⁶ Legislative Decree no. 34 of 2011, published in the Official Gazette on April 12, 2011, Issue no. 14 a (A).

²⁷ Overall number of voters 52 million, with a percentage of participation in the referendum of around 32% of the voters.

Egypt's current situation has shown that women are especially targeted by police and other protesters' violence, and that sexual harassment and violence in the context of assemblies and demonstrations has been a recurrent problem for years, and more since the 2011 popular uprising. Without regard to the social causes of this phenomenon, there is a legal framework that has deep loopholes in acknowledging and condemning gender-based violence and abuse and bears a great responsibility in perpetrating a sense of impunity for the authors of such violations. The Penal Code does not recognize "sexual harassment" but a crime vaguely defined as "attack against bashfulness". It does not refer either to State violence, while the practice of violating women's bodies is used systematically in order to break their resistance and remove them from the public space. In case of rape, the rapist is not sanctioned if he decides to marry the victim. These laws seriously encroach upon international standards laid down in treaties ratified by Egypt, such as CEDAW.²⁸ Additionally, the social culture is highly male oriented, especially after the rise of fundamentalism, and contributes in reducing the presence of women in the public sphere.

²⁸ Under Article 3 of CEDAW, "*States Parties are obliged to take all appropriate measures to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men*"; see also article 7(c).

1. Repeal Law no. 10 of 1914 on Public Assembly and Law no 34 of 2011 on Criminalization of Assaults on the Freedom to Work and Vandalism against Facilities as they are contrary to international standards;
2. Ensure that regulatory authorities comply with their legal obligations and are held accountable for procedural failure or abusive practices according to Article 5 of the Constitution, and in particular for failure to carry out their protection duty and to prevent law-enforcement officers from using excessive force;
3. Change the provisions of the Law governing the Right of Peaceful Assembly no. 14 of 1923 or draft a new law to regulate the right of assembly according to international standards, privileging a declaration regime, framing possible restrictions into strict standards of legality, proportionality and necessity in a democratic society, and limiting sanctions for non-compliance to administrative sanctions;
4. Repeal the Minister of the Interior's Decision on the Use of Firearms and reform the Police force Law no. 109 of 1971, to strictly regulate the use of force by law-enforcement agents, in particular restrict the use of live ammunition to extreme cases of imminent life danger;
5. Reform the Penal code to suppress provisions criminalizing acts that are protected under freedom of expression and freedom of assembly, in particular articles 86 a, 87, 98A, 98 a, 133 and 167.