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3 Regional Study

01 The Right to Freedom of Assembly in 2 the Euro-Mediterranean Region



Part I
Legislation Review

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Demonstration in Gezi Park, Istanbul, June 2013
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EXECUTIVE SUMMARY

Freedom of assembly in the Euro-Mediterranean region has been in the spot light in recent years. In Europe, as in countries both South and East of the Mediterranean, from Morocco to Turkey, citizens have taken to the streets to protest against policies they deemed unfair, to celebrate change or to topple dictatorships.

This publication is the first part of a Regional Study on Freedom of Assembly in the Euro-Mediterranean Region. It specifically deals with the legislative framework that enshrines the right to assembly in different countries. A second part which will be published during 2014, will deal with the implementation of legal provisions and the exercise of freedom of assembly in practice.

This study evidences that, in most countries of the South and East of the Mediterranean, laws restrict freedom of assembly and do not abide by the recommendations of international Human Rights bodies. In most of these countries, public meetings and demonstrations, especially when they are critical of public officials or policies – are considered by States as a political and security threat that has to be curtailed, instead of a phenomenon inherent to political life and a right that States must facilitate. Numerous legal provisions sanction this approach and expose peaceful demonstrators to judicial proceedings, administrative and police arbitrariness.

In European countries, security laws adopted over the past years in the context of the fight against terrorism, the development of surveillance methods and files, and an increasingly private use of public spaces have increased legal obstacles and risks for citizens in the exercise of their right to assemble and to protest.

Several countries around the Mediterranean have entered a complex transitional period towards democracy while others have pledged to carry out reforms to answer democratic claims of their people, the European Union also must comply with its responsibilities: the responsibility to implement its own commitments and demand democratic reform to its partners south and east of the Mediterranean in the framework of the new European Partnership Policy; and that of leading by example on its own soil in order to require that others implement reforms.

This study hence aims at shedding light on the issue of freedom of assembly through a regional perspective, in order to enhance democratic practices in all societies of the Euro-Mediterranean region, by evidencing the shortcomings in legal provisions and their implementation, and by highlighting good practices that can be inspiring.



"National students protest against the reform of education sector,
Barcelona, Spain, 6 February 2013."
by Albert Macias

INTRODUCTION

Since its creation in 1997, the Euro-Mediterranean Human Rights Network has paid particularly close attention to freedom of association in the region. It has followed the situation in the various countries, denouncing violations, supporting the work of its member organisations, and formulating recommendations for governments in order to guarantee the exercise of freedom of association. From 2007 to 2010, four regional reviews were published on this freedom. One of the principal tasks of the EMHRN has been to demand that fundamental rights, including peaceful association, be taken into consideration by EuroMed region governments and European institutions in the development of their policies.

Freedom of association is inseparable from freedom of peaceful assembly and demonstration. The right to gather and demonstrate is a significant aspect of freedom of association and a fundamental right. This is affirmed by the Universal Declaration of Human Rights (Article 20), international conventions and the United Nations Human Rights Council resolution of September 2012. Freedom of peaceful assembly and demonstration has important political significance for it is closely related to the exercise of citizenship in democratic societies.

The objective of this regional study is to evaluate the status of freedom of peaceful assembly and demonstration in the region, identify restrictions within the context of current political transitions, monitor trends and formulate specific recommendations.

The right of peaceful assembly comprises one of the most efficient means to publically expose ideas, proposals and/or objections concerning social realities, as well as to defend general and targeted interests. Meetings and demonstrations are the public and collective manifestation of freedom of expression, as exercised by formal bodies or occasional groups.

It is also a way of exercising the principle of participative democracy. For citizen participation does not end at elections and the representative democracy political system does not exclude other forms of participation in public affairs. Moreover, for many citizens and social groups, this right is one of the rare means at hand in between elections to publically express their ideas and demands.

Limitations placed by authorities on this right are always a subject of debate. Whether for reasons of public order due to the ideas expressed or under the pretext of respecting the rights of others, such limitations generally translate a clear desire to restrict the free exercise of this freedom. To the contrary, authorities should facilitate and protect the exercise of peaceful assembly and demonstration; restrictions should be exceptional and proportionate. The principle of presumption in favour of this right (*principio favor libertatis*) must rule. The ideas supported in demonstrations, under the condition that they do not incite hatred, discrimination, racism or violence should in no manner be an argument for forbidding a demonstration. This would be to deny the possibility of any form of dissidence or the expression of opposing ideas. States have the obligation to respect and protect the right of all persons to peacefully gather, assemble and express themselves.

This question is particularly relevant today in southern and eastern Mediterranean countries as well as in Europe whether within the framework of the democratic revolutions in the Arab countries and in Turkey, or during citizen-based protest movements against the economic and political crisis which is devastating Europe. We are witnessing an upsurge of group actions and a desire for citizen expression, along with an increase in social contestation related to demands for social justice. Social movements that are occupying public spaces and inventing new forms of meetings and gatherings have proliferated from Tahrir Square in Cairo to Puerta del Sol in Madrid to Taksim Square in Istanbul.

Throughout the region new forms of political expression have emerged along with new dimensions linked to communication technologies which are within reach of the majority of people. People do not just want to express ideas or protest; they want to occupy public space as a citizen statement and a means of pressure. This reassertion of demonstrating in public spaces is a clear expression of a will to expand the boundaries of citizenship, social participation and political debate.

Faced with this phenomenon, administrative and legislative responses tend to restrict freedom of assembly. In certain cases, group actions have been criminalised by draconian reforms, while in others the same repressive mechanisms used prior to the Arab revolutions have been reinstated, sometimes going so far as to declare a state of emergency and use arms to subdue contestation. In the light of the “Arab spring” and of the repressive and highly conflictive context of some “transition” countries nowadays, monitoring freedom of assembly raises the question of the balance between different rights and freedoms, of the acceptable limits to freedom of expression and of the right of rebellion against oppression.

North American social militant Howard Zinn said that “democracy is not a spectator sport”. Citizenship cannot be reduced to the mere right to vote; it presupposes participation, debate and the possibility of expressing oneself in a variety of ways. Freedom of association and peaceful assembly are fundamental underlying conditions for the formation of democratic societies.

With this first regional study, the Euro-Mediterranean Human Rights Network wishes to participate in the documentation and analysis of the state of this issue in order to better target the work of associations, social actors and States in favour of the free exercise of this fundamental right.

PRESENTATION

and Methodology

This report is the first part of a study which assesses the current situation on the freedom of assembly in the Euro-Mediterranean region, both in legal terms and in practice. This first part focuses in particular on the legal and institutional framework of the right of assembly, while the second part examines the practical reality of freedom of assembly in the region.

This first part of the study summarizes international standards protecting freedom of assembly, and then analyzes in this light, the legislative and institutional framework in 13 countries in the North, East and South of the Mediterranean, as well as the European Union as a whole.

In order to develop the assessment, objective indicators were used as a reference throughout this report, 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, and the causes.

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 defence based in 30 countries as well as individual members. It thus reflects the efforts of researchers recruited for each country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of civil society organizations, through interviews and in advisory exchanges.

Accordingly, the objective of this regional report 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 of different countries 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.

Methodology

This report is structured as follows:

The first chapter presents the main texts of international law protecting freedom of assembly, as well as their interpretation by international bodies for the protection of Human Rights and expert recommendations for their implementation.

The next chapters focus on the legal framework for freedom of assembly in the Euro-Mediterranean area.

A chapter is devoted to the European Union, dealing with specific protection guaranteed by the European Convention on Human Rights and providing examples from different EU countries. Two other chapters deal specifically with cases in Spain and in the United Kingdom. The reason for choosing these countries for study is because they have contrasting legal traditions and practices and are also countries where the EMHRN has several member organizations, partners and associates who participated in this study.

Finally, 11 chapters study 11 countries of eastern and southern Mediterranean where EMHRN has member organizations: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia and Turkey.

The country analysis summarize the laws, procedures and legal reforms that have an impact on the exercise of freedom of assembly. The institutions responsible for the implementation of laws on freedom of assembly are identified, and their specific role in the protection or the repression of freedom of assembly is examined.

Insofar as women often face specific restrictions that limit their social and political participation, both in law and in practice, special attention has been given to gender-based discrimination in this study of the legal framework.

Each chapter was written by a researcher working in communication with the organizations defending human rights and EMHRN members with the Working Group of the EMHRN Freedom of Association, Assembly and Movement, and under the supervision of an advisory committee composed of experts and representatives of human rights organizations. Information was collected from documentary sources, such as constitutions, legislations, case laws, etc., and from interviews with stakeholders such as organizations and human rights defenders, experts, and academics from the countries studied, and international organizations.

Description of the indicators

To better compare the legal and institutional environment in each country with international Human Rights standards and the recommendations from international bodies, we have defined a set of key questions and indicators.

These indicators were organized into 5 categories, which reflect the main aspects of protection of the right to freedom of assembly: **i) The general legal framework; ii) Procedures; iii) Restrictions; iv) Protection; v) Sanctions.**

In the first category on the general legal framework, indicators were used to assess the level of protection of freedom of assembly in the legal system of each country. In this regard, first of all we need to know if freedom of assembly is enshrined in the Constitution and if the country has ratified international instruments for the protection of this right. Another set of indicators focuses on the legal status of norms that regulate freedom of assembly, the definition of freedom of assembly and its scope, the existence or absence of a presumption in favor of holding assemblies, not forgetting the identification of all the laws that may affect the exercise of this right.

The second category concerns procedures that are implemented for exercising the right of peaceful assembly. As far as freedom of assembly varies depending on the type of control exercised in advance, an important indicator is the current procedure (notification or authorization) and its requirements, as well as the terms that apply to spontaneous assemblies. It is also important to address the list of institutions involved in the process. Finally, indicators identify the existence and effectiveness of remedies available to the organizers against prior restraints.

The third category, **restrictions**, focuses mainly on the type and extent of the restrictions prescribed by law, with special attention to unfair restrictions according to international law, or those leaving a margin for arbitrariness in their application.

The fourth category of indicators regarding protection, allows assessing the clauses that regulate the obligation of the State to guarantee the exercise of freedom of peaceful assembly and the physical integrity of the participants and bystanders. Specific indicators sift through standards that govern the use of force by security forces during the course of a meeting or a demonstration, and civil and criminal liability of officers of the law on violations of human rights while exercising freedom of assembly.

Finally, the fifth category indicators relate to any punishment following organizing a meeting or participating in it. Because of their deterrent effect, the analysis of the nature and scope of criminal, civil and administrative penalties provided by the law against participants in meetings and especially the organizers, is particularly important. The question of who is imposing sanctions is also studied, knowing that in some countries, civilians may be tried through special courts simply for exercising their right to peaceful assembly, and often the lack of independence of the judiciary system and deficiencies in statutory remedy does not guarantee citizens their fundamental right to a fair trial.

Gender-sensitive indicators were used where this was possible, bearing in mind the crucial importance of ensuring equal enjoyment of the right to freedom of assembly for men and women in all countries. Researchers have questioned the existence of laws that restrict women's rights, and the existence or absence of laws protecting women from violence and harassment they may face during assemblies or demonstrations.

GENERAL

RECOMMENDATIONS

The EMHRN urges all governments throughout the Euro-Mediterranean region to comply with their obligations under international human rights law with regards to freedom of assembly.

In particular, the EMHRN wishes to put forth the following recommendations for the legal regulation of freedom of assembly:

On the general legal framework

1. To ensure that the right to freedom of peaceful assembly is enjoyed by everyone, either individually or as member of an organization, be it a registered or not, without discrimination on the basis of gender or sexual orientation and identity, mental or physical disability, age, national, ethnic or social origin, religion, language and citizenship or immigration status;
2. To clearly and explicitly enshrine in law the presumption in favour of holding peaceful assemblies;
3. To ensure that definitions of different types of 'assembly' contained in laws are not over-inclusive and reflect a principle of minimal regulation;
4. To prohibit the reliance upon “emergency” laws as a basis for preventing the exercise of the right to freedom of assembly, and not to categorize organizations involved in protests as “extremist” or “terrorist” unless there is unequivocal evidence that the organization itself explicitly condones the use of violence.

On legal restrictions

5. To ensure that any restrictions on the rights to freedom of peaceful assembly are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness;
6. To repeal general restrictions discriminating against specific groups, such as women, minority groups or students;
7. To ensure that no content-based restrictions are imposed on assemblies, and to allow critical or controversial opinions (including those regarding State officials or institutions) to be voiced; the only acceptable limits on content in a democratic society should be the explicit calling to violence, hatred and discrimination, and should be precisely defined by law;
8. To ensure that assemblies are only banned in last resort, and always according to the principles of necessity, legality and proportionality.

On procedures

9. To pursue the principle of “minimal regulation” and replace authorization procedures with, at most, prior notification procedures; exempt from notification, for example, static gatherings;
10. To provide simple and fast notification procedures, and ensure that receipt of notification is immediately acknowledged by the relevant authority to avoid diversions of the procedure (such as the refusal to handle the notification receipt);
11. To ensure that any restriction placed on an assembly is communicated in a timely manner in writing to the organizers of the event, including a detailed explanation of the reasons behind each restriction; provide prompt and effective remedies, including the possibility of appeal to an independent tribunal to challenge the substance of any restriction before the date of the assembly;
12. To establish in law an exemption to the notification requirements for spontaneous assemblies prompted by circumstances which make compliance with the established notification timeframe impracticable;
13. To facilitate negotiations and dialogue between the authorities and the organizers on the practical aspects of the assembly. Ombudsmen, National Human Rights Institutions or other independent organizations may play a useful role in facilitating such dialogue in circumstances where sufficient trust does not exist.

On the protection

14. To prioritize and promote a human rights-centred approach to the policing of assemblies by ensuring that the primary role of law enforcement officials is to protect and facilitate peaceful assemblies, and not to control or manage such gatherings (and that this is reflected in relevant training programs);
15. To establish by law that the use of force must be guided by the principles of exceptionality, proportionality and necessity in view of guaranteeing absolute respect for the right to life and the right to be free from torture and other cruel, inhuman or degrading treatment;
16. To ensure that regulatory authorities and law enforcement officials comply with their obligation to protect peaceful assemblies by providing adequate protection to participants from individuals or groups, including counter-demonstrators that aim to disrupt the event;
17. To refrain from placing on organizers the responsibility to protect assemblies, as this responsibility lies with the authorities in the first place;
18. To try and facilitate all simultaneous assemblies (including peaceful counter-demonstrations), while protecting the right to assemble and the security of all peaceful protesters by deploying an adequate number of properly trained law enforcement personnel to this end;
19. To ensure the protection of those monitoring and reporting on violations and abuses in the context of assemblies;

20. To protect and facilitate spontaneous assemblies and to avoid the dispersal of such assemblies (Even if timely notification might have been possible) so long as they remain peaceful; the criterion of peacefulness should be more heavily weighted than the criterion of procedural rightness;
21. To ensure that the use of force during assemblies is only used exceptionally and in last resort. In particular:
22. To prohibit effectively the use of firearms during public assemblies, for example by setting up mechanisms such as registration and control of ammunition and communications registration to control operative orders, persons responsible for these orders and those executing them;
23. To regulate by law the use of non-lethal weapons, such as tear gas, plastic bullets, water cannons and batons, and any addition of chemical substances to incapacitating (or non-lethal) weapons such as water cannons, setting out strict limits for their employment pursuant to the principles of proportionality, progressivity and necessity;
24. To ensure that law enforcement officers always seek to differentiate 1) Between participants and non-participants; 2) Between peaceful and non-peaceful participants when policing assemblies and particularly when resorting to coercive forms of intervention;
25. To provide audible and clearly worded prior warnings of any plan to terminate or disperse an assembly, or to use force, and to allow adequate time to enable demonstrators to disperse safely and of their own accord. Requirements are more stringent in this regard if law enforcement officials use firearms;
26. To avoid the routine use of “containment” (or “kettling”) of assembly participants since this may be in violation of their rights to liberty and freedom of movement;
27. To publish clearly-worded policies governing the deployment of undercover police officers (Including deployments before and during assemblies) and the gathering, processing, retention and destruction of surveillance data;
28. To conduct prompt, effective, independent and impartial investigations if the dispersal or intervention in assemblies results in individuals being seriously injured or deceased to ensure that perpetrators are held accountable. To this end, police officers, including riot police officers, must be easily and clearly identifiable at all times, and nameplates or identification numbers must never be removed or covered;
29. To ensure independence of investigations on complaints against law-enforcement officers, including by the creation of independent oversight bodies.

On sanctions

30. To refrain from holding organizers or participants criminally responsible for failing to carry out their duties; to repeal those provisions containing disproportionate sanctions, in particular prison sentences and high fines, and collective responsibility.
31. To ensure that assembly organizers and participants are not held liable for the violent behavior of others;
32. To refrain from criminalizing the organization and dissemination of calls for peaceful

protests through internet and social media and recognize that freedom of peaceful assembly can be exercised and promoted by using new technologies;

On the promotion of gender equality

33. In order that women may truly exercise their rights and freedoms on an equal footing with men, all discriminatory and unequal legislative measures must be abolished and positive measures taken to correct such discriminations. For this, it is necessary to:
34. Guarantee gender-equality and non-discrimination on grounds of sex by law and in constitutions, as stipulated in Article 2 of the Universal Declaration of Human Rights and in Article 26 of the International Covenant on Civil and Political Rights;
35. Fully enforce the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), remove all reservations pertaining to this convention, and sign the Optional Protocol; this implies abolishing all discriminatory articles concerning personal status in national legislation, penal codes and other codes;
36. Combat gender-based violence by adopting and applying restrictive legal frameworks against gender violence, including sexual harassment, in order to create a legal and institutional environment that will allow women to safely participate in public life, in particular at gatherings and demonstrations;
37. Develop and reform judicial apparatuses in order to guarantee their independence and impartiality, as well as women's full access to the legal system on an equal footing with men;
38. Ensure the participation of women in all areas of economic, political, civil and public life, inter alia, by agreeing upon mandatory quotas to promote such participation (not less than 30% in view of equality).

The EMHRN wishes to submit the following recommendations to the European Union (EU):

- ▶ Respect its own Human rights commitments in its relations with EuroMed partner countries in accordance with Article 6 of the Treaty on European Union, which states that "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law" and Article 21§1, which states that "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law";
- ▶ Take all measures necessary to implement Article 2 of the Association Agreements;
- ▶ Fully implement its commitments in favour of democracy, gender equality and the respect of Human rights as laid out in the new European Neighbourhood Policy (ENP);¹ freedom of peaceful assembly being one of the primary reference criteria defined by the EU to evaluate democratic advances;
- ▶ Implement the EU Strategic Framework and Action Plan on Human Rights and Democracy² by ensuring cohesion between its Human rights instruments and its geographical instruments such as ENP Action Plans, ENP follow-up reports and local Human rights strategies;
- ▶ Specifically make the respect and promotion of freedom of peaceful assembly a EU priority in the EU Action Plan on Human Rights and Democracy and in its other geographical instruments;
- ▶ Base the degree of EU support to its partners on advances made regarding freedom of peaceful assembly, in accordance with the "more-for-more principle" introduced in the new ENP and in conformity with the EU Action Plan on Human Rights and Democracy, whereby the EU agreed in 2013 to "include the assessment of human rights as an overarching element in the deployment of EU country aid modalities, in particular regarding budget support";
- ▶ Raise violations of freedom of peaceful assembly at every level of political dialogue, as well as in technical sub-committee meetings between the EU and EuroMed countries in aim of achieving tangible improvements concerning freedom of peaceful assembly in the country under consideration: in particular in terms of legislative reforms that will enable citizens and foreigners living in that country to gather freely and ensure that police fulfils its duty in terms of protection rather than its usual repressive role;
- ▶ Give particular attention to gender-based discriminations and violence that prevent women from safely participating in public life and gatherings and demonstrations in accordance with ENP commitments and the EU Action Plan on Human Rights and Democracy;

1 A New Response to a Changing Neighbourhood http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

2 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

- Ensure the implementation of Human rights related priorities, namely freedom of peaceful assembly as set forth in the ENP Action Plans, namely through the implementation of evaluation criteria to measure the general objectives of the Action Plans and a schedule to concretise such evaluation; annually assess the implementation of such priorities based on this criteria;
- Strengthen human rights objectives and actions and the promotion of freedom of assembly in future ENP Action Plans; ensure that tangible achievements in these domains have been realised before concluding any new Action Plans;
- Ensure the effective implementation of EU Guidelines,³ in particular concerning Human rights defenders and violence against women; defenders cannot act unless they enjoy full freedom of peaceful assembly, and authorities must ensure their protection during gatherings and demonstrations;
- Within the framework of European financing, give priority support to independent civil society actors in countries where their freedom to act efficiently and independently is flagrantly called into question; include freedom of peaceful assembly in EU-financed police training programmes.

3 http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/index_en.htm



"Student protest in London, UK, 21 November 2012."

by Christopher Barrie

INTERNATIONAL STANDARDS PROTECTING FREEDOM OF ASSEMBLY

Freedom of assembly is a key human right in international human rights law, enshrined, together with freedom of association, in article 20 of the Universal Declaration of Human Rights. Recently, the Arab Spring has shown the critical relevance of the exercise of this freedom for the expression of common values and claims and as a basic means to influence decision making powers. However, processes of transition and political reforms taking place in countries around the Mediterranean have also revealed the extent to which challenges regarding the exercise of freedom of assembly remain. In Europe, large protests against austerity measures face important challenges, as lawmakers introduce increasingly harsher sanctions for demonstrators and reports frequently point to excessive use of force against demonstrators and an abusive use of measures involving deprivation of liberty. In this context, the UN Human Rights Council has recently expressed concern at violations of the right to freedom of assembly, taking note of the conclusions drawn in the first report submitted by the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association (hereinafter, “Special Rapporteur on FPAA”).¹

Freedom of assembly is essential for individuals and societies to peacefully raise criticism and effect change, even (and specially) in countries where political systems lack basic democratic standards, as the Arab Spring has shown. As stressed by the European Court of Human Rights, “*One of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest*”.²

It is noteworthy to mention that when governments or non-state actors are involved in human rights violations, the exercise of freedom of assembly, often through the articulation of peaceful public protests, arises as a fundamental tool for human rights defenders.³ Furthermore, human rights activists are often involved in the monitoring of public assemblies, through which they perform the critical role of social watchdogs, by observing and reporting, for instance, on the policing of assemblies or the interaction between participants and counter-demonstrators to stress issues of concern regarding the protection of freedom of assembly and other rights to the authorities.⁴ Against this backdrop, in many countries in the Euro-Mediterranean region and around the globe, particularly in those with authoritarian regimes clinging to power, the exercise of freedom of assembly is often arbitrarily curtailed, legally or *de facto*, on grounds of public order and safety. It is common for the authorities simply to assert that a gathering is non-peaceful, or to allege that its organisers or participants have violent intentions (For example, by claiming that they are members of a “terrorist” organisation). Such claims are

1 Human Rights Council, Resolution 21/16 of 11 October 2012 on the rights to freedom of peaceful assembly and of association, OP2, available here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/21/L.25.

2 Judgment of the European Court of Human Rights, *Éva Molnár v Hungary*, 7 October 2008, para. 42.

3 Report by the Special Representative of the Secretary-General on Human Rights Defenders, A/61/312, 5 September 2006, para. 76. On the legitimacy and relevance of *peaceful social protest*, see Inter-American Commission on Human Rights, Report on the situation of human rights defenders in the Americas (2011), paras. 106 and 129.

4 See OSCE *Handbook on Monitoring Freedom of Peaceful Assembly* (2011) <http://www.osce.org/odihr/82979?download=true>

rarely adequately supported by evidence. Moreover – aside from formal restrictions – assembly organisers have on occasion been harassed or intimidated. Indeed, in cases where assembly participants have been detained, there have been violations of the right to freedom from torture and the right to life.

It needs to be stressed here that, as it will be observed and analysed throughout the report, in many contexts women do not enjoy freedom of assembly on an equal footing with men due to *de jure* (legal restrictions) or *de facto* (Unequal education and employment opportunities, unequal distribution of household duties and family care, patriarchal values, gender-based violence) obstacles to their participation in public and political life, which in the context of the practical exercise of freedom of assembly may entail danger to their physical and psychological integrity, sometimes taking extreme forms such as harassment and sexual abuse.

1. Definition: A basic foundation of democratic societies

Freedom of assembly constitutes an essential pillar for pluralistic and tolerant societies to exist, since it serves the purpose of allowing the expression of political, cultural or religious opinions, beliefs or practices, including – importantly – the expression of minority or dissenting views.

Freedom of assembly, hence, is inextricably linked to freedom of expression, as it has been ascertained by the European Court of Human Rights and numerous experts.⁵ Besides, freedom of assembly and freedom of association are clearly interdependent and mutually reinforcing (And the development of both has historically gone hand in hand) since both underpin the participation of individuals in public affairs and, hence, the foundation and development of civil societies. It is worth stressing, as well, the relevance of freedom of information and the role of social media for the realization of freedom of assembly, since it is crucial both for disseminating information to organise and publicise forthcoming gatherings and to report on them once held.⁶ Furthermore, freedom of assembly is closely linked to the other political and civil rights,⁷ and interdependent with the promotion of economic, social and cultural rights.

⁵ See *Ezelin v France*, app. 11800/85, 26 April 1991, paras. 35-37; John P. Humphrey, Political and Related Rights, in: Human Rights in International Law, Legal and Policy Issues (ed. Theodor Meron), Clarendon Press, Oxford, 1984, Vol. I, p. 188; Manfred Nowak's CCPR Commentary (2nd ed., 2005), p. 371.

⁶ On the role of the media in assemblies, see OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly* (2010, Warsaw, second ed.), paras. 206-210, pp. 98-100 (*OSCE Guidelines*), available here: <http://www.osce.org/odihr/73405?do wnload=true>; see also *Second Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Human Rights Council, 23rd session, A/HRC/23/39, 24 April 2013, paras. 72-76.

⁷ For instance, restrictions on freedom of movement (e.g. travel restrictions) may hamper the participation of individuals and groups in assemblies of different kinds (on this matter, see Jacobs, White and Ovey, *The European Convention on Human Rights* (2010), p. 457).

For the purposes of this report, an “assembly” is an intentional and temporary gathering, which can be static or moving, in a public or private space, for a common expressive purpose which goes beyond the mere private sphere of each individual.⁸

Freedom of assembly protects the freedom to prepare, hold and participate in an assembly. As an individual freedom exercised collectively (individually or in association with others), it includes rallies, marches, sits-in, parades, picket lines, public conferences, inside meetings, processions and other kinds of assemblies. It must be noted that the right to meet or assemble in privately owned premises has specific limitations attached to the existence of property rights. Thus, when conflicts arise between the exercise of freedom of assembly and property rights, judges have weighed up one against the other bearing in mind the circumstances surrounding the case.⁹ These specific limitations will be tackled in the country chapters wherever relevant but will not be studied in this introduction due to its limited space and scope.

The Special Rapporteur on FPAA in the first report of his mandate noted that “*assemblies play a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing States’ public policy.*”¹⁰ Thus, the right’s importance lies in its unique and critical function in a democratic system as it serves the purpose of guaranteeing opinions on matters that affect the public sphere being voiced collectively. That is, freedom of assembly enshrines a genuine and direct form of collective political, social and cultural engagement for the expression, promotion or defence of common values, opinions and beliefs, thereby, fostering dialogue among different stakeholders, facilitating the coexistence of often competing groups and, finally, promoting the development of healthy and flourishing democracies where governments are accessible and accountable. Therefore, freedom of assembly is deemed to constitute an essential form of *direct* democracy.

⁸ Thereby, an accidental gathering (e.g. people standing in a queue outside the cinema) or a gathering held by a group of individuals in privacy for purely private social purposes, such as a party, would not fall within the scope of protection of assemblies (Other definitions of assembly: by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *supra* note 3, para. 24; *OSCE Guidelines*, *supra* note 4, para. 1.2, p. 16; Report by the Special Representative of the Secretary-General on Human Rights Defenders, A/61/312, 5 September 2006, para 31).

⁹ In a case brought by Shell Netherlands against Greenpeace International, the District Court of Amsterdam ruled that the NGO was allowed to occupy petrol stations and stage protest blocking access to Shell headquarters, as long as the principle of proportionality was observed (by, for instance, setting a time limit for protesters to occupy petrol stations), since protests about controversial business practices were legitimate and should be expected by the company (*Shell Netherlands v Greenpeace*, Case 525686 / KG ZA 12-1250 HJ/JWR, 5 October 2012, para. 5.9); see also European Court of Human Rights, *Cisse v France*, 9 April 2002, paras. 41-54.

¹⁰ Report of the Special Rapporteur on FPAA (2012), *supra* note 3, para. 24.

2. What international human rights instruments protect Freedom of Assembly?

Freedom of assembly is protected in the International Covenant on Civil and Political Rights (ICCPR)¹¹ under:

“

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

”

Freedom of assembly is to be enjoyed equally by everyone; that includes women, men and children, persons with disabilities, nationals and non-nationals¹² and individuals belonging to minority groups.¹³

In addition, freedom of assembly is recognised in the following international and regional instruments:

- ▶ Art. 20 (1) of the Universal Declaration of Human Rights (adopted on 10 December 1948)
- ▶ Art. 5 (d) (ix) of the International Convention on the Elimination of All Forms of Racial Discrimination (adopted on 21 December 1965, in force since 4 January 1969, ratified by all EU States and all States located South and East of the Mediterranean);
- ▶ Art. 15 (1) of the Convention on the Rights of the Child (adopted on 20 November 1989, in force since 2 September 1990, ratified by all EU States and all States located South and East of the Mediterranean);
- ▶ Art. 5 (a) of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of the Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the Declaration on Human Rights Defenders (General Assembly Resolution A/RES/53/144 of 9 December 1998);

11 Adopted by UN General Assembly resolution 2200A (XXI), in force since 23 March 1976.

12 Not only citizens of the State but also foreign nationals, stateless persons, refugees, have the right to freedom of assembly, as it has been restated by the UN Human Rights Committee in General Comment no. 15 (1986), para. 7: “[a]liens receive the benefits of the right of peaceful assembly”.

13 See also arts. 2 and 26 of the ICCPR, report of the Special Rapporteur on FPAA, supra note 3, para. 13, *OSCE Guidelines*, supra note 4, paras. 46-60.

- ▶ Art. 2 (5) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (GA Resolution 47/135 of 18 December 1992).
- ▶ Art. 11 of the African [Banjul] Charter on Human and Peoples' Rights (adopted on 27 June 1981, in force on 21 October 1986, ratified by all southern Mediterranean States);
- ▶ Art. 28 of the Arab Charter on Human Rights (League of Arab States, adopted on May 22, 2004, in force since 15 March 2008, ratified by Algeria, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Palestine, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen);
- ▶ Art. 15 of the American Convention on Human Rights (adoption 22 November 1969, in force since 18 July 1978).
- ▶ Art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (adopted on 4 November 1950, in force since 3 September 1953, ratified by all EU States).
- ▶ Art. 8 of the African Charter on the Rights and Welfare of the Child (adopted on 11 July 1990, in force since 29 November 1999);
- ▶ Art. XXI of the American Declaration of the Rights and Duties of Man (adopted on 2 May 1948).

Besides, pursuant to resolution 15/21 of the UN Human Rights Council, a Special Rapporteur on the rights to Freedom of Peaceful Assembly and Association was appointed for the first time in 2011, for a period of 3 years.¹⁴ Mr. Maina Kiai submitted his first thematic report to the Human Rights Council on 21 May 2012, highlighting what he considers “*Best practices, including national practices and experiences that promote and protect the rights to freedom of peaceful assembly and of association*”. The Special Rapporteur has recently submitted his second report, which focuses on the ability to hold peaceful assemblies and on the access of associations to financial resources.¹⁵

Reference must be made also to the OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, the most exhaustive and advanced set of guidelines and best practices regarding freedom of assembly, elaborated by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE), and produced in co-operation with the Council of Europe's Venice Commission.¹⁶

3. International protection of women's freedom of peaceful assembly and the gender gap

Freedom of assembly is not explicitly set out in the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);¹⁷ it has, however, been inferred or

¹⁴ Human Rights Council, Resolution 15/21, 30 September 2010.

¹⁵ Second Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 23rd session, A/HRC/23/39, 24 April 2013.

¹⁶ OSCE Guidelines, supra note 4.

¹⁷ Adopted on 18 December 1979, in force since 3 September 1981, ratified by all EuroMed States.

connected with article 7.c), which foresees the right of women “To participate in non-governmental organizations and associations concerned with the public and political life of the country”.¹⁸

Moreover, despite the lack of an explicit recognition, 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*”. Thus, States have the obligation under international law to ensure that women enjoy their rights and freedoms on equal basis with men, including freedom of peaceful assembly.¹⁹

In the context of the exercise of the freedom to assemble, it must be noted that women have been traditionally excluded from public and political life due to the persistence of social norms, cultural values and religious beliefs that discriminate against women, keeping them away from positions of responsibility in society. Thus, international women’s rights conventions provide that States are required to remove all obstacles that impede the free and full exercise of freedom of women to congregate with others and get involved in affairs which bypass the private and familial sphere since, as underlined in Article 13 of the Beijing Platform Declaration and Platform for Action, “*Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace*”.²⁰ Likewise, States are bound to protect women from gender-specific risks when exercising freedom to assemble.

However, even when all countries studied in this report have ratified CEDAW, international bodies keep raising concerns on the acute vulnerability of women participating in public assemblies, granted that they become targets of gender-based violence and acts of harassment by groups

18 Also art. 4.h) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”) guarantees “the right to associate freely”. The Protocol of the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa does not have a provision recognising freedom of assembly either.

19 **Other documents of reference on women’s freedom of assembly and, in general, on women’s involvement in public life:** Human Rights Committee, General Comment no. 28, Equality of Rights between Men and Women (art. 3); CEDAW, General Recommendation no. 23 to eliminate discrimination against women in the political and public life of the country; CEDAW, General Recommendation no. 19 on violence against women; UN Commission on Human Rights, Resolution 2003/45 on the elimination of violence against women; Report of the Special Representative of the Secretary-General on Human Rights Defenders, 5 September 2006, A/61/312; Report of the Special Representative of the Secretary-General on Human Rights Defenders, 13 August 2007, A/62/225; Report of the Special Rapporteur on the Situation of Human Rights Defenders, 20 December 2010, A/HRC/16/44; Council of Europe’s Parliamentary Assembly, Resolution 1873 (2012) on Equality between women and men: a condition for the success of the Arab Spring; Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas, 31 December 2011, OEA/Ser.L/V/II; Inter-American Commission on Human Rights, Honduras, Human Rights and Coup d’État, 30 December 2009, OEA/Ser.L/V/II; Report Women and the Arab Spring: Taking their place?, FIDH, 2012; Global Report 2012, Women Human Rights Defenders International Coalition (WHRD_IC).

20 Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (A/CONF.177/20 and Add.1), chap. I, resolution 1, annex I.

of men and by law enforcement officers, and such acts are generally met with impunity.²¹ To tackle gender-based violence and discrimination in this context, recommendations have sought the investigation, prosecution and punishment of perpetrators of gender-based violence against women occurring during demonstrations as a matter of priority, as well as the integration of a gender perspective in the training and instruction of law enforcement officials, among other measures.²²

4. Only peaceful assemblies are protected

Freedom of assembly enshrines the liberty to come together to debate and speak out about shared concerns as long as the organisers of the gathering have peaceful intentions, means and manners. That is, the scope of freedom of assembly does not protect violent actions or purposes among those who wish to assemble. Nevertheless, as observed by the OSCE/ODIHR Panel of Experts in the Guidelines, *“The term ‘peaceful’ should be interpreted to include conduct that may annoy or give offence, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties”* (para. 1.3, p. 15).

International bodies and experts, including the Special Rapporteur on FPAA and the OSCE/ODIHR Panel of Experts on freedom of peaceful assembly, consider as a “good practice” and, thus, call upon States to establish a clear presumption in favour of holding assemblies, according to which peaceful intentions of individuals and groups wishing to assemble should be presumed.²³ That is to say, authorities should only beforehand restrict the exercise of peaceful assembly if compelling and well-founded reasons indicate that imminent violence is likely to occur, and if there are no less intrusive measures that might prevent the occurrence of violence. In the course of demonstrations, the authorities are required to take positive measures in order to guarantee that peaceful demonstrators can effectively and fully enjoy their freedom of assembly without fearing for their physical integrity.²⁴ Such obligation includes the protection of participants from individuals or groups, including *agent provocateurs* and counter-demonstrators, who aim at disrupting such assemblies or harassing

21 See statement by the Special Rapporteur on Violence against Women and the Working Group on discrimination against women in law and in practice, 8 December 2011: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11700>; statement by the UN Human Rights High Commissioner, 26 December 2011: <http://www.ohchr.org/EN/NewsEvents/Pages/PoliticaltransitionsprovideopportunitiestopromotewomensHR.aspx>; Recommendation 1996 (2012), Council of Europe’s (CoE) Parliamentary Assembly, para. 6.

22 Report of the Special Representative of the Secretary-General on Human Rights Defenders, 13 August 2007, A/62/225, para. 101. See also, Resolution 1873 (2012) of Council of Europe’s Parliamentary Assembly on *Equality between women and men: a condition for the success of the Arab Spring*, para. 8.10.

23 Report of the Special Rapporteur on FPAA, supra note 3, para. 26, *OSCE Guidelines*, supra note 4, Guiding Principle I, p. 15 and para. 30.

24 European Court of Human Rights, *Plattform “Ärzte für das Leben” v Austria*, 21 June 1988, para. 32: “[a] demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community”. See also *Ouranio Toxo and others v Greece*, 20 October 2005, para 37.

those who may hold opposite opinions.²⁵ It needs to be highlighted that participants in the gathering do not cease to enjoy freedom of assembly if, as a result of sporadic or scattered violent acts, incidents occur which jeopardize public safety and order, as long as the large majority remain peaceful.²⁶

5. Use of force and dispersal of assemblies

The use of force by law enforcement officials is a measure of last resort, and should only be used in the context of assemblies when non-violent means to control a situation of violence or enforce prior restrictions have proved to be ineffective. In any case, policing should exclude heavy-handed tactics and indiscriminate measures of crowd control such as the practice of “kittling” or containment.²⁷ The authorities should ensure that open and accessible channels of communication exist through which demonstrators may contact the officials policing the assembly should they wish to do so.

Stemming from the presumption in favour of holding assemblies, *non-violent* unlawful assemblies (E.g. where demonstrators failed to notify the authorities within the required notice period), should not be immediately terminated. Rather, the principle of proportionality requires that the enforced dispersal of unlawful assemblies – so long as they remain peaceful – should only occur once the demonstrators have been given a reasonable time to convey their message. Even then, the authorities should follow a graduated response and should seek to exhaust non-forceful means of intervention (such as negotiation with demonstrators), before adopting more forceful methods. If assemblies turn out to be violent, the use of force needs to be restricted pursuant to the principles of exceptionality, proportionality and necessity.²⁸

6. Freedom of peaceful assembly may only be subject to certain restrictions

Freedom of assembly is not an absolute right, since it can be subject to certain limitations, which are to be prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.²⁹

25 Report of the Special Rapporteur on FPAA, *supra* note 3, para. 33; see also, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas* (2011), para. 134.

26 European Court of Human Rights, decision on admissibility, *Ziliberg v Moldova*, 4 May 2004: “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behavior”.

27 *OSCE Guidelines*, *supra* note 4, para. 160, deals with a tactic known as “kettling”; also Report of the SR on FPPA, *supra* note 3, para. 37, judgment of the European Court of Human Rights, *Austin v UK*, 15 March 2012.

28 Drawing on the UN Code of Conduct for Law Enforcement Officials (adopted on 17 December 1979), the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, *OSCE Guidelines*, reports of the Inter-American Commission on Human Rights (Citizen Security and Human Rights, 31 December 2009, Second Report on the Situation of Human Rights Defenders in the Americas, 31 December 2011).

29 Article 21, ICCPR; Human Rights Council, Resolution 15/21, 30 September 2010, OP 4; Human Rights Committee, *Belyazeka v Belarus*, Communication no. 1772/2008, 23 March 2012, para. 11.7.

According to such international standards, restrictions on freedom of assembly must be: 1) Provided for by law; 2) Respond to a “pressing social need”, which means that measures undertaken must not be considered only useful and convenient in the particular situation, but must rather be necessary in a “democratic society” (which itself should be characterized by the values of “pluralism, tolerance and broadmindedness”);³⁰ 3) For the pursuit of certain specified legitimate aim(s);³¹ and 4) Proportionate or, in other words, it must constitute the least restrictive and burdensome means among those reasonably available to serve the same purpose.³²

In summary, the reasons adduced to curtail freedom of assembly must be relevant and compelling, and any restrictive measure must be adopted in accordance with the principles of legality, necessity and proportionality. That implies that any restriction needs to be narrowly tailored to accommodate the relevant and legitimate concerns raised in every case. It follows that general bans on the holding of assemblies (for instance, forbidding all assemblies to be held in central areas or during peak hours) are contrary to freedom of assembly.³³ As stated by the Special Rapporteur on FPAA, “only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”.³⁴ Indeed, “blanket bans, are intrinsically disproportionate and discriminatory measures.”³⁵

In this context, the only legitimate aims for prior restrictions banning or limiting the holding of peaceful assemblies are those that seek, on one hand, to ensure the best conditions for the exercise of freedom of assembly and, on the other, to protect both participants and by-passers while preventing serious disturbances to public order.³⁶ Thus, and following the above-mentioned presumption in favour of holding peaceful assemblies, assemblies should not be subject to prior authorisation procedures by the authorities. It is preferable, at most, a system of prior notification with the aim of guaranteeing the peaceful exercise of freedom of assembly.³⁷ Be that as it may, any prior notice procedure posing an excessive burden on those willing to assemble would unlawfully restrain this freedom.³⁸

30 Judgment of the European Court of Human Rights, *Handyside v UK*, 7 December 1976, para. 49.

31 Human Rights Committee, *Govsha and others v Belarus*, Communication no. 1790/2008, 27 July 2012, para. 9.4.

32 General Comment no. 31 (2004), CCPR/C/21/Rev.1/Add.13, para. 6; Judgment of the European Court of Human Rights, *Ezelin v France*, 26 April 1991, paras. 48-53.

33 Also restrictions subsequent to the event, such as disproportionate sanctions and penalties imposed on organisers and participants after a demonstration, may breach freedom of assembly (see *OSCE Guidelines*, supra note 6, paras. 109-112, Report of the Special Rapporteur on FPAA, supra note 3, para. 29, ECHR *Ezelin v France*, supra note 34, para. 53).

34 Report of the Special Rapporteur on FPAA, supra note 3, para. 16.

35 Second Report of the Special Rapporteur on FPAA, para.63.

36 Report of the Special Rapporteur on FPAA, supra note 3, para. 28, *OSCE Guidelines*, supra note 6, pp. 63-66.

37 However, the Special Rapporteur in his second report upholds that “notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated” (para. 52).

38 Assembly organizers should be able to notify authorities “in the simplest and fastest way” and the notification should include merely information on “the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer” (second report of the Special Rapporteur on FPAA, para. 53).

Following the same principles, regulations on assemblies may not impose excessive demands or limitations that invalidate the practical exercise of this freedom. In consequence, authorities can set restrictions on time, space or manner if judged necessary, but they must be cautiously set and a certain degree of tolerance must be shown.³⁹ Indeed, temporary disruption of road traffic cannot, of itself, be exclusively relied upon as a reason to restrict the exercise of freedom of assembly.⁴⁰ As stressed by the European Court of Human Rights, danger to public order must go beyond “*the level of the minor disturbance which is inevitably caused by an assembly in a public place*”.⁴¹

In the event that assemblies or demonstrations occur spontaneously in response to emergent or unexpected circumstances, they should be exempted from advance notification requirements since a delay in the reaction would weaken or even neutralize the communicative purpose of the assembly.⁴² As noted by the European Court of Human Rights: “*In special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly*”.⁴³

Also restrictions subsequent to assemblies, such as disproportionate sanctions and penalties imposed on organisers and participants after a demonstration, namely in the form of fines or imprisonment, may breach freedom of assembly and ultimately deter individuals and organisations from exercising this freedom in the future.⁴⁴ Assembly organisers should not be made responsible for the maintenance of public order, as stressed by the Special Rapporteur,⁴⁵ and in any case they should not be accountable for the acts of participants or third parties. Besides, individual participants that have not committed any reprehensible act on the occasion of an assembly should not be held liable, even if others become violent.⁴⁶

39 The Special Rapporteur considers pre-event planning, including risk assessment, by law enforcement officials, together with organizers of peaceful assemblies, as long as it is non-compulsory for the latter ones, as a good practice; among issues to be discussed in this phase, he recommends to deal with the specific needs of persons with disabilities and groups at risk, such as women, indigenous peoples and groups who, due to their sexual orientation and/or gender identity may be in need of greater protection (second report of the Special Rapporteur on FPAA, paras. 68-69).

40 Judgment of the European Court of Human Rights, *Oya Ataman v Turkey*, 5 December 2006, para. 42; in the same judgment, the Court notes that the temporary disruption of vehicular or pedestrian traffic is not, by itself, a reason to impose restrictions on an assembly (para. 41).

41 Judgment of the European Court of Human Rights, *Bukta and others v Hungary*, 17 July 2007, para. 37.

42 Judgment of the European Court of Human Rights, *Eva Molnar v Hungary*, 7 October 2008, para. 38.

43 *Bukta and Others v Hungary*, supra note 37, para. 36.

44 See *OSCE Guidelines*, supra note 6, paras. 109-112, Report of the Special Rapporteur on FPAA, supra note 3, paras. 29 and 31, Second Report of the Special Rapporteur on FPAA, para. 77.

45 Report of the Special Rapporteur on FPAA, supra note 3, para. 31.

46 ECHR, *Ezelin v France*, supra note 34, para. 53.



"Demonstration in front of the Algiers Hospital for workers' rights,
Algeria, 2013."
by Yacine Zaid

ALGERIA

Introduction

The national uprising of 1988, which some do not hesitate to describe now as the “first Arab spring”,¹ led Algeria to adopt Law no. 89-28 of 31 December 1989 concerning public assemblies and demonstrations,² and for the first time protecting freedom of public assembly by law. However, in 1991 the law was reformed in a more restrictive sense ending this phase of openness, and the state of emergency was imposed in February 1992³ with consequent liberty-depriving measures.

In the wake of the “Arab spring”, peaceful marches were organised in February 2011 in particular in the capital and in Oran, to which the Algerian government reacted disproportionately. Demonstrations were not authorised in violation of the Algerian constitution and international agreements. Tens of thousands of police officers were deployed in Algiers to prevent demonstrators from attending the gatherings and hundreds of them were detained.

The conditions for exercising freedom of assembly in Algeria therefore are not conform to international standards for the protection of human rights. The Algerian legislation, associated with arbitrary practices of the administration, is the primary source of violation of this right. On 23 February 2011 the state of emergency was finally lifted,⁴ but restrictions on freedom of assembly continued; first, because restrictive legal provisions, based on the decree establishing the state of emergency, are still in force; and second, because Algerian authorities kept on repressing assemblies in practice.

The Euro-Mediterranean Human Rights Network report on Algeria published in 2012⁵ states that: *“the lifting of the state of emergency was only a game of smoke and mirrors which served to conceal the fact that obstacles to the enjoyment of public and personal freedoms as well as human rights violations were getting worse. Most of the provisions that were part of the emergency law ended up being incorporated into the general legislation”*.

Meanwhile the NGO Human Rights Watch complains that *“The authorities have invoked other repressive laws and regulations to stifle dissenting voices and suppress human rights activities, especially the 1991 act governing the right to freedom of assembly which requires obtaining prior approval for public demonstrations”*.⁶

1 Akram BELKAID, Algerian journalist and writer, author especially of the essay called *Etre arabe aujourd'hui (To be an Arab today)*, Carnets Nord, 2011, 256 p.

2 JORA no. 4, of 24 January 1990, p. 143.

3 Decree no. 92-44, of 9 February 1992, concerning instituting the state of emergency, JORA no. 10, of 9 February 1992, pp. 222-223

4 Presidential decree no. 11-01, of 23 February 2011, concerning lifting the state of emergency, JORA no. 12, of 23 February 2011, p. 4

5 *The lifting of the state of emergency: A game of smoke and mirrors. The exercise of the freedoms of association, assembly and demonstration in Algeria*. EMHRN, December 2011. http://www.euromedrights.org/files/lev_e__tat_urgence_Alg_rie_en_253294957.pdf

6 Last report of Human Rights Watch of 31 January 2013, on *Human rights in the world*.

1. General Legal Framework

a. Constitutional protection and international commitments of Algeria

International commitments

Algeria is bound by several **international treaties recognising freedom of assembly and which are legally binding**:

- ▶ The International Covenant on Civil and Political Rights of December 12, 1966 (hereafter ICCPR); Optional Protocol no. 1 of the ICCPR with the declaration recognising the competence of the Human Rights Committee to receive, investigate and decide on the communications of private individuals who argue that the participant State does not comply with the provisions of the Covenant;
- ▶ International Covenant on Economic, Social and Cultural rights of December 12, 1966 (particularly provisions relating to workers' rights); the Optional Protocol to the International Covenant on Economic, Social and Cultural rights of 10 December 2008;
- ▶ The African Charter on Human and Peoples' Rights of June 26, 1981 (article 11);
- ▶ The Arab Charter of Human Rights of 2004 (article 24);
- ▶ The International Convention for the Protection of All Persons against Enforced Disappearances (ICCPED) adopted by the General Assembly of the United Nations in December 2006

Moreover, **Algeria has adhered to declarations of principles** which, although devoid of binding legal force, have an important moral force, such as the Universal Declaration of Human Rights of 10 December 1948; Resolution 69 (XXXV) on the protection of human rights defenders in Africa adopted by the African Commission of Human and Peoples' Rights in June 2004, creating a Special Rapporteur on the matter; the Declaration on Human Rights Defenders adopted by the General Assembly of the United Nations on 9 December 1998; the Fundamental principles on the independence of the Judiciary, adopted by the General Assembly of the United Nations in 1985 etc.

Lastly, **Algeria signed an Association Agreement with the European Union**, wherein article 2 provides for the protection of human rights and fundamental freedoms a key objective, and their violation as a possible cause of annulation of the Agreement. This clause has never been implemented.

Constitutional protection

In Algeria, the right to freedom of peaceful assembly is a constitutional right. In fact, article 41 of the constitution, after the last revision of 15 November 2008,⁷ states that “*Freedoms of expression, of association and assembly are guaranteed to citizens*”. Moreover, several constitutional provisions come to reinforce protection of rights as a whole. Article 33 states that “*Individual or group defence of fundamental human rights and individual and collective freedoms is guaranteed*”; article 34 states that “*The State guarantees the inviolability of the human being. Any form of physical or mental violence or violation to dignity is forbidden*”; finally, article 35 even provides that “*Offences committed against rights and freedoms, as well as physical or moral harm to the integrity of the human being is punishable by law*”.

Moreover, under the terms of its article 132, “*Treaties ratified by the President of the Republic, under the conditions set forth by the Constitution, are above the law*”. In other words, the Algerian constitution grants a supra-legislative value to international treaties which confers, in theory, enhanced protection to freedom of assembly in Algeria insofar as Algeria has ratified the main international instruments protecting freedom of assembly.

b. Algerian domestic legislation: Definitions of assemblies

At the legislative level, Law no. 89-28 of 31 December 1989 on public meetings and demonstrations upholds freedom of assembly, but was restricted by the provisions of Law no. 91-19 of 2 December 1991, that modifies and supplements it.

In both texts, the legislator distinguishes between meetings and demonstrations, which are not subject to the same declaration and authorisation regimes and restrictions. Hereafter, we will refer to the provisions of the law on public meetings and demonstrations (hereafter, law on assemblies), in their version of 1989 or 1991, as the 1991 version was not a complete overhaul of 1989 text but brought a few modifications.

Article 2 of the law on assemblies, in its 1991 version, defines (and restricts) public meetings “**out of public roads and in an enclosed public place**”, which is a first limit.

As for public demonstrations, article 15 of this same text defines them as “*Processions, parades or gatherings of people and, generally, all exhibitions on public roads*”. Public roads mean, as per the law on assemblies in its unchanged initial version on this point, “*Any street, avenue, boulevard,*

⁷ Constitutional law no. 08-19, of 15 November 2008, *JORA* no. 63, of 16 November 2008.

main road, and place or transportation channel reserved for public use" (Article 16). In the absence of contrary mention in the law, these assemblies are considered *a priori* as peaceful.

2. Procedures

The law on assemblies in its 1991 version states **that public meetings can only be held subject to a declaration procedure**. The declaration must be presented, "*three full days minimum before the date of the assembly*" (article 5) to the territorially competent administrative authority, generally the *Wali* (province governor), or the popular communal assembly; a receipt is immediately delivered and should be presented by the organisers when authorities request it (article 5). However, in practice this declaration procedure amounts to prior authorisation because authorities enjoy a broad liberty in assessing the reasons for restricting the right to assemble.

Furthermore, the un-amended article 14 of the law on assemblies exempts "*Private meetings characterised by personal invitations by name*" from declaration formalities. This text is thus not sufficient in protecting private meetings since it does not exempt private meetings on anonymous invitations from prior declaration. As an example, Algerian authorities prevented the Maghreb Forum for the fight against unemployment and job insecurity in Algiers in February 2013, and the Maghreb delegations were barred from entering Algeria, without any justification.⁸

There is no mechanism to ensure compliance of these provisions by civil servants, and the enjoyment of the right of assembly is actually limited by the arbitrary implementation of the law. These practices finally amount to equating the declaration procedure to an authorization procedure, and give the administration a power of systematic and unjustified refusal.

As for public demonstrations, the law on assemblies, in its 1991 version, insists on prior authorisation (articles 15 to 19). The request for authorisation is presented to the wali, at least eight full days before the date set for the demonstration. A receipt of the request for authorisation should be issued by the wali immediately after the application is filed. The wali must deliver its written authorisation or refusal at least five days before the date set for the demonstration. The text does not foresee that the wali should give reasoned justification for refusal. As for public meetings, the receipt of request for authorisation must be provided by the organisers upon request by the authorities (article 17).

⁸ See the statement: *Banning of the Maghreb forum for the fight against unemployment and job insecurity: Arrests, expulsions*, 24 February 2013, DzActiviste.info.

The right to legal remedy is guaranteed only partially and in an unsatisfactory manner in a country where much remains to be done to achieve real independence of the judiciary.⁹ Administrative courts exist as an independent jurisdictional order since 1996, with the State Council as supreme administrative court. In practice, Algerian citizens who feel that they are deprived of their rights can appeal against the administrative authority that has rendered the restrictive decision or can resort to emergency proceedings to request the administrative judge to uphold their freedom of assembly. The first procedure, which would cancel the arbitrary administrative decision, is the easiest to use even if appeals are not common.

Lastly, other laws in force in Algeria can influence the exercise of freedom of assembly. They are on the one hand, the legal instruments to fight terrorism¹⁰ and, on the other hand, the laws relating to the exercise of other freedoms connected to freedom of assembly: for example, the 2006 Order on religious practices other than Islam or the 2012 Law on associations. Both texts contribute to restrict freedom of assembly

3. Restrictions

The legal basis for restrictions of freedom of assembly are too broad and vague to comply with the requirements of legitimacy, proportionality and necessity set out in the ICCPR. If some restrictions are *a priori* in conformity with international standards, such as the safeguard of “*health and public peace*” (unchanged article 6 of the Law on assemblies) and of “*public order*” (unchanged article 9 of the Law on assemblies), others are not, such as the provision prohibiting “*any assembly or demonstration to oppose national constants, the symbols of the revolution of November 1st, public order and morality*” (article 9 of the Law on assemblies in its drafting of 1991).

Such limitations are unclear, insofar as “national constants” referred to are not defined, and severely restrict freedom of assembly, even if article 2 specifies that the goal of public assemblies is “*An exchange of ideas or defence of shared interests*”.

Moreover, the law disregards any concept of proportionality in restrictive measures. In contradiction with the declaratory regime, and despite the lifting of the state of emergency in 2011, article 6 (a) of the law states with no further details that the Wali can **prohibit the holding of a public meeting** “*Informing its organisers that it so happens that it is a real risk of disturbance to public order or if it clearly appears that the real purpose of the assembly constitutes a danger to the preservation of public order*”. Hence the right to hold a meeting remains depends on the will of the administration. Furthermore, the law provides for specific restrictions on the place of the meeting since article 6 of the law specifies that “*The wali or the President of the popular communal assembly can, within 24 hours of the submission of the declaration, ask organisers to change the*

⁹ *Algeria: independence and impartiality of the legal system*, Report of EMHRN, October 2011, http://www.euromedrights.org/files/rapport_ind_pendance_justice_alg_rie_en_784351410.pdf.

¹⁰ Like the decree introducing the state of emergency, of 9 February 1992, but also the decree of 30 September 1992 for the fight against subversion. *The lifting of the state of emergency: A game of smoke and mirrors. The exercise of the freedoms of association, assembly and demonstration in Algeria*, EMHRN December 2011.

venue of the meeting by offering a place which has necessary guarantees for its proper conduct as regards hygiene, safety and public peace". Moreover, article 8 of the law provides that "Public meetings cannot be held in a place of worship or a public building not intended for that purpose" and that they "Are prohibited on public roads"; the law also puts limitations on the people who organise or participate in the meeting, insofar as article 4 specifies that the declaration preceding the meeting must be "Signed by three people, domiciled in the province and enjoying their civic and civil rights".

These provisions give a legal base to the arbitrary and excessive restriction of freedom of assembly, criticised in many reports by human rights organisations such as the EMHRN, the Coalition of Families of the disappeared in Algeria, Human Rights Watch etc. These restrictions unduly applied in practice push independent labour unions and associations, who are the main victims, to refrain from organising public meetings or to hold them almost secretly, putting themselves in a position of illegality and at risk of criminal penalties even though they are exercising a fundamental right.

Lastly, if theoretically foreigners enjoy the right to freedom of assembly on an equal footing with Algerian citizens, the need for a national identity card, mentioned particularly in article 5 on declaration formalities, could be looked at as an implicit restriction of this right for foreigners.

Regarding the **right to demonstrate**, article 17, subparagraph 5 of the law on assemblies, specifies that the wali can deny the authorisation in writing, without having to justify his refusal. Article 18 sets forth that the wali can "Request organisers to change the route by providing an alternate route for the execution of the demonstration". Moreover, article 19 states that any demonstration not authorised beforehand is considered an illegal mob, liable to a prison sentence up to one year. In fact article 97 of the Criminal Code prohibits "On public roads or in a public place: [...] any unarmed mob which can disturb public peace", which means that a spontaneous peaceful gathering, or one which has not received permission, is criminalised and its participants are liable to a heavy criminal penalty.

Moreover, a **decision of the Head of the Government of 18 June 2001¹¹ prohibits the organisation of demonstrations in the capital**. The continued application of this decision nowadays reveals the illusion of lifting the state of emergency, which did not constitute a positive step for the exercise of freedom of assembly. In practice, demonstrations are banned in Algiers; protesters are always policed by a disproportionate number of law-enforcement forces who do not hesitate to use violence to disperse them. The police routinely detains protesters for interrogation before, during and after the demonstrations. However, since

11 In the context of which is called "the black spring of Kabylie" where demonstrators rallied to protest against discriminations undergone by the kabyles in Algeria. See on this point, for example, *Kabylie: 14 June 2001, the great rally of Kabyles towards Algiers*, 20 June 2001, la-kabylie.com.

the 2011 revolutions in the Arab world, peaceful demonstrations in Algiers, Oran and in the south of the country have intensified, despite systematic bans.

Another important text indirectly influences the exercise of freedom of assembly: the Charter for Peace and National Reconciliation, adopted by referendum on 29 September 2005 that declared a general amnesty for the civil war crimes committed during the nineties. Its implementing regulations of 2006 are used to restrict the right to freedom of assembly; in particular, article 46 of the Order no. 06-01, although it has never been applied, provides for a sentence *“of imprisonment from 3 to 5 years and a fine of 250,000 to 500,000 Algerian Dinars [to] anyone who, by their speech, writings or any other act, uses or exploits the wounds of the national tragedy, to undermine institutions of the People's Democratic Republic of Algeria, weaken the State, harm the reputation of its agents who served it with dignity, or tarnish the image of Algeria internationally”*.

In addition, Law no. **12-06 on associations of 12 January 2012** strictly restricts the activities of associations and imposes many conditions on their creation. This directly affects freedom of assembly of individuals who are members of an association, on two points for example: first of all, because *“Any member or staff of an association, not yet registered or authorised, suspended or dissolved, who continues to act on its behalf, is liable to a sentence of three to six months of imprisonment and a fine of one hundred thousand Dinars to three hundred and thousand Dinars”* (Article 46.). Arranging a meeting for an unauthorised organisation thus conveys a big criminal risk. Second, because an authorised association which is considered guilty *“of interference in the internal affairs of the country or of undermining national sovereignty”* can be suspended or dissolved by a simple administrative decision, without review by an independent judge (Article 39). This dangerously vague provision is a direct attack on freedom of expression and indirectly on freedom of assembly.

Lastly, **the Order no. 06-03 of 28 February 2006 setting forth conditions and rules for the exercise of religions other than Islam**, restricts in practice the exercise of all religions and also sets forth many conditions on the freedom of assembly with a religious purpose. In fact, article 6 of this text states for example that the *“Collective exercise of a religion is organised by religious associations whose creation, licensing and operation are subject to the provisions of this Order and the legislation in force”*. Article 7 establishes that *“Collective exercise of religion exclusively takes place in buildings intended for this purpose, open to the public and identifiable from the outside”*. These provisions exclude a group of non-Muslim believers from meeting freely in private to practice their religion. Moreover, article 5 of the Ordinance prohibits *“Any activity, in places reserved for religious worship, which is contrary to their nature and the objectives for which they are intended”*. Thus, the practice has shown that under the Ordinance of 2006 on the

exercise of religions other than Islam, one certainly cannot receive at home, or meet in a public place, Muslim friends and discuss with them issues relating to Christian faith.¹²

4. Protection

The Algerian legal system nowhere acknowledges the positive obligation of the State to protect and facilitate the exercise of freedom of assembly. Instead, a security approach is favoured by justifying many restrictions with arguments of public order and the fight against subversion.

Article 96 of the *Wilaya* (provinces) Code¹³ and article 16 of executive decree no. 83-373 of 28 May 1983 specifying the powers of the wali as regards safety and public order¹⁴ frames police interventions. These provisions require two commands to allow police forces to intervene, the first order to deploy the police at the scene of the gathering and the second ordering it to intervene.

Furthermore, article 97 of the Penal Code states that *“law enforcement officers, called to disperse a mob (...) can use force if violence or assault is exerted against them, or if they cannot otherwise defend the ground they hold”*.

If an intervention is carried out in the absence of violence from the demonstrators, police are required by the Criminal Code to issue two warnings before the use of force, asking demonstrators to leave, using sound or light signals or by loudspeaker.¹⁵ It is not uncommon however that these provisions are not or only partially implemented by the authorities and the police, which regularly disperse peaceful gatherings by force.¹⁶

12 For a deeper analysis, see Nassima FERCHICHE, *“The Algerian Ordinance of 2006 on non Islam religions and its application”*, Right and religions, Annual Volume 4, 2009-2010, pp. 500-522.

13 Law no. 80-09 of 7 April 1990 relating to the Wilaya, JORA no. 15 of 11 April 1990.

14 JORA no. 22 of 31 May 1983.

15 It is thus described: *“(...) Representatives of the police, called to disperse a mob or to provide the execution of the law, a judgment or a police warrant, can use force if violence or assault is exerted against them, or if they cannot otherwise defend the ground which they occupy or the stations whose guard is entrusted to them.*

In the other cases, the mob is dispersed by the police after the wali or the chief of daïra, the president of the popular communal assembly or one of his assistants, a police superintendent or any other officer of the criminal investigating department wearing the badges of his post:

1- announced its presence by a sound or light signal likely to effectively inform the individuals constituting the unlawful assembly;

2- summoned people participating in the mob to disperse, using a loudspeaker or a sound or light signal also informing individuals effectively constituting the mob;

3- proceeded, likewise with a second warning if the first is not heeded to.”

16 See for example the *Report 2011-2013 of the Coalition of Families of the Disappeared in Algeria* Paris, <http://www.algerie-disparus.org/images/stories/communiqu/Rapport%20CFDA.pdf>.

5. Sanctions

Punishments set forth against participants or organisers of unauthorised assemblies according to law 91-19 and to the Penal code, are disproportionate.

Law 91-19 devotes the entire Chapter III to penalties for breaches of its provisions. Penalties raise from 2.000 to 30.000 Dinars fines (approximately 20 to 300 Euros) and from one month to three years of imprisonment. These punishments are as per the law, *“Without prejudice to prosecution for crimes or offenses committed during or at the time of a public meeting as set forth in the Penal Code”* (article 21).

In the Penal Code, article 97 punishes illegal gatherings, even when peaceful (referring to article 19 of the law on assemblies and demonstrations). Article 100 in turn, condemns *“Instigators of demonstrations that escalate into violence, those which, through public speeches or writings, incite to violence”*; this provision can be applied arbitrarily to condemn organisers not having committed or advocated violence.

There is hence a high risk of penalty inherent to exercising the fundamental right to freedom of peaceful assembly in Algeria. People participating in or organising public assemblies are also often subject to legal harassment, based on different articles of the penal code. Independent trade union activists and human rights defenders for example face frequent trials, detentions and interrogations for their participation in peaceful gatherings, even when these are declared in accordance with the legal provisions.

In practice, legal proceedings are regularly initiated against human rights defenders for “unarmed gathering” or “encouraging unarmed gatherings”.¹⁷ For example in the month of May 2013, 43 communal guards appeared before the Court of Algiers for “unarmed mob, assaulting an officer and disturbing public order”.¹⁸ The court in Bir Mourad Raïs gave them a 6 months suspended prison sentence.

6. Gender Equality and Freedom of Assembly

Algeria ratified the **United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** of 18 December 1979 and its Optional Protocol. **Article 3** of the Convention provides that *“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, 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.”*

¹⁷ These trials are regularly reported by the press: *Prosecutions for encouraging unarmed mob: trial today of 4 human rights activists in Algiers*, Le temps, 19 June 2013, <http://www.algerie360.com>; *Algeria: Activists prosecuted for ‘unarmed mob’*, <http://www.agoravox.fr>; “After a protest action before an oil company: several unemployed arrested at Ouargla”, <http://archives.tsa-algerie.com>.

¹⁸ *They are accused of unarmed mob: 43 communal guards before the court of Algiers*, 4 May 2013, <http://fr.afrikinfos.com>.

Some laws, in particular the Algerian Family code, which exclusively governs family law and issues such as marriage, divorce, parenthood and inheritance, are still discriminatory for women, but do not directly restrict their freedom of assembly.

Nevertheless, Algeria has expressed reservations, inter alia, on article 2 of the CEDAW that provides that States should undertake concrete measures to fight discrimination against women. The reservation reads *“The Government of the People's Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article under the condition that they do not conflict with the provisions of the Algerian Family Code”*.

Recommendations

The national legislation and the procedures implemented with regard to freedom of assembly are not in conformity with international standards. To correct it, Algerian authorities are asked to:

1. Repeal all laws and measures banning assemblies and demonstrations in public places;
2. Clarify definitions of public and private assemblies;
3. Replace the actual de facto authorisation procedure by a real declaratory regime for meetings as well as for demonstrations;
4. Repeal the decision of 18 June 2001 of the Chief of Government that prohibits peaceful gatherings or any form of public demonstration in Algiers;
5. Modify articles 97 and 100 of the Penal code;
6. Guarantee the right to an effective remedy against any administrative decision and guarantee the independence of the judiciary, by measures such as the harmonisation of national legislation with international agreements and the reform of the institutional, constitutional and legislative frameworks; ensure equal access to for all Justice, equality before the law and uphold the right to a fair trial;
7. Repeal the implementing regulations of the Charter for peace and national reconciliation.



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

EGYPT

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.



ISRAEL

This chapter examines the legal framework regulating Freedom of Assembly in Israel. Statehood for an independent State of Israel was declared on 14 May 1948, following a series of political events that led to the United Nations (UN) General Assembly's recommendation of the partition of Historic Palestine by Resolution 181 of 1947, also referred to as the UN Partition Plan of 1947.

In June 1967, Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip.¹ Severing it from the rest of the Occupied Palestinian Territory, Israel illegally annexed East Jerusalem and has since confirmed the permanent nature East Jerusalem's annexation; thereby failing to recognise it as occupied territory.²

Similarly, Israel occupied the Syrian Golan Heights in 1967 and formally annexed the territory in 1981 with the Israeli Knesset's (Parliament) approval, despite the UN Security Council's Resolution 497 declaring Israel's annexation of the Syrian Golan Heights null and void and against international law.³ The Knesset's statute extended Israeli civilian law and administration to the residents of the Syrian Golan Heights, replacing the military authority that had ruled the area since 1967.

According to the latest figures of the Israeli Central Bureau of Statistics, Palestinian citizens of Israel make up for 20 per cent of the total population of some 7.6 million.⁴ Their status under international human rights instruments to which Israel is a State party is that of a national, ethnic, linguistic and religious minority. However, despite this status, the Palestinian minority is not declared as a national minority under Israeli law. Inequalities between Palestinian and Jewish citizens of Israel span all fields of public life and have persisted over time. Direct and indirect discrimination against Palestinian citizens of Israel is ingrained in the Israeli legal system and in governmental practice.⁵

Nonetheless, during Operation "Cast Lead" against Gaza in 2009 there has been a shift, as Israel has started targeting Jewish activists and human rights defenders who joined Palestinian human rights activists protesting this operation.⁶ The Knesset has also put forward legislative initiatives aimed at curtailing freedom of association and expression for civil society organizations, particularly targeting Jewish organizations who denounce the occupation of the Occupied Palestinian Territory (hereafter, "OPT") or work in solidarity with

1 See country chapter on Palestine in this publication.

2 The status of East Jerusalem under international law is clear. Along with the Gaza Strip and the rest of the West Bank, East Jerusalem was occupied by Israel by force, and remains occupied territory to this day. This position is legally indisputable and has been universally and repeatedly affirmed by the United Nations, the High Contracting Parties to the Geneva Conventions, the International Court of Justice and the International Committee of the Red Cross.

3 UN Security Council Res 497 (17 December 1981) UN Doc. S/RES/497.

4 Israeli Central Bureau of Statistics (ICBS), *Statistical Abstract of Israel 2011* (2011) 86 <http://www1.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st02_01&CYear=2011> last accessed 6 April 2013.

5 See for an overview of the discriminatory policies and practices against Palestinian citizens of Israel, Adalah, *The Inequality Report: the Palestinian Arab Minority in Israel* (March 2011).

6 See Adalah report *Prohibited Protest*, 2009.

Palestinians and Arab Israeli citizens. It is the case of the “Anti-boycott law”⁷ or a law targeting human rights organisations as “political” organisations and aiming at limiting their access to foreign funding.⁸

The right to freedom of assembly has been recognised and articulated in Israel and has been upheld by the Supreme Court, which has also elaborated on the balance that should be maintained between competing interests and rights. Directives and separate laws have clarified many of the practical matters arising from the landmark judgements. However, the exercise of this right has often been restricted and continues to discriminate against Palestinian citizens of Israel, who in practice do not enjoy freedom of assembly on an equal footing with Jewish Israelis.

This part only addresses the legal framework within Israel’s 1967 borders, while Israeli regulations of freedom of assembly in the OPT will be addressed in the chapter on **Palestine**. To this regard, note that in the OPT a civil body of laws apply to Israeli citizens residing in settlements located beyond the Green Line, while a body of Military Orders applies to its Palestinian citizens.

1. General Legal Framework

International commitments

Israel has ratified all core international human rights conventions relating to freedom of assembly, including the 1966 International Covenant on Civil and Political Rights (hereafter ICCPR), which Article 21 is the reference for the protection of freedom of assembly.⁹

According to Article 4 of the ICCPR, the right to freedom of assembly is not an absolute right and, under certain circumstances, a State may be allowed to derogate from or temporarily exempt from upholding some of its international human rights obligations during periods of emergency. Israel declared itself to be in a state of emergency on 19 May 1948,¹⁰ just four days after its founding, which has been annually renewed by the Knesset since 1997, until the present day.¹¹

⁷ See EMHRN *Anti-boycott law violates human rights and further undermines Israeli democracy – EU must unequivocally condemn the law*, 15 July 2011

⁸ See EMHRN *Open Letter to the Israeli Knesset*, 16 November 2011

⁹ An assembly is defined as “an intentional and temporary gathering in a private or public space for a specific purpose”, which, according to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, may include “demonstrations, inside meetings, strikes, processions, rallies or even sit-ins”. UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of assembly and of association*, Maina Kiai, (21 May 2002) Human Rights Council 20th Session, UN Doc. A/HRC/20/27, summary, paragraph 24.

¹⁰ Under Basic Law: the Government (2001), the Knesset may declare a state of emergency for a period of up to one year. Basic Law: the Government, passed by the Knesset on the 12th Adar, 5761 (7th March, 2001) and published in Sefer Ha-Chukkim No. 1780, p. 158; the Bill and an Explanatory Note were published in Hatza’ot Chok No. 2756 of 5758, p. 72.

¹¹ See *Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee: Third periodic report of States parties due in 2007: Israel* (21 November 2008) UN Doc. CCPR/C/ISR/3, paragraph 157.

Essentially, by perpetuating this state of emergency, Israel is trying to bypass its international legal obligations, using the argument of “national security”. While reviewing Israel’s period report in 2003, the United Nations Human Rights Committee (hereafter the UN HRC) expressed concern about what it described as the “sweeping nature” of emergency measures that derogated from the State’s obligations under the ICCPR. The UN Human Rights Council stated that the derogations went beyond the permissible limitations on the right to freedom of assembly.¹²

Israeli Domestic Legislation

In absence of a formal constitution, the legal rights and obligations are enumerated in different laws. A set of Basic Laws, which were designed to be part of the future Israeli constitution, set forth the State’s main institutions and its citizens’ fundamental rights. The Basic Laws are considered of a higher rank than regular laws and enjoy constitutional status. Among these, the most important are *Basic Law: Human Dignity and Liberty* (1992)¹³ and *Basic Law: Freedom of Occupation* (1994).¹⁴ The Israeli High Court considered the two as a constitutional revolution and labelled them as “Israel’s mini bill of rights.” However, the right to freedom of assembly, as well as a general provision for equality and non-discrimination, are lacking in the Basic Laws.¹⁵

Despite the absence of constitutional protections, the right to freedom of assembly has been recognised and duly upheld by the judiciary as a fundamental right that the State needs to guarantee to *all* residents of Israel¹⁶.

The most significant case and turning point in relation to the exercise of the right to freedom of assembly has been *Saar v. Minister of Interior and Police* (1979),¹⁷ in which Justice Barak,

12 *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee*, 78th session, UN Doc. CCPR/CO/78/ISR, 21 August 2003, paragraph 12 (; see also Human Rights Committee, 99th Session, UN Doc. CCPR/C/ISR/CO/3, 3 September 2010, paragraph 7.

13 *Basic Law: Human Dignity and Liberty* (1992) intends to protect human rights in Israel. It was passed by the Knesset on the 12th Adar Bet, 5752 (17 March 1992) and amended on 21 Adar, 5754 (9 March 1994). Amended law published in *Sefer Ha-Chukkim* No. 1454 of the 27th Adar (10 March 1994), p. 90; the Bill and the Explanatory Note were published in *Hatza’ot Chok*, No. 2250 of 5754, p. 289.

14 *Basic Law: Freedom of Occupation* (1994) guarantees every Israeli national or resident’s “right to engage in any occupation, profession or trade”. It was passed by the Knesset on the 22nd Shevat, 5718 (12 February 1958) and published in *Sefer Ha-Chukkim* No. 244 of the 30th Shevat, 5718 (20 February 1958), p. 69; the Bill was published in *Hatza’ot Chok*, No. 180 of 5714, p. 18.

15 *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue (June 2012) Human Rights Council 20th Session, paragraph 15.

16 Emphasis added. See, HCJ 8988/06, *Yehuda Meshi Zahav v. Ilan Franko*, CO Jerusalem District (unpublished, 27 December 2006); HCJ 2557/05, *Mateh Haruv et al. v. Israel Police et al* (unpublished, 12 December 2006); HCJ 6658/93, *Kalavie v. CO Jerusalem Station*, PD 48 (4) 793, 796 (1994); HCJ 2481/93, *Dayan v. CO Jerusalem District*, PD 48 (2) 456, 468 (1994); HCJ 372/84, *Klopper-Naveh v. Minister of Education and Culture*, PD (3) 233, 238 (1984); HCJ 153/83, *Levy v. CO Southern District, Israel Police*, PD 38(2) 393, 401-402 (1984). Original source: Adalah, “Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza” (September 2009) 8 fn. 3.

17 *Saar v. Minister of Interior and Police* (1979) 34 P.D. II 169.

former Chief Supreme Court Justice, confirmed that the freedom of assembly was a fundamental right recognised by Israeli law. Following this and many other Supreme Court clarifications of the right to freedom of assembly,¹⁸ the government issued legally binding directives to define its framework, such as the *Directives on the Matter of the Freedom to Demonstrate*,¹⁹ which reaffirmed the State's acceptance of the basic right to demonstrate and clarified the nature and range of police powers to intercede in such cases.²⁰

The Supreme Court has further stated that: "*Freedom of expression and protest were designed to protect not only those who hold accepted and popular opinions, but also – and herein lies the principal test of freedom of expression – opinions that are liable to be provoking or upsetting.*"²¹ While the Supreme Court has emphasised that it is particularly important to protect this right in the case of minority views, restrictions placed on the exercise of the right to freedom of assembly in practice severely affect minorities, including Palestinian citizens of Israel and residents of East Jerusalem and the Syrian Golan Heights.

2. Procedures

The Police Ordinance (1971) and the Penal Law (1977) contain the basic requirements for those organising a demonstration and regulate law enforcement authorities' powers for such events. These instruments state that no prior notification or permission is required for demonstrations that do not involve speeches or a march, regardless of the number of attendants. However, note that demonstrations in the Knesset area always require a permit.

A permit, issued by the Israeli police, is required only when all following three conditions exist:

1. When the demonstration is likely to attract more than 50 people;
2. When it is an open-air demonstration;
3. When it includes a march and/or political speeches.

Organisers of demonstrations must apply for a permit five days in advance to the District Commander of Police.

18 See also landmark Supreme Court case HCJ 153/83 *Levy v. Southern District Commander of the Israeli Police* and HCJ 4661/06 *The Temple Mount Faithful v. Police Commander of Jerusalem*. See further, D. Sharfman, *Living Without a Constitution: Civil Rights in Israel* (M E Sharpe Inc, Armonk, New York, 1993) 131-133.

19 Issued on 1 April 1983.

20 See further, D. Sharfman, *Living Without a Constitution: Civil Rights in Israel* (M E Sharpe Inc, Armonk, New York, 1993) 127-136.

21 B'Tselem, "*Demonstrations: Israeli Law*" (September 2011).

3. Restrictions

Restrictions to freedom of assembly may only occur in exceptional circumstances as a measure of last resort. As stated by the Special Rapporteur on the rights to freedom of peaceful assembly and association (UN Special Rapporteur on FPAA) in his first report, “Only ‘certain’ restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”.²² As such, it is necessary to consider all alternative measures that would ensure public order and security, before placing any restrictions on the freedom to assemble or demonstrate.

“

“As with other liberties, here, too, a balance must be struck between the will of the individual – and of individuals – to express views by way of assembly and demonstration, the will of the individual to protect his well-being and property, and the will of the public to protect public order and security. Without order there is no liberty. Freedom of assembly does not mean the abandonment of all public order, and freedom of procession does not mean the freedom to riot.”

Justice Barak in *Saar v. Minister of Interior and Police* (1979)

”

The police can refuse permission for a demonstration or protest on grounds of “concern for public order”, and additional restrictions may be placed on “time, place and manner” of a demonstration.²³ The Supreme Court stipulated that the test concerning the restriction of the right to freedom of assembly is the test of “*near certainty*” of disruption of public order.²⁴ As such, the mere apprehension that a demonstration might lead to rioting and disturbance of the peace is not sufficient to place restrictions on freedom of assembly, but must be substantiated with concrete, clear and convincing evidence, such as information of plans to violate public order or to incite violence.²⁵ The Directives further state that the police

²² Report of the UN Special Rapporteur on FPAA, Human Rights Council, 20th session, A/HRC/20/27 (2012), para. 16; see also OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, 2010, Warsaw, 2nd edition.

²³ For instance, the Supreme Court considers restricting the duration of the demonstration or altering its location, as proportionate measures. HCJ 5277/07, *Baruch Marzel v. The Chief of Jerusalem Police*, Ilan Franko; HCJ 5380/07 *Kochav Ehad Association v. The Chief of Jerusalem Police*, Ilan Franko. See, *Consideration of reports submitted by States parties under article 40 of the Covenant: Third periodic report of States parties due in 2007: Israel* (21 November 2008) UN Doc. CCPR/C/ISR/3, paragraph 407-412.

²⁴ HCJ 73/53, *Kol Ha'Am v. Minister of the Interior*, PD 7(1) 871 (1953); HCJ 4712/96, *Meretz Faction v. CO Jerusalem District*, ILR 50 (2) 822, 827-828 (1996); HCJ 153/83, *Levy v. CO Southern District, Israel Police*, PD 38(2) 393, 401 (1984). Original source: Adalah, *Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza* (September 2009) 8 fn. 5.

²⁵ Adalah, *Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza* (September 2009) 8.

cannot refuse a permit simply because of undue demands being made on police resources; nor because of disruption to urban routines that a demonstration might cause; nor because of an objection to the ideology of the demonstrators or the views that might be expressed. The police have a duty to protect people's right to demonstrate and receiving permission from the police must not be considered a favour, but the exercise of the right to freedom of assembly, regardless of the message that is being conveyed or of the demands that might be made on police resources.

4. Protection

The right to protest is not contingent upon the subject or purpose of the demonstration and the police bear responsibility for allowing each person to demonstrate, regardless of the cause.²⁶ In order to ensure that the police do not abuse its powers of granting permission for demonstrations, the law allows for an appeal process to the Supreme Court in case the police refuse to issue a permit. However, this requires the police to render a decision on the demonstration prior to the event, which has proven problematic in practice.²⁷

The law furthermore provides protection for those wishing to engage in a demonstration. Two recent police practices that violate freedom of assembly have drawn attention from human rights groups and have been challenged before the courts. Firstly, while working to maintain public order, police regulations require police officers to wear name tags, have their faces exposed, and present a photo identification to any citizen who asks for it.²⁸ Secondly, as a condition for release, many protesters arrested by the police have had to agree to various restrictions, including distancing themselves from the location of the protests, or promising not to participate in future events. Several courts have opposed this policy of preconditioning release upon receiving guarantees from the protester, which is in clear violation of the individual's right to freedom of assembly.²⁹

The use of force

The police have the authority under Article 153 of the Penal Law to disperse the gathering – “*After making [their] presence known by blowing a bugle or whistle or by similar means or by firing a Verrey light from a pistol*” (Article 153 of the Penal Code). The order to disperse may be giving by a ranking police officer only if:

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

27 To this regard, the UN Special Rapporteur on FPAA sets out that “*organizers should be given the possibility of an expedited appeal procedure with a view to obtaining a judicial decision by an independent and impartial court prior to the notified date of the assembly*” (Second Report, Human Rights Council, 23rd session, A/HRC/23/39, para. 64).

28 ACRI, *Rights of Demonstrators* (July 2011) 5; ACRI *Situation Report: the State of Human Rights in Israel and the OPT 2011* (December 2011) 42-43.

29 AK 48236-03-011 *Vardi et al v. State of Israel*, decision rendered 27 March 2011 (in Hebrew); BSA (TA) 18299-09-11 *State of Israel v. Nisan*, decision rendered 8 September 2011; AK 22343-09-11 *Musari v Israel Police – Ayalon Region*, decision rendered 13 September 2011. Original Source: ACRI *Situation Report: the State of Human Rights in Israel and the OPT 2011* (December 2011) 44.

1. A demonstration lacks the required permit;
2. The conditions for the demonstration set by the law enforcement authorities are ignored;
3. The demonstration poses a threat to the public;
4. Demonstrators turn violent and when there is a real fear for the public's safety.

Every person who participates or continues to participate in a prohibited assembly after the dispersal order was announced to rioters or to persons assembled in order to riot, and if reasonable time passed since the notification and order, is liable to five years imprisonment (Article 155 of the Penal Law).

The police may, in certain instances, use force when dispersing the demonstration (Articles 154 and 155 of the Penal Law) or arrest the demonstrators. The law stipulates that a police officer may be allowed to use force in the following cases:³⁰

1. When arresting a demonstrator who attempts to resist arrest or flee;
2. To disperse an unruly congregation that threatens the public;
3. When the officer is attacked or tries to prevent a crime.

5. Sanctions

In accordance with Article 151 of the Penal Law, *"If at least three or more persons [...] assembled for a common purpose, even a lawful one, and conducted themselves in a manner that gives nearby persons reasonable grounds to suspect that the assembled persons will commit a breach of the peace or that by their assembly itself they will provoke others needlessly and without reasonable cause to commit a breach of the peace, then that constitutes a prohibited assembly."* A person commits a riot when *"committing a breach of peace that terrorises the public"* (Article 152 of the Penal Law).

In such cases, the demonstration will be regarded as an "unlawful gathering" and all those participating (not only the organisers) are considered to be in violation of the law. A person who participated in a prohibited assembly as defined under Article 151 of the Penal Law is liable to one year imprisonment, while a person who participated in a riot as defined under Article 152 of the Penal Law is liable to two years imprisonment.

It needs to be noted, however, that, as international human rights bodies have warned about, disproportionate sanctions and penalties may amount to unlawful restrictions on

³⁰ ACRI, *Rights of Demonstrators* (July 2011) 5.

the exercise of the freedom to assemble if, for instance, individual participants that have remained peaceful are held liable on account of the violent means or intentions of others.³¹

6. Palestinian citizens of Israel

While acknowledging the above stipulated regulations and government practices, it must be noted that these apply principally to Jewish Israeli demonstrations and that other factors come into play if Palestinians are involved. While Palestinian citizens of Israel, some 20 per cent of the population, enjoy equal rights under the law, they face direct and indirect discrimination in all aspects of political, social and economic life in Israel. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, stated in his recent report: “[...] *Palestinians citizens of Israel are frequently regarded and treated as “An enemy from within”, given their ethnic and religious ties to the Palestinians in the occupied Palestinian territory and the surrounding Arab and Muslim States, and consequently suffer from various discriminatory policies and treatment*.”³²

According to human rights groups, the police routinely arrest and use (excessive) force against Palestinian citizens of Israel as a deterrent against demonstrating. Reportedly, law enforcement authorities in Israel apply different treatment to detained protestors if they are from Palestinian descent. For instance, Palestinian citizens of Israel are frequently denied bail or release under *The Criminal Procedure (Powers of Enforcement, Detentions) Law* (1996). The reason usually cited by the authorities is that, if released, they could endanger state security or public safety, disrupt the investigation or influence witnesses. A further attempt to reduce the space allowed for protest by Palestinians citizens of Israel was mounted by the General Security Services (GSS), who continue to use intimidation tactics, including warning phone calls and threats of prosecution if activists do not halt their activities. This kind of state sanctioned harassment and intimidation of Palestinian political leaders and activists in Israel stands in stark contrast to the treatment afforded to Jewish Israeli protesters exercising their right to freedom of assembly.³³

On 22 March 2011, the Knesset adopted the “Nakba Law”, which empowers the Minister of Finance to fine public bodies that receive public funding, such as schools, universities and local authorities, if they hold events that commemorate Israel’s “Independence Day or the establishment of the State of Israel as a day of mourning.” Furthermore, fines could also be imposed if such institutions hold events that aim to revoke “the existence of Israel as a Jewish and democratic State.” This has raised concern with the Special Rapporteur on the freedom of opinion and expression as this law is inherently discriminatory towards Palestinian citizens of Israel, who refer to Israel’s

31 See *Ezeline v France*, Judgment of the European Court of Human Rights, 26 April 1991, para. 53: [t]he Court considers, however, that the freedom to take part in a peaceful assembly - in this instance a demonstration that had not been prohibited - is of such importance that it cannot be restricted in any way, even for an advocate, so long as the person concerned does not himself commit any reprehensible act on such an occasion. See also first report of the Special Rapporteur on FPAA, para. 29.

32 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ Mission to Israel and the occupied Palestinian territory (11 June 2012) Human Rights Council 20th Session UN Doc. A/HRC/20/17/Add.2, paragraph 43.

33 Adalah, *The Inequality Report: the Palestinian Arab Minority in Israel* (March 2011) 55-57.

Independence Day as the “Nakba”, meaning catastrophe or tragedy, to commemorate the suffering of their people in 1948.³⁴ In addition, it is noteworthy to mention that the Special Rapporteur on the right to freedom of peaceful assembly and of association in his latest report expresses concern about the practice of prohibiting or repressing assemblies when authorities are not pleased with the message conveyed.³⁵

7. Gender Equality and Freedom of Assembly

In 1951, three years after declaring statehood, Israel passed the Women’s Equal Rights Law, 5711-1951, which guaranteed women the right to live in dignity by providing equality in work, education, health, and social welfare. The 1992 Basic Law - Human Dignity and Liberty further protects gender equality as falling within the parameters of the right to human dignity. The amendment to the Women’s Equal Rights Law in 2000 consolidated the principles of equal opportunity, affirmative action and accommodation, previously recognized in case law and specific statutes, as basic principles of the legal system. Another notable amendment to the Women’s Equal Rights Law in December 2005, which resulted from the articulation of UN Security Council Resolution 1325 (October 2000), dealt with the representation of women in peace negotiations and increased protection of women and children against violence in conflict situations. The amendment mandated the inclusion of diverse women to public bodies established by the government on issues of national importance, including peace negotiations. Despite this achievement, the law remained a formal declaration, lacking all meaningful implementation. Human rights groups have further warned that *“The repression of civilian freedom of action, [for instance through discriminatory laws such as the “Nakba Law” and the “anti-boycott law” aimed at oppressing civil society initiatives] nullifies the feminist achievements towards equal representation, anchored in UN Security Council resolution 1325”*.³⁶

Women still face the “glass ceiling”, i.e. social and political *obstacles* to climb the ladder to higher positions in the public sphere, confining their participation in the political arena to civil society, peace, and human rights organizations. Thus, attempt to hamper the work of these organizations constitutes an additional step towards the exclusion of women from involvement in the political system.³⁷

34 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ Mission to Israel and the occupied Palestinian territory (11 June 2012) Human Rights Council 20th Session UN Doc. A/HRC/20/17/Add.2, paragraph 28-31.

35 Second report of the Special Rapporteur on FPAA, para. 61.

36 Coalition of Women for Peace, *All-Out War: Israel Against Democracy* (November 2010) 6.

37 Ibid.

Recommendations

1. As has continuously been recommended by various UN treaty bodies, the Basic Law: Human Dignity and Liberty (1992) should be amended to include principles of non-discrimination and equality and the right to freedom of assembly, opinion and expression.
2. Abandon those police practices that violate the right to freedom of assembly, such as masking police identity, conditioning of release of demonstrators and withholding permission for demonstrations on the basis of the message of the demonstration.
3. Abolish the rubberstamping on the existence of the state of emergency, which allows for the restriction of the right to freedom of assembly in violation of international legal norms, as well as the Basic Laws.
4. The government of Israel must ensure that Palestinian citizens of Israel can fully exercise their right to freedom of assembly, including by upholding their rights with equal force as those of Jewish Israelis.
5. The government of Israel must hold law enforcement authorities accountable for violations of the right of Palestinian citizens of Israel to assemble.
6. The government of Israel must put in place effective participation mechanisms to counter discriminatory policies and laws, particularly in the absence of constitutional protections that promote equality and non-discrimination norms to the benefit of Palestinian citizens of Israel.
7. The government of Israel must abolish the “Nakba Law”, which bestows upon the Minister of Finance the power to take punitive measures to prevent Palestinian citizens of Israel from commemorating Israel’s Independence Day or the establishment of the State of Israel as a day of mourning.



"Demonstration in Amman, 16 November 2012."
by Jazi Manaseer and Amjad Taweel

JORDAN

Introduction

Over the last three years, Jordan has witnessed popular protests in the form of sit-ins, marches and strikes across the kingdom, demanding political and constitutional reforms, the reduction of prices, the overthrow of the government, the dissolution of parliament, the abolition of the peace treaty between Jordan and Israel and the closure of the Israeli embassy in Amman.

These protests culminated in the amendment of the Public Meetings Law in 2011 and the Constitution as well as the creation of a professional association for teachers in Jordan and early elections.

At times, the protests were handled with a relatively soft security policy whereby the security forces and gendarmerie abstained from using force against sit-ins and demonstrations and even distributed bottled water and juice to demonstrators. At other times, however, the protests were suppressed and activists arrested and referred to the State Security Court. Moreover, anti-reform movement groups, calling themselves the Bloc of Loyal Youth, organized counter-demonstrations against popular reform movements and attacked peaceful demonstrators, according to reports by local and international organizations.

The popular movements utilized electronic media, especially social networks, to call for marches and sit-ins and release statements. This approach was countered by amendments to the Press and Publications Law holding directors and editors of websites responsible for user comments. As a result of the Syrian crisis, Jordan has received large numbers of Syrian refugees now living in Jordanian cities and refugee camps specifically built to host them. These camps, including Al-Zaatari Camp, witnessed demonstrations protesting their difficult conditions. In addition, Syrians and Jordanians held sit-ins in front of the Syrian and Russian embassies, some to protest against and some to show support for the Syrian regime.

1. General Legal Framework

International conventions on human rights

Jordan has ratified the majority of international conventions on human rights, including:

1. International Covenant on Civil and Political Rights.
2. International Covenant on Economic, Social and Cultural Rights.
3. Convention on the Elimination of All Forms of Discrimination against Women.
4. Convention on the Rights of the Child.
5. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Jordan published these conventions in the official gazette and, in 2009, withdrew the country's reservation on Article 15/4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) relating to the right to relocate and choose a place of residence.

Nonetheless, Jordan has not ratified the 1951 Geneva Convention on Refugees, but has signed a memorandum of understanding with the UN High Commissioner for Refugees (UNHCR) on the recognition of the legal status of refugees and the provision of services to them. However, this MoU does not include specific provisions on the right of refugees and asylum seekers to assemble, whereas it includes a provision on the refugees' obligations to respect applicable laws and regulations to maintain public order and not to undertake activities that would undermine security or harm Jordan's relations with other countries.

The Jordanian Constitution does not define the legal value of international agreements at the national level. The Jordanian Court of Cassation, upon reviewing its jurisprudence, determined that international conventions take precedence over national laws and shall be applied even if they conflict with domestic laws. However, judges and lawyers rarely base their arguments on international conventions.

Jordanian legislation

The Jordanian Constitution provides for the right to assembly in Article 16 which stipulates that (i) Jordanians shall have the right to hold meetings within the limits of the law. (ii) Jordanians shall have the right to establish societies, unions and political parties provided their objective is lawful, their methods peaceful, and their by-laws not in violation of the provisions of the Constitution. (iii) The law shall regulate the manner of the establishment of societies, unions and political parties and the control of their resources.

According to Constitutional amendments of 2011, every infringement on public rights and freedoms is a crime punishable by law.

The Public Meetings Law No. 7 of 2004, as amended in 2011, defines the procedures for holding public meetings and identifies the relevant authorities.

2. Procedures

Jordan introduced a fundamental amendment to the Public Meetings Law in 2011, which abolished the requirement to obtain the prior written approval of the administrative governor in order to organize a public meeting. The former law required that the approval be obtained at least twenty-four hours before the date set for the public meeting. Under the new law, obtaining approval was replaced with giving the administrative governor notice of convening the public meeting at least forty-eight hours in advance. The notice should contain the names of the organizers of the public meeting, their addresses and signatures as well as the

purpose of the meeting, its time and place. This amendment was the most significant outcome of pro-reform protests in Jordan.

The amended law considers every public meeting held without notice to the administrative governor an illegal act. Consequently, the law does not foresee an exemption from advance notification in the case of spontaneous assemblies prompted by unexpected circumstances, as international experts, such as the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, recommend.¹

Definition

The Public Meetings Law defines a public meeting as a meeting held to deliberate a matter related to state policy.

This definition is criticized for its lack of specificity in terms of scope, actors, time and place. Based on its wording, the law would consider a conversation between two people, possibly friends or relatives, about a public economic or social matter or news event reported by media a public meeting subject to the provisions of the Public Meetings Law.

Article 3 of the Public Meetings Law of 2004, as amended in 2011, specifies the meetings exempted from the prior notice requirement and, in addition, it grants the Interior Minister alone the discretionary power to exempt any other meeting from the prior notice requirement. Article 3 stipulates that “A) Jordanians have the right to hold public meetings and organize rallies in accordance with the provisions set forth in Articles (4) and (5) of this Law. The following meetings are exempt from these provisions:

1. The general assembly of charities, volunteer-based societies, companies, chambers of commerce and industry, municipalities and clubs provided that these assemblies aim to realize the objectives of their respective bodies and are compliant with the laws governing their work and activity.
2. Meetings of professional associations provided that these meetings aim to realize the objectives of their respective associations and are compliant with the laws governing their work and activity.
3. Meetings of legally licensed political parties held at their headquarters within the conditions prescribed in the applicable Political Parties Law.
4. Symposiums and informational programs held by official media institutions.
5. Meetings on university campuses

¹ See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 20th session, A/HRC/20/27, para. 29.

6. Meetings held to celebrate national and religious holidays organized by ministries and governorates provided that the Ministry of the Interior is informed of the meeting at least one week in advance.

7. Meetings held during elections.

B) The Minister may exempt any meeting of the provisions set forth in Articles (4) and (5) of this Law.”

3. Restrictions

The law does not contain any clause requiring that measures restraining freedom of assembly should be undertaken in conformity with the principles of necessity and proportionality, as international human rights law request.² Ultimately, the law seems to give competent authorities unfettered discretion to suppress freedom of assembly, overlooking, among others, the principle by which all assemblies should be presumed peaceful.³

4. Protection

The Public Meetings Law vests in the administrative governor the absolute power to disband meetings and disperse marches if the governor believes that the meeting or march could endanger lives, public or private property, or public safety. It further empowers the administrative governor to take all security measures and procedures necessary to preserve security and order and protect public and private property and to compel security apparatus directors to fully abide by his or her orders and instructions in accordance with Articles 7 and 9 of the Public Meetings Law.

The phrases “public safety” and “all security measures and procedures necessary” contained in these provisions are broad and non-specific, which entails a risk of arbitrary restrictions and use of excessive force against protesters.

5. Sanctions

The Public Meetings Law penalizes those who disregard the law with a penalty of imprisonment for a minimum of one month and a maximum of three months or a fine of not less than two hundred dinars and not exceeding one thousand dinars, or both penalties.

² According to the Special Rapporteur, “only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”, *ibid*, para. 16. See also UN Human Rights Committee, General Comment no. 31 (2004), CCPR/C/21/Rev.1/Add.13, para. 6

³ See *supra* note 2, para. 26, OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, section A, Guidelines on freedom of peaceful assembly, para. 2.1.

Article 8 holds those who cause damages to others or to public or private property criminally and civilly liable even though this is a general principle already set forth in the Civil Code and the Penal Code.

The Penal Code criminalizes unlawful assembly in Article 164, which states:

1. If seven or more people assemble to commit an offense or achieve a common purpose and act in a manner that drives others to reasonably expect that they will disrupt public security or provoke unnecessarily or without a reasonable reason other people to disrupt public security, their assembly shall be considered unlawful.
2. If unlawful assemblers begin to achieve the purpose for which they assembled in order to disrupt public security in a manner that terrifies the public, such assembly shall be called rioting.

Participants in an unlawful assembly face a punishment of imprisonment not exceeding one year or a fine not exceeding 25 dinars, or both penalties.

Participants in assemblies/demonstrators who disband before or in immediate compliance with the warning of authorities or law enforcement representatives without using a weapon or committing a felony or misdemeanor (Article 166) are exempted from the penalty set forth in Article 165.

The Penal Code (Article 167) permits representatives of the administrative authority, the police chief, regional commander or any police officer, gendarme or any person assisting either of them to take the necessary measures to disperse assemblers who continue to assemble after being warned by blowing a trumpet, a whistle or other means or by firing a flare gun. If participants demonstrate resistance, the police or the gendarmes may use necessary force within reasonable limits to overcome such resistance.

Hence, if the use of force is unnecessary and disproportionate, those affected may resort to the judiciary. Police personnel are tried before a police tribunal consisting of one civilian judge and two police judges appointed by the public security director and are interrogated by the police prosecutor in accordance with the Public Security Law No. 38 of 1965.⁴ Under the Gendarmerie Law No. 38 of 2008, gendarmes are referred to the Gendarmerie Forces Court if they commit an offence while on duty.

The State Security Court considers cases of unlawful assembly. It is worth noting that Article 108 brought by the constitutional amendments of 2011 prohibits the trial of civilians in criminal cases

⁴ Effective and prompt investigations should be conducted by independent and impartial bodies, including judges and courts, when abuses are committed by security forces during or after an assembly; see *supra* note 2, paras. 77-81, see also OSCE/ODIHR *Guidelines on freedom of peaceful assembly* (2010), section A, Guidelines on freedom of peaceful assembly, para. 5.6.

before tribunals whose judges are not all civilians except in cases of high treason, espionage, terrorism, drug crimes and currency counterfeiting.

During the last three years, participants in peaceful sit-ins and marches across the kingdom were arrested on charges of unlawful assembly, insulting the king or undermining the regime. Some of them are charged under terrorism provisions, which place them under the purview of the military-dominated State Security Court.⁵ This is of serious concern, as according to international Human rights principles, military tribunals should not try civilians.⁶

It must be noted that disproportionate sanctions and penalties imposed on organisers and participants after a demonstration may breach freedom of assembly, particularly granted that they may deter individuals from exercising freedom of assembly.⁷

6. Gender Equality and Freedom of Assembly

The Constitution does not expressly provide for equality between Jordanians based on gender despite the demands made by human rights organizations to add gender as grounds for discrimination in Article 6 when the constitutional amendments were under review. These demands were ignored, despite calling for the observance of international treaties such as CEDAW which imposes on States the obligation to take all appropriate measures to guarantee women's exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.⁸ Such response triggered a debate on whether the Constitution guarantees gender equality considering that the word "Jordanians" in Article 6 and elsewhere in the Constitution refers to both Jordanian men and women. This debate has been most prominent with regard to Jordanian women's right to pass on their Jordanian nationality to their children like men. Several sit-ins, campaigns and coalitions were organized or created in support of this right, notably the campaign entitled "My Mother is Jordanian and I have a Right to her Nationality." The competent authorities rejected an application submitted by the organizations implementing this campaign to register a private association committed to realizing this goal.

5 See for instance Human Rights Watch 2013 report <http://www.hrw.org/world-report/2013/country-chapters/jordan>

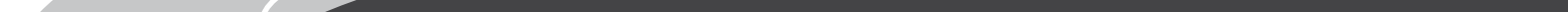
6 UN Working Group on Arbitrary Detention (Opinion No. 27/2008).

7 *OSCE Guidelines*, *supra* note 4, paras. 109-112, Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 23rd session, A/HRC/23/39, para. 81(d), *Ezelin v France*, judgment of the European Court of Human Rights, 26 April 1991, para. 53.

8 See CEDAW, arts. 3 and 7.

Recommendations

1. Amend the Constitution to explicitly provide for the primacy of international human rights conventions in the Jordanian legal system and ensure gender equality.
2. Amend the Public Meetings Law in order to comply with international standards of human rights, conduct a comprehensive review of its provisions, provide a specific definition of public meetings in terms of their scope and number of participants, limit the absolute powers vested in the administrative governor to disperse sit-ins and marches by force and provide protection for marches and sit-ins.
3. Adhere to international standards relating to the use of force by law enforcement personnel and assign the task of investigating and deciding on the violations committed by law enforcement personnel to civil courts to ensure impartiality and continuity.
4. Review the legislative system to give civil courts jurisdiction to consider cases relating to the right of assembly and crimes committed by police and gendarmes against participants in public meetings.



Introduction

Lebanon is a parliamentary democratic Republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.¹ The preamble of the Constitution incorporates the Universal Declaration of Human Rights (UDHR) into its provisions. These international human rights norms and standards have constitutional status² and a higher standing than the national law.³

Lebanon participated in drafting the UDHR in 1948 and has acceded to a number of international treaties and conventions, among which its ratification on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997, with reservations to certain paragraphs of articles 9, 16 and 29.⁴ Nevertheless, due to insufficient integration of procedural safeguards in laws and practices, gaps remain in the fulfilment of Lebanon's obligations under international human rights law.

The right to Freedom of assembly is a key right in democracies and a prerequisite for the exercise of other human rights. Lebanon, which is a democratic republic, with a pluralistic environment and multi confessional society "(...) *has often been a fertile arena for internal strife and external interventions; it has paid a high price to maintain this colourful mosaic (...)*",⁵ such as the Lebanese Civil War (1975-1991), the confessional conflicts and the political crisis. In these instable contexts, freedom of assembly has a great importance in advocating and effecting real changes in Lebanon. The protection of this right plays a major role in facilitating continuous dialogue within different stakeholders⁶ and creating an open and tolerant society, in which different groups live together.

1. General Legal Framework

International and regional instruments

Lebanon's commitment to the Charter of the United Nations and the Universal Declaration on Human Rights is expressly stipulated in the preamble to the Constitution. In addition, the Constitutional Council considers that the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) complement the UDHR.

1 "c"-(Fundamental Provisions Preamble) - The Lebanese Constitution.

2 The Constitutional Council resolved to consider the preamble to the Lebanese Constitution as an integral part of it.

3 Article 2 - Code of Civil Procedures - Lebanon.

4 *National Strategy for Women in Lebanon 2011-2021*, National Commission for Lebanese Women.

5 Arda ARSENIAN EKMEKJI, *Confessionalism and electoral reform in Lebanon*, July 2012, The Aspen Institute

6 Government, Parliament, Political Parties, Civil Society, etc.

Lebanon adhered to relevant international conventions:

- ▶ the International Covenant on Civil and Political Rights (ICCPR)
- ▶ the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ▶ the International Convention on the Elimination of All Forms of Racial Discrimination
- ▶ the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Domestic laws

The right to Freedom of Assembly is a constitutional right in Lebanon, guaranteed in article 13, which stipulates that: *“The freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits established by Law”*. This constitutional text is in line with international standards upholding the importance of the freedom of peaceful assembly which represents the genuine side of democracy.

In Lebanon, the right to Freedom of Assembly is still governed by the Ottoman law issued on 1911 (20 Jumada 1, 1327), known as the Public Assemblies Law) and amended by the law issued on June 4, 1931 and law decree number 41 issued on September 28, 1932.

2. Procedures

Advance notification

Public assemblies are not subject to previous authorization by the Lebanese authorities. Article 1 of the Ottoman law stipulates that no permit (authorization) is required and that Public assemblies are allowed only if participants are unarmed.

However, the exercise of this right is subject to a **prior notification procedure**. According to article 2 of the above mentioned law, a “statement paper” shall be prepared by organizers before the assembly, specifying the place, day and exact time of the meeting. The paper shall be signed by **at least two persons** provided they are both residents of the meeting location area and enjoying their political and civil rights. They should mention their names, position and status.

The “statement paper” shall mention the cause and the intended purpose of the meeting⁷ and shall be submitted to the Ministry of Interior for assemblies to be held in Beirut and to the administrative authority for assemblies to be held outside of Beirut (the *Muhafiz* and the

⁷ Article 5 of the Ottoman law.

Qaem-maquam). A “notification” is received once the paper is submitted. In case the notification was not delivered, the writers of the statement paper shall draw up minutes explaining the reasons. Two of the participants enjoying their political and civil rights must sign the minutes. It is necessary to mention, in the notification or in the minutes, the exact date and time the statement was submitted.⁸

The regulation of the Ministry of Interior, issued under Decree number 4082 on 14/10/2000, mandates the Department of Political Affairs, Parties and Organizations to settle the requests related to assemblies and demonstrations notifications.

Article 4 of the Ottoman law states that the notification should be submitted **at least 48 hours** prior to the date of the assembly.

Spontaneous and urgent assemblies

There is a difference between public assemblies and spontaneous or urgent assemblies, despite the bond that may exist between participants. The Ottoman law doesn’t include any provisions for exceptions in the case of spontaneous assemblies;⁹ however the Lebanese authorities protect and facilitate, in practice, spontaneous assemblies as long as they remain peaceful.

3. Restrictions

In accordance with article 21 of the ICCPR: “(...) *no restriction may be placed on the exercise of the rights to freedom of peaceful assembly and of association other than those that are prescribed by law and that are deemed necessary in a democratic society to safeguard national security and public order, protect public health, morals or the rights and freedoms of others*”.¹⁰ In the same perspective, although the general principle is the freedom of assembly in Lebanon, yet this right is not absolute as the Lebanese Legislator has put limitations and restrictions in order to balance it against the need to protect other rights and needs.

As stipulated in article 3 of the Ottoman law, the Lebanese government may prevent, pursuant to a Council of Ministers decision, the holding of a public assembly that would disturb public security or public order or public morality and that would go against the regular and normal course of public interests.¹¹ Every meeting that is held despite the prohibition referred to shall be

⁸ Article 3 of the Ottoman law.

⁹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that spontaneous assemblies should be exempted from prior constraints (*Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, Human Rights Council, 21 May 2012, A/HRC/20/27, para. 29).

¹⁰ Resolution 21/16 - adopted by the Human Rights Council on 11 October 2012, *The rights to freedom of peaceful assembly and of association*, Human Rights Council, General assembly, United Nations.

¹¹ Added to Article 3 as per amendment - law issued on June 4, 1931.

dissolved and the organizers and owners of the location shall be subject to prison sentence from six months to three years and to the payment of a fine or to one of these two penalties.¹²

The Lebanese government **forbids any meeting organized without notification** or minutes submission.¹³ The organizer of such event will be subject to imprisonment ranging from one week to one month or to the payment of a monetary sanction.¹⁴ Article 6 and 7 of the Ottoman law put general restrictions related to the place and the time of the assembly. The public assembly shall not be organized in open spaces located within a distance of three kilometers from the presidential palace or the parliament when it is convened.¹⁵ In addition, it cannot be held in public roads intended for traffic and crossing. The public assemblies, organized in open places, can last from sunrise to sunset.¹⁶

International bodies monitoring freedom of assembly have narrowly construed limitations foreseen in article 21 ICCPR; in this context, blanket restrictions imposed by the Ottoman law fall short of international standards, particularly the ban on assemblies in roads with vehicular and pedestrian traffic, since the temporary disruption to regular traffic flow caused by an assembly should be tolerated by the authorities.¹⁷

Legal remedies

It is possible to file a complaint against an administrative decision to an administrative tribunal. Its decision may be appealed to the State Consultative Council (*Shura Council*).¹⁸ This administrative appeal procedure has proved to be a satisfying and effective remedy.

4. Protection

State's duty to protect peaceful assembly

The Lebanese authorities have a negative obligation, the obligation to respect the right to freedom of assembly and not to unjustifiably interfere in the enjoyment of this right. In addition, they have a positive obligation to ensure that the right to hold and participate

¹² Added to Article 3 as per amendment - law decree number 41 issued on September 28, 1932.

¹³ Article 3 of the Ottoman law.

¹⁴ Article 3 of the Ottoman law.

¹⁵ Article 6 of the Ottoman law.

¹⁶ Article 7 of the Ottoman law.

¹⁷ See Judgment of the European Court of Human Rights, *Oya Ataman v Turkey*, 5 December 2006, paras. 41-42.

¹⁸ <http://www.loc.gov/law/help/lebanon.php>

in peaceful assembly is enjoyed in practice by putting in place adequate procedures and mechanisms to protect and facilitate it.

Law enforcement officials duties to maintain order and security, protect public freedoms¹⁹

Law No. 17 of 6/9/1990 (Organization of the Internal Security Forces - ISF) and The Internal Security Code of Conduct (in particular article 7 - Use of Force and Firearms) aiming at guiding law enforcement officials in general, can be adapted to their role of policing peaceful protests. In this regard, they will preserve human dignity and uphold human rights.²⁰ They will protect freedoms within the bounds of the Law²¹ and will not practice any form of discrimination based on race, ethnicity, confession, region, national origin, gender, age, social status or any other basis.²²

In their duties, Lebanese Law Enforcement officials have the positive obligation to actively protect peaceful assemblies in general, and to protect it in particular from intruders and troublemakers aiming at disturbing or dispersing these assemblies, such as infiltrators, counter-demonstrators, provocateurs. As per the Special Rapporteur, these individual or groups may include in general *"(...) those belonging to the State apparatus or working on its behalf"*.²³ This protection should ensure that interferences do not keep any person from enjoying the right to assembly *"(...) be it through threats, violence, or any other means of physical and moral coercion, or through deprivation of freedom in cases other than those set forth by the law"*.²⁴

Lebanese law enforcement officials will not abuse power²⁵ and will not use the power entrusted to them *"(...) but to maintain order and to enforce the law"*.²⁶ The use of force must be commensurate with the circumstances²⁷ and officials will restrain from using it unless it is *"necessary, proportionate and after exhausting all possible, non-violent means, within the minimum extent needed to accomplish the mission"*.²⁸

19 According to the cabinet's assignment on 15/1/1991, the Lebanese army started executing the missions of peacekeeping in all the Lebanese areas and continues to do so.

20 Abiding by: Lebanese Constitution (article 8), UDHR (article 9), Lebanese Penal Code (article 329 & 367), and United Nations Code of Conduct for Law Enforcement Officials dated 17/12/1979 (article 2).

21 Article 1 of Law N 17 of 6/9/1990 (Organization of the Internal Security Forces).

22 *Code of Conduct*, Internal security forces, Ministry of Interior and Municipalities, Lebanese Republic.

23 *Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, Human Rights Council, 21 May 2012, A/HRC/20/27.

24 *Code of Conduct (Explanatory Notes)*, Internal security forces, Ministry of Interior and Municipalities, Lebanese Republic.

25 *Code of Conduct*, Internal security forces, Ministry of Interior and Municipalities, Lebanese Republic.

26 Article 45 of Law N 17 of 6/9/1990 (Organization of the Internal Security Forces).

27 Article 225 of Law N 17 of 6/9/1990 (Organization of the Internal Security Forces).

28 *Code of Conduct*, Internal security forces, Ministry of Interior and Municipalities, Lebanese Republic.

5. Sanctions

Responsibility of the assembly's organizers

As per article 8 of the Ottoman law, a commission (administrative commission) composed of at least three persons (in general the organizers) runs the assembly, ensuring the peaceful nature of the assembly. This commission has the obligation to make adequate and reasonable efforts to comply with the assembly's legal requirements. It is responsible of maintaining order, preventing laws violations, assuring that participants are not deviating from the topic mentioned in the "Statement Paper" and preventing any speech that might be prejudicial to the State order and public morals or any other words that could incite crime commission. If members of the committee are not nominated by the statement paper signatories, the assembly shall elect them. This administrative commission is responsible of every action that goes against the dispositions of articles 7 and 8. Before this commission is formed, this responsibility lies on the shoulders of the "statement paper" signatories.²⁹ It is worth noting that under such provision organizers bear far-reaching responsibility for criminal acts committed during the assembly, whereas, bearing in mind the State's ultimate obligation to protect peaceful assemblies, promoters or organizers should not be held accountable for others' actions or omissions when they were not involved.³⁰

As per article 10 of the Ottoman law, whoever contravenes the provisions of this law will be punished by a monetary penalty or with imprisonment for 24 hours to one week. In addition to prosecution against those who commit a crime in the course of the meeting (as per articles 345 to 349 of the Lebanese Penal Code).

Riot demonstrations and assemblies

The Lebanese Penal Code, in its 5th chapter, criminalizes "Riot demonstrations and assemblies". As per Article 345,³¹ whomever cries out loudly what could incite to riots or disturb public security or do what could potentially lead to unrest, while attending an assembly not having the character of a private meeting whether by its purpose or number of participants or location and whether it was held in a public place or an open venue, can be sentenced to a period of one month to a year in prison and to pay a fine ranging from 20,000 LBP to 200,000 LBP.

Article 346 defines riot assemblies as being any rally or parade organized on public roads or venues, open to the public and composed of at least three persons, one of them at least having a weapon, with the intent to commit a felony or a misdemeanor or of **at least seven persons intending to protest against a decision or measure taken by the**

29 Article 8 of the Ottoman law.

30 *Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Maina Kiai, Human Rights Council, 21 May 2012, A/HRC/20/27, paras. 31 and 33.

31 Article 345 amended by virtue of law number 239, dated 27/5/1993.

public authority to put pressure on it, or if of around twenty persons suspected of disturbing public peace. These provisions are vague and lack a precise definition. Moreover, any provision criminalizing assemblies aimed at protesting against public authorities' decisions encroaches upon the democratic essence of the freedom to peacefully assemble as enshrined in the ICCPR and the UDHR.³²

If people are gathered as previously described, they can be asked to disperse by one of the representatives of the administrative authority or an officer of the judicial police. Those taking action before the authority's warning or those who obey immediately without using their weapons or committing any other misdemeanor are exempted from the abovementioned sentence.³³

Nevertheless, in case demonstrators do not disperse except by force, they will be condemned to imprisonment from two months to two years. Furthermore, the demonstrator using a firearm will be sentenced to a period ranging from one to three years in prison or to a more severe penalty that he may be entitled to.³⁴

Military Courts to judge civilians

According to the **Lebanese Code of Military Justice of 1968**, Lebanon's Military Court is a special court competent to statute on offences against national security and crimes committed by military personnel. This court is headed by a military officer assisted by four other judges, three of which are military officers, all appointed by the Minister of Defence. The Military Court has jurisdiction over any conflict between civilian and military personnel.³⁵ Before 2005 this procedure was widely applied to protesters, raising concern from international Human rights organizations, as in principle, military tribunals should not try civilians.³⁶

The United Nations Human Rights Committee expressed in its 1997 review of Lebanon's report *"concern about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians. It is also concerned about the procedures followed by these military courts, as well as the lack of supervision of the military courts' procedures and verdicts by the ordinary courts"*.³⁷ Although the law has become much

32 See, e.g., OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, section B, Explanatory Notes, para. 94 "[C]riticism of government or state officials should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly".

33 Article 347 - Lebanese Penal Code.

34 Article 348 - Lebanese Penal Code.

35 *Lebanon: Human Rights Organizations urge the Lebanese authorities to stop referring civilians to the Military Court*, Alkarama, ALEF & CLDH, 17 August 2012.

36 UN Working Group on Arbitrary Detention (Opinion No. 27/2008).

37 *Lebanon: Human Rights Organizations urge the Lebanese authorities to stop referring civilians to the Military Court*, Alkarama, ALEF & CLDH, 17 August 2012.

more protective to protesters' rights, the possibility of military courts trying civilians remains open and is still a concern.

6. Gender Equality and Freedom of Assembly

The Lebanese constitution recognizes equality between men and women before the law. Article 7 stipulates that: "*All Lebanese shall be equal before the Law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction*". However, practice shows that gender-based discrimination persists in some laws, which have not yet been challenged as unconstitutional.³⁸

The right to freedom of peaceful assembly is to be enjoyed equally by everyone in Lebanon. In regulating this right, the Lebanese authorities must treat all individuals and groups equally. Women have equal rights to peaceful assembly and can freely advocate for any cause. Women's organizations in Lebanon use different kinds of actions to shed light on their demands and rights such as sit-ins and demonstrations. The aim of such events is to claim a right or make an issue known in order to mobilize public opinion.

³⁸ *Women's Rights in the Middle East and North Africa 2010*, Freedom House, Lebanon, 3 March 2010, available at: <http://www.unhcr.org/refworld/docid/4b99012177.html> [accessed 22 February 2013]

Recommendations

1. Authorities should reform the Public Assemblies Law in order to lift restrictions based on content, blanket restrictions on time and place and the extra liability for the organizing commission.
2. Strengthen the Law Enforcement Officials' capacities in human rights in general and in relation to protecting freedom of assembly in particular.
3. Implement the recommendation accepted during the Universal Periodic Review-UPR 2010, by "*strengthening the institutional framework in the human rights area, including, through the establishment of a National Human Rights Institution in accordance with the Paris Principles*".³⁹
4. Implement the recommendations accepted during the Universal Periodic Review of 2010 by establishing processes and institutions to protect women's rights, ensure equitable representation of their interests and concerns,⁴⁰ continue efforts for their advancement and participation in public life,⁴¹ as well as fighting violence against women.⁴²

【 LEBANON 】

³⁹ *Report of the Working Group on the Universal Periodic Review, Lebanon*, Human Rights Council, General Assembly, United Nations, 12 January 2011, Par. 80-9, A/HRC/16/18. Recommendation also included in the National Human Rights Action Plan for Lebanon 2013-2019, Lebanese Parliament, Lebanese Republic.

⁴⁰ *Report of the Working Group on the Universal Periodic Review, Lebanon*, Human Rights Council, General Assembly, United Nations, 12 January 2011, Par. 81-16, A/HRC/16/18.

⁴¹ National Human Rights Action Plan for Lebanon 2013-2019, Lebanese Parliament, Lebanese Republic.

⁴² *Report of the Working Group on the Universal Periodic Review, Lebanon*, Human Rights Council, General Assembly, United Nations, 12 January 2011, Par. 81-14, A/HRC/16/18.



"Woman holding a flag in a Benghazi Street, 26 March, 2011."
by Pierre Terdjman/Agence Cosmos

LIBYA

Introduction

The right to freedom of public assembly in Libya, as well as other basic freedoms, has only come into existence since the 2011 revolution that ended with a civil war and the overthrow of the country's leader Muammar Gadhafi.

Public protests were under Gadhafi practically impossible, and during the 2011 uprising the repression of – initially – peaceful protests was fierce. The UN International Commission of Inquiry concluded that Gadhafi forces engaged in excessive use of force against demonstrators in the early days of the protests. This led to significant deaths and injuries, the nature of which were indicative of a clear intention to kill (Shots were aimed at the head and upper body). Indeed, the Commission of Inquiry believed it to have been a central policy of violent repression, and a widespread and systematic attack on civilians. Specifically, the Commission found that firing on demonstrators during the protests was excessive in relation to the threat posed.¹

After the ousting of Gadhafi however, the security situation remains extremely precarious, due to the weakness of transitional institutions, and the presence of armed militias that refuse demobilization and exercise their rule by force over parts of the territory.

In this tense context, in August 2011 a transitional ruling committee issued a Constitutional Declaration that is to remain in effect until a new constitution is passed.

The Constitutional Declaration upholds human rights and basic freedoms, and Libya's citizens should, at least by law, finally be able to enjoy the rights enshrined in international treaties that the country had ratified but never implemented. Furthermore, only those existing laws that are in accordance with the spirit of the Constitutional Declaration are to remain in force until new legislation is issued.

A few new laws have been passed since the end of the revolution: In 2012, the authorities issued a law lifting a ban on the formation of political parties,² and another regulating the right to freedom of peaceful assembly.³ The latter falls short of international standards in many of its articles.⁴

The issuance of Law 65 of 2012 (hereinafter, the "Demonstration Law") may be a reflection of the precarious condition of Libya's transition phase. In its present form, the demonstration law lacks mechanisms to enable its implementation and regulations to hold accountable the State as well as participants. This is compounded by a chaotic security situation, with numerous

1 See, A/HRC/19/68, 8 March 2012. <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf> For further discussion, see also Annyssa Bellal and Louise Doswald-Beck, *Evaluating the Use of Force During the Arab Spring*, Yearbook of International Humanitarian Law, Volume 14 (T.M.C. Asser Press: The Hague, 2012), pp.3-35.

2 Law No. 02-2012 on political parties, issued by the National Transitional Council.

3 Law no. 65 of 2012 on regulating the right of peaceful assembly, passed by the General National Congress in November 2012.

4 See Lawyers for Justice in Libya, *LFJL Joins Libyan and Arab rights organizations to warn of new Libyan law which undermines freedom of assembly*, 3, December 2012, at <http://www.libyanjustice.org/news/news/post/55-lfjl-joins-libyan-and-arab-rights-organizations-warn-that-new-libyan-law-undermines-freedom-of-assembly> (accessed February 19, 2103).

former rebel groups that evolved into heavily armed militias that have continued to resist integration into official police or military units, and some have joined in a number of protest demonstrations that have turned violent. These groups operate outside the realm of the law continuing to control public order in parts of the country with little accountability.

1. General Legal Framework

International instruments

Libya has ratified most of the rights-related international declarations and conventions and, as a consequence, it is committed to respect international standards regarding the right to freedom of peaceful assembly and of association.

Ratified conventions:

- ▶ The International Covenant on Civil and Political Rights (ICCPR) and its First optional protocol;
- ▶ The International Covenant on Economic, Social and Cultural Rights (ICESC);
- ▶ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – with reservations, and its Optional Protocol The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- ▶ The Convention on the Rights of the Child (CRC);
- ▶ The Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- ▶ Convention on Migrant Workers, which provides inter alia for the freedom of association and assembly;
- ▶ African Charter on Human and Peoples' Rights; its Protocol on the Establishment of an African Court on Human and Peoples' Rights, and its Protocol on the Rights of Women in Africa; On February 26, 2013 Libya ratified the Convention of the Rights of Persons with Disabilities, Article 29 of which requires state parties to ensure that persons with disabilities can effectively and fully participate in political and public life.

In referring to international treaties that protect basic rights and freedoms, the Constitutional Declaration requires the State to join them without explicitly recognising the pre-eminence of those that have been ratified.⁵ However, it commits the then-ruling Interim National Council to respect human rights and basic freedoms,⁶ and entrusts it with ensuring the safety of citizens and expatriates, ratifying international agreements and establishing a civil, constitutional, democratic state.⁷

⁵ Constitutional Declaration, Article 7.

⁶ *Ibid.*

⁷ Constitutional Declaration Article 17.

Domestic Law

Following the revolution, the Constitutional Declaration⁸ was issued in August 2011, and it is to remain effective until a new constitution is drafted.⁹

Article 14 of the Constitutional Declaration guarantees freedom of opinion for individuals and groups, freedom of assembly, of demonstration, of communication and of peaceful strike, in accordance with the law.

The **Law no. 65 of 2012** regulates the right to peaceful public assembly.

Passed by the current legislative body, the General National Congress (GNC), Law no. 65 of 2012 provides for the specific right by citizens, political parties, civil society organisations and professional associations to peaceful, public demonstration, as enshrined in the Constitutional Declaration and in international treaties.¹⁰

The law, issued in November 2012, defines a demonstration as “A gathering of persons in a peaceful march on a public route or venue in order to express a view, make a request or present a protest”. As such, the law does not impose any requirements on assemblies that take place in private places.

The law comes under the jurisdiction of the district security administration, which belongs to the interior ministry.

Other previous laws, such as the Security and Police Law no. 10 of 1992, provide restrictions to freedom of assembly (see “Restrictions”).

2. Procedures

The demonstration law does not require prior authorisation, only a notification to local security officials.¹¹ The notification procedure requires information on the date, time, start venue and route

⁸ Libya, Draft Constitutional Charter for the Transitional Stage, The Constitutional Declaration, see <http://www.wipo.int/wipolex/en/details.jsp?id=11248>; Article 35 allows for provisions prescribed in existing legislation to apply on condition they are not inconsistent with the Constitutional Declaration.

⁹ Parliament is to decide the procedure to select a Constituent Assembly, after the Supreme Court on February 26, 2013, found unconstitutional a law issued in 2012 providing for its election.

¹⁰ Articles 2 and 3 of Law 65/2012.

For Arabic text of Law 65/2012, passed November 6, 2013, see http://www.gnc.gov.ly/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=3&Itemid=8, (accessed on February 13, 2013).

¹¹ Article 5 of Law 65/2012.

of the demonstration 48 hours before the event to the Security Directorate in the district to which the planned demonstration belongs. The law does not refer to a receipt of notification. There is no provision for exemptions from the notification procedure, which is recommended by international experts and bodies, particularly to allow the holding of spontaneous assemblies.¹²

Notification is to be presented by **an organising committee of at least three people, which assumes responsibility for protecting public order and morals, and preventing crime-inciting speeches.**

Article 6 (a) allows the relevant administrative authorities to require, for the sake of security and public order, amendments at least 24 hours in advance in the timing, venue or route of the planned demonstration if they are considered to endanger citizens, or private or public property, or state interest. Article 7 provides that if the event is deemed to pose a threat to public security, the district Security Directorate may ban it, and must provide a notice in writing at least 12 hours in advance, with a copy to be displayed on the outside of the office of the authorities, and to be published in the local press, if possible.

The same article provides, in this case, that demonstration organisers can submit a complaint to the interior minister, but no mechanisms for judicial review or legal remedy have been legally established.

3. Restrictions

Previous laws that banned all assemblies of a political nature and prohibited independent trade unions and labour strikes, are not in effect any more, and professional groups and trade unions have gone on strike over the past year to protest policies or express financial grievances.

However, other laws that limited freedom of assembly, such as the **Security and Police Law** no. 10 of 1992, remain in place. Regarding public assembly, Police Law no. 10 provides for the police to use force first and firearms only as a last resort to disperse a gathering of more than five persons if it poses a threat to public security.¹³

¹² United Nations, Human Rights Council, 20th Session, report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27 ("Report by UN SR on FoPA"), May 21, 2012, para. 29; OSCE Guidelines, 4.2, European Court of Human Rights, *Bukta and Others v Hungary* (2007), para. 36. For more information, see chapter 1, "Procedures".

¹³ Article 13 of Law 10/1992 See <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=41> (accessed February 25, 2013).

Moreover, the current election law limits the place of campaign demonstrations by prohibiting campaigning in places of worship, schools or universities.¹⁴

The UN Special Rapporteur on Freedom of peaceful assembly and association (FOAA) recommends that “*the free flow of traffic should not automatically take precedence over freedom of peaceful assembly*”,¹⁵ and that temporary disruptions of road traffic cannot be alleged in itself or exclusively as a reason of public order to hamper the exercise of freedom of assembly.¹⁶ However, the Libyan law makes **the right of peaceful assembly conditional on not disturbing public roads or public transportation (art.2).**¹⁷

In a Joint Allegation Letter of January 9, 2013,¹⁸ **the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, together with the Special Rapporteur on the situation of human rights defenders, raised serious concerns about several provisions of Law no.65/2012.** At the time of writing, no response had been received from the Libyan government.

In particular, the Special Rapporteurs highlighted:

- ▮ Article 4 requires the establishment of a committee of organizers responsible for maintaining public order and burdens organizers with excessive responsibility that has a likely deterring effect;
- ▮ Article 7 gives “broad and vague” basis for prohibiting an assembly on “security” grounds;
- ▮ Article 6(a) confers broad powers to the authorities to change the time and place of an assembly.

Only citizens, political parties, civil society organisations and professional associations have the right to hold demonstrations. **Non-citizen residents** would, thus, be precluded from the exercise of this freedom, in contradiction with international standards.¹⁹

However, there reportedly have been a few sporadic peaceful protest demonstrations held by foreign workers outside oil companies and embassies that were tolerated.²⁰

14 Article 21 of Election Law, <http://feb17.info/news/libyas-final-election-law-2012-unofficial-english-version/> (accessed February 26, 2013).

15 Report by UN Special Rapporteur on Freedom of Peaceful Assembly and Association, para no. 41, p. 11.

16 For more information, see chapter 1, “Restrictions”.

17 Articles 2, and 3 of Law 65/2012.

18 JAL 09/01/2013, see [https://spdb.ohchr.org/hrdb/23rd/public_-AL_Libya_09.01.13_\(3.2012\).pdf](https://spdb.ohchr.org/hrdb/23rd/public_-AL_Libya_09.01.13_(3.2012).pdf) (accessed on June 12, 2013).

19 Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), U.N. Doc. HRI/GEN/1/Rev.6 at 140 (2003), para. 7: “[a]llies receive the benefits of the right of peaceful assembly”; Human Rights Council, Resolution 21/16 of 11 October 2012 on the rights to freedom of peaceful assembly and of association, OP 2: “[e]veryone has the rights to freedom of peaceful assembly and of association”.

20 Telephone interview with Libyan human rights lawyer, March 5, 2103.

In practice, the notification procedure has been applied in a lax way; demonstrations held without prior notification have been tolerated, and there is no known instance of ban orders or complaints against them.²¹

4. Protection

The Constitutional Declaration commits the State to guarantee the freedom of assembly, in accordance with the law.

Article 6(b) of law 65/2012 provides for protection and assistance by the relevant administrative officials to the demonstration within the framework of the law and of administrative regulations.

However, there are no mechanisms or regulations issued so far for the implementation of the protection of demonstrators against counter demonstrations, or the protection of public buildings. The police law, issued during the Gaddafi era, does not address demonstrations, which were banned at the time. In practice, protection has been provided to large demonstrations by militia groups particular to the area, in addition to police,²² which is a problem insofar as these groups have no legal existence and are armed, which entails a risk of excessive and arbitrary use of force.

Use of force

While foreseeing the duty of local authorities to protect and assist demonstrators²³ **Law 65/2012 requires organisers to ensure that order is observed.**²⁴ This contradicts the principle of the State's primary responsibility to "*protect public safety and order and the rights and freedoms of others*".²⁵ There is no provision in the Assembly Law for negotiation mechanisms between law enforcement agents and organisers or participants, whereas international bodies recommend such mechanisms of mediation in demonstrations in order to avoid escalation of violence and prevent conflict.²⁶

The demonstration law fails to require the State to guarantee the minimal use of force by security agents²⁷ and to protect life, and it legitimates dispersion even for a minor failure

21 Telephone interviews with four lawyers, in Tripoli and Benghazi, February 16 – March 6, 2013.

22 Media reports and telephone interviews with lawyers, activists, February-March, 2013.

23 Article 6(b) of Law 65/2012.

24 Article 4 of Law 65/2012.

25 Report by UN Special Rapporteur on FoAA, para. 28, p.8.

26 Report by UN Special Rapporteur on FoAA, paras. 38 and 89, OSCE Guidelines para. 5.4.

27 Police law no. 10, issued in 1992, provides for police to use force to subdue an escaped convict or a suspect caught offending or committing a crime and resisting arrest, or in case of dispersing a gathering of more than five persons if it poses a threat to public security (Article 13 of Law 10/1992). The law allows for police to use firearms in self-defence in those cases, only as a last resort, in coordination with justice ministry instructions, See <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=41> (accessed February 25, 2013).

such as “*deviat[ing] from the description provided*”, as noted by the Special Rapporteurs in their Joint Allegation Letter (op-cited). Dispersion is also permitted the demonstration has resulted in a riot or in acts that disturb public order or prevent the authorities from performing their duty,²⁸ which are very vague terms.

According to international human rights bodies, measures entailing force or violent means should be the last resort granted the relevance and nature of the freedom at stake.²⁹ In this context, following the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force.³⁰

Moreover, the law does not ensure the accountability of law enforcement agents if excessive force is used, contrary to what is recommended by the UN Special Rapporteur.³¹ In practice, both security forces and militia groups have been responsible for using force to break up prolonged sit-ins, and arresting demonstrators in some cases, holding them briefly and without charge, in formal or non-formal detention centres, and sometimes mistreating them.³²

5. Sanctions

The law does not provide, in case a demonstration turns violent or causes damage, for removing only those responsible for unlawful acts, thereby contradicting the UN Special Rapporteur Best Practices, which require that demonstration organisers or participants should not be held responsible for the acts of others.³³

Article 10 of the law provides for a maximum jail sentence of no more than six months or a fine not exceeding 5000 dinars (about € 3,000), or both, for anyone who has organised or knowingly participated in a demonstration or sit-in without notifying the relevant authorities, or has organised or participated in a banned demonstration.³⁴

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association, in the Joint Allegation Letter mentioned above, noted as concern these excessive criminal sanctions under Article 10, that contradict his general recommendation not to penalize organisers for

28 Article 8, Law 65/2012, “*the security administration may ask organisers to end their demonstration, and may force it break up if it has diverged from its declared or amended plan, or if it has resulted in riots or acts that disturb the public order or prevent the authorities from performing their duty.*”

29 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), para. 12.

30 Ibid, art. 13.

31 Report by UN Special Rapporteur on FoAA, paras. 35 and 77-81.

32 Media reports and telephone interviews with two lawyers 27 February – 6 March 2013.

33 Report UN SR on FoPA para. 31).

34 Article 10 (a) of Law 65/2102.

failing to notify the authorities, stressing the exigency to show tolerance towards peaceful spontaneous assemblies that were not notified but remain peaceful.

Breaches to the demonstration law are heard by a criminal court, and the defendant has the right to appeal.³⁵ The penalty is doubled in case of weapons possession even if they are licensed.³⁶ In practice, police or militia have arrested those responsible for the use of arms and held them briefly, with no further action.

6. Gender Equality and Freedom of Assembly

The Constitutional Declaration provides for equality before the law for all citizens, with a mention that no discrimination may be based on sex, *inter alia*.³⁷

While Libya has ratified the Convention on the Elimination of All Forms of Discrimination against Women, it expressed reservations to two core provisions, on grounds that they contradict Sharia requirements: Article 2 concerning inheritance, and Article 16 (c) and (d), which provide for the same rights in marriage, divorce and parenting.³⁸ Additionally, there is no law that condemns sexual harassment.

Women's political participation so far remains minimal; the current 200-member parliament includes 33 women members,³⁹ but only two women were appointed to the 27-minister cabinet. New non-governmental organisations and civil society are working to challenge traditional and patriarchal conservatism that hampers women's political empowerment and to lift provisions that may contribute to violence against women.

The demonstration law provides for the right to peaceful assembly for all citizens, regardless of gender. No legal provision prevents women from organising or participating in peaceful public assemblies, or limits their freedom of movement. Conservative norms in some rural areas are restrictive but women have increasingly organised and joined demonstrations, most recently to require a larger quota for women in the last parliament elections.⁴⁰

35 Telephone interview with lawyer, March 10, 2013.

36 Article 10 (b) of Law 65/2012.

37 Article 6, Constitutional Declaration: "*Libyans shall be equal before the law. They shall enjoy equal civil and political rights, shall have the same opportunities, and be subject to the same public duties and obligations, without discrimination due to religion, doctrine, language, sex, wealth, race, kinship, political opinions, and social status, tribal or eminent or familial loyalty.*"

38 See <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (accessed February 25, 2013).

39 Article 15 of Libya's Election Law requires political parties to present equal numbers of men and women candidates. See <http://feb17.info/news/libyas-final-election-law-2012-unofficial-english-version/> (accessed February 26, 2013).

40 Telephone interviews with Libyan women's rights activists, September 2012, and February - March 2013. See also <http://www.vlwlibya.org/political-participation/political-protests/> (accessed February 28, 2013).

New violence has surfaced since summer 2012. A woman activist organising a conference on women's rights was abducted by militiamen,⁴¹ while others have faced threats from extreme Islamist militia groups over their dress code.⁴²

Women protesters are not specifically protected by the law in their participation in peaceful assemblies, although there is a higher risk of restriction of their right to participate or even of aggression, as traditionally women have been left out of public participation. The penal code provides for a one-year jail sentence and a fine for indecent acts and speech⁴³ in general, up to seven years in the case of sexual assault, and up to eight years for abduction and rape.⁴⁴ However, the law allows a rapist to go free if he agrees to marry his victim⁴⁵ and no law protects women against sexual harassment.

41 Telephone interview with victim, Majduleen Abeida, who declined to give details as she was seeking legal advice.

42 Telephone interviews with women's rights activists in Tripoli, Benghazi and London, February 16-28, 2013. See also <http://www.libyaherald.com/2012/09/16/women-in-libyan-public-life-a-seismic-shift/> (accessed March 5, 2013).

43 Libyan Penal Code, Article 501.

44 Libyan Penal Code, Article 408.

45 Libyan Penal Code, Article 424.

1. Lift sanctions against spontaneous (unnotified) demonstrations; provide for minimal restrictions or changes in the demonstration route or timing, which should be only imposed if strictly necessary; and provide for precise conditions for banning demonstrations that should respect the principles of legality, proportionality and necessity in a democratic society;
2. Include in the law that the primary responsibility for maintaining public order, safety of persons, private and public property and general security lies with the State and not with the demonstration organisers; hence, repeal provisions of Law 65 of 2012 giving a disproportionate responsibility to assembly organizers for protecting public order and morals, and to prevent crime-inciting speeches; the law should provide for individual, not collective responsibility in case some individuals become violent or incite to crime;
3. Provide in law and practice with the possibility for any restriction or ban on demonstrations to be submitted to judicial review in front of an impartial court;
4. Make the necessary steps to obtain the demobilization of armed militia groups, and in particular ensure that they do not participate to maintaining order in assemblies or take part in policing public event;
5. Respond promptly and comprehensively to the Joint Allegation Letter issued by the Special Rapporteurs on the rights to freedom of peaceful assembly and of association, and on Human Rights Defenders, on 13 January 2013 (JAL 09/01/2013).



"Demonstration of the 20-February Movement in Casablanca, 2013."
by Alexandre Foulon

MOROCCO

Demonstrations and rallies in Morocco grew since the 1980s in response to difficult living conditions, but also thanks to a relative democratic opening, especially since the accession to the throne of King Mohamed VI. These dynamics were supported by the development of a strong civil society¹ and the increasing demands of the trade union movement.

Morocco has ratified the main international conventions on human rights. However, many laws remain restrictive to civil rights; a reform of the body of laws governing public freedoms is desirable, following on from the constitutional reform of July 2011 that developed a whole chapter on rights and freedoms in the new constitution. It is also important to note that freedom of expression, hence indirectly freedom of association and assembly, are bound by intangible and non-written “red lines” that punish speeches or writings which openly criticize the King, his family or authority, the Islamic nature of the State or Islam as such, and Morocco’s “territorial integrity” – i.e. Morocco’s claimed sovereignty over Western Sahara.

Many public assemblies have recently been met with excessive use of force by the authorities which claimed a number of lives. It is important to stress that in the context of demonstrations, women are often targeted by physical aggressions, sexist comments and acts of intimidation by the police. All this resulted in the call formulated by human rights associations to organise a public debate on the legal framework governing public assemblies.

Besides, the supremacy of international human rights treaties mentioned in the Constitution is at the same time limited by constitutional provisions within the limits of specific local legislation and “national identity”, a contradiction that renders the concept of legal supremacy meaningless.

Consequently, the analysis of the body of laws governing public assemblies as well as their implementation is an important step towards the long-awaited implementation of constitutional principles relating to human rights.

1. General Legal Framework

Morocco's ratification of international human rights treaties makes the State responsible of taking all effective measures essential to the protection of public assemblies.

1 Favoured by the Associations Law No. 76.00 of 23 July 2002, OB No. 5046, 10 October 2002, p. 2890.

International Instruments

Ratification:

- ▶ International covenant on civil and political rights;
- ▶ International covenant on economic, social and cultural rights;
- ▶ International convention on the elimination of all forms of racial discrimination;
- ▶ International convention on the elimination of all forms of discrimination against women;
(with statements and reservations which affect the core meaning of this convention, see Annex 2)
- ▶ Convention against torture and other cruel, inhuman or degrading treatments or punishments;
- ▶ International convention on the protection of rights of all migrant workers and members of their family

Not ratified:

- ▶ Optional protocols relating to the above-mentioned international covenants.
- ▶ The convention No. 87 of the International Labour Organization on workers rights.

The Moroccan constitution of 2011 includes in its preamble² the principle of the **supremacy of ratified treaties on internal laws** as of their publication in the Official Bulletin.

National Instruments

Article 29 of the constitution guarantees freedoms of assembly, peaceful demonstration and association without any discrimination.

Pending a practical implementation of the constitutional provisions, which would need the reform of laws on public freedoms, the **Dahir (royal decree) No. 1-58-377 governs public assemblies**³ since it was promulgated on 15 November 1958, and then modified and supplemented by the law no. 76.00 of 23 July 2002. In addition to these two texts, the **Electoral code of 2 April 1997**, modified and supplemented by law No. 64-02 of 24 March 2003, contains many provisions on gatherings related to elections.⁴

This Dahir distinguishes 3 types of assemblies: Public meetings; demonstrations on public roads; and mobs.

² Under the new constitution, the preamble has the same legal force as other provisions.

³ O.B. No. 2404a of 27 November, 1958, p. 2883.

⁴ O.B. No. 5096 of 3 April 2003, p. 245.

Public meetings are governed by law 76-00 and the Dahir 2002, art 2: “Any *temporary but concerted assembly where the agenda is fixed in advance is said to be a public meeting*”. Art 21 of law 76-00 provides that any person has the right to participate in a public meeting. The only restrictions to the exercise of this right are those imposed in accordance with the law and which are necessary in a democratic society.

Demonstrations on public roads are a static or moving gathering, defined mainly by its organisers. Only political parties, trade-unions and professional associations can hold such demonstrations, all other demonstrations on public roads are prohibited.

Lastly, mobs are not defined precisely. Some describe the mob as an unorganised group of people on the street. Others consider the mob as illegal when the goal is to resist authorities.

Art 17 of Dahir 1958 distinguishes between 2 types of mobs, armed and unarmed mobs.

- ▶ Unarmed mobs: When they do not respect the declaration procedure for the demonstrations or when the demonstration has been prohibited.
- ▶ Armed mobs: When several individuals carry hidden or apparent weapons, or other dangerous objects.

Interesting case law of the Moroccan administrative justice protects freedom of peaceful assembly, such as a decision issued by the administrative court of Oujda:⁵

“Freedom of assembly is a basic component of individual freedoms like freedom of opinion and movement. Without freedom of assembly, no exchange or debate on public affairs can be imagined. This freedom of assembly means the right of individuals to gather in a place to express their ideas in the form of speeches, seminars, conferences or discussions. All legislations, constitutions and international treaties acknowledge that freedom of assembly is a precondition to the consolidation of human rights and to the propagation of the principles of democratic practice”.⁶

The Marrakech administrative Court of Appeal (Decision 159 of 10/7/2007) also states that the judiciary only has the power to decide on the closure of assembly venues and the banning of gatherings.⁷

⁵ Decision No. 202/01 dated 26 September 2001.

⁶ Judgment published in *Guide pratique de la jurisprudence en matière administrative* (Handbook of administrative case law), A. Bouachiq, t. 5 R. A. M. D. publication, No. 16, 2004, p. 112-117.

⁷ *La jurisprudence en conflits administratifs* (Case law on administrative disputes), RDM No.2 (2010) p: 280-284.

2. Procedures

The Dahir of 1958 imposes a certain number of conditions to be complied prior to holding of public assemblies and demonstrations.

Public meetings

Under article 3", *any public meeting will be preceded by a **declaration** indicating the day, the time and the place of the meeting. This declaration will specify the purpose of the meeting. **It will be signed by three people** domiciled in the prefecture or province where the meeting will take place and will provide the names, professions and addresses of the signatories as well as a certified copy of their national identity card".*

All these requirements can be considered as “unnecessarily bureaucratic” according to the criteria of the Special Rapporteur of the United Nations on the Rights to Freedom of peaceful assembly and association.⁸

Resident foreigners have a Moroccan residence identity card, and can thus organise assemblies if they wish to do so. In addition, the law does not expressly prohibit non-resident foreigners from taking part or organising assemblies. They also have the right to form associations in accordance with the law of 1958 such as it was modified by law 75-00 in 2000.

The declaration is presented to local administrative authorities, in exchange of a **stamped receipt of acknowledgment**. If the organisers did not succeed in obtaining this document, they can send the declaration by registered letter with acknowledgment of reception. The meeting should take place only after a **minimum period of twenty-four hours** following the date of acknowledgment of the declaration or forty-eight hours after the sending of the registered letter.

The public meeting is thus not entirely free insofar as two conditions are required. First, advance declaration, and second, the presentation of the receipt of acknowledgment. However, if authorities are not pleased with a specific meeting because of its political or cultural character, they can deny either the declaration or the delivery of the receipt, as they may not sign the acknowledgment of reception to the letter, which is the only supporting document of the legality of the assembly.

Yet the delivery of this receipt of acknowledgment of the declaration by the competent jurisdiction is not mandatory as per law 75-00. Moreover it does not set forth any punishment to civil servant if they refuse to deliver the aforementioned receipt. Thus, law 75-00 leaves room for this arbitrary administrative practice that has prevailed for a long time, which turns the acknowledgment of the declaration into a de facto authorisation, conducive to interferences with freedom of assembly.⁹

⁸ 2nd Annual Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39, 2013 in para.54).

⁹ Report of the Special Rapporteur, A/HRC/20/27, para. 28.

The meetings of associations and legally constituted groups are exempted from prior declaration (Article 3). However, in practice authorities sometimes ask for prior declaration for inter-associative meetings. In these cases, the declaration procedure allows the administration to assign a representative to attend the meeting, in accordance with the law, interfering in the work of associations.

Demonstrations and mobs

Demonstrations on public roads are also subject to a **prior declaration**, to be filed only by political parties, trade-union organisations and professional associations. The declaration must be signed by three people whose residence is in the prefecture or the province where the demonstration will take place.

The declaration is presented to the local administrative authority three clear days at least and fifteen clear days at most before the date of the demonstration (Article 12), and a **receipt** is given in return. If the organisers do not obtain this receipt, they can send the declaration by registered letter with acknowledgment of reception to the same authority.

If the administrative authorities deem that the planned demonstration is likely to disturb public security, they can ban it by a written decision sent to the signatories of the declaration (Article 13).

Lastly, article 17 of the dahir of 1958 specifies that armed assemblies are prohibited, as well as **any unarmed mob which could disturb public security**.

Because of these restrictions on the organisation of demonstrations on public roads, citizens who do not belong to an organisation cannot hold demonstrations legally, since there is no exemption to this procedure (the concept of “spontaneous demonstration” hence does not exist in Moroccan law). They thus fall under the scope of the definition of a “mob”.

3. Restrictions

Public meetings

In all cases, meetings **cannot be held on public roads** or extend beyond midnight or the time fixed by the administration (Article 4).

The administrative authority who received the declaration can assign a civil servant to attend the meeting. This person will have the right to announce its dissolution if required by the organisers committee or if the meeting results in clashes or assaults (Article 7).

Demonstrations

Only political parties, trade-unions, professional groups and registered associations can stage demonstrations in public spaces after submitting a declaration for this purpose (Article 11). Foreigners have the right to form associations and consequently are able to organize demonstrations in their name.

However, as seen as in point 2, **citizens who do not belong to organisations cannot legally hold demonstrations**, and their gatherings are thus regarded as mobs, generally being subject to police repression.¹⁰

The local administrative authority can, at any time, take written decisions to maintain public order by prohibiting the display of emblems, flags or any other rallying symbol, either on public roads or on buildings, sites and premises freely open to the public (Article 22). They can also modify the route or the time of the demonstration, in particular for reasons of traffic and security.

The administration holds a **discretionary power to ban a demonstration** if it deems that it is likely to disturb public security (Article 13). In fact, the competent authority is not required to justify the ban with convincing reasons, leaving the door open for arbitrary bans.

Limiting the right to organise demonstrations to registered associations constitutes a **disproportionate restriction of this fundamental freedom** which is absolutely contrary to international law. In fact, according to the Special Rapporteur on the right to Freedom of peaceful assembly and association, individuals involved in unregistered associations should be free to carry out all kinds of activities, including organise and participate in peaceful gatherings, and should not be subject to penal sanctions.¹¹

In addition, **other laws restrict directly or indirectly freedom of assembly** of men and women in Morocco.

The anti-terrorism law No. 03-03 (adopted on 28/05/2003) threatens the exercise of public freedoms. Under its provisions, any demonstration or public meeting that degenerates could constitute its organisers as terrorists. Two rather vague conditions can result in an assembly being regarded as a terrorist act, under art 218-1:

¹⁰ For example, the movement of unemployed graduates could not get permission for their association. Their sit-in outside the parliament in Rabat are illegal and although peaceful and not disturbing traffic, they are often dispersed by violence without the police giving mandatory warnings for dispersing the crowds, according to local human rights organizations.

¹¹ Report of the Special Rapporteur, A/HRC/20/27, para. 56 ; also *Lignes directrices de l'OSCE sur la liberté de réunion (OSCE Guidelines on freedom of assembly)*, 2nd edition, para. 53, 105 and 106.

- a. Destruction, degradations or deteriorations of properties belonging to others;
- b. The existence of an intentional relation between these degradations and “*a collective endeavour to seriously breach public order by intimidation, terror or violence*”. In such a case, a demonstration can become this “collective endeavour” even if the majority of the participants did not participate in the destruction and remained peaceful.

Finally, the electoral code 9-97 promulgated in 1977 and modified by the law 64-02 of 24 March 2003 sets out the rules for electoral campaigns. It refers to the Dahir of 1958 concerning public assemblies and thus does not lay down other conditions.

4. Protection

The law does not expressly establish the positive obligation of the State to protect peaceful assemblies, which is nonetheless an obligation under international law. Given the importance of the freedom at stakes, authorities have the obligation to take measures to facilitate assemblies and to protect participants against individuals or groups, including *agents provocateurs* and counter-demonstrators, who aim at disturbing or dispersing the assembly.¹²

Use of force

The police must follow a specific procedure while dispersing unauthorised gatherings. Under article 19, a police officer must give the order to disperse, read out loud the possible sanctions incurred, and disperse the assembly by force only after the third warning.

It appears from discussions with civil society activists, that authorities are not keen on respecting the legal procedure defined for the dispersal of gatherings. The concept of proportionality is disregarded, and law enforcement forces systematically resort to excessive use of force when policing and dispersing undeclared but peaceful gatherings.

Effective remedy

A judicial remedy against administrative decisions such as the restriction or ban of a demonstration, or against the police for excessive use of force is theoretically possible before an administrative court.

However, the delays practiced in the judicial system question the effectiveness of this right. The recourse available does not meet the “fast appeal procedure” requirements under

¹² Report of the Special Rapporteur, A/HRC/20/27, para. 33.

international law,¹³ which would make it possible to hold the demonstration on the planned date if the court ruled in favour of the organisers. Furthermore, it is extremely difficult for the victims of acts of violence to fill complaints against the police because of procedural obstacles in determining responsibilities and establishing the proof of violent acts.

Finally, the weak geographical extension of administrative courts - seven courts in the whole territory and two administrative appeal courts (in Rabat and Marrakech), and the deep-grounded suspicion of lack of independence of the administrative judiciary are also responsible for the scarce number of appeals before these courts.

5. Sanctions

The Dahir of 1958 provides for punishments in the event of not respecting its provisions. According to article 9, *"Any infringement of this law is punished with a fine of 2,000 to 5,000 Dirhams. In the event of repetition the contravener is punished with imprisonment from one to two months and a fine of 2,000 to 10,000 Dirhams or only one of these two punishments, without prejudice of sanctions incurred for crimes or offences made during these assemblies"*.

Other provisions reinforce the incurred sanctions. For example, according to article 14 the offence *"Will be punished with imprisonment from one to six months and a fine of 1,200 to 5,000 Dirhams or only one of these two punishments: 1-those who have made an inaccurate declaration likely to mislead authorities on the information required in article 12 of this law (Article concerning the procedure, referred to above) or who have issued by any means, a call to participate in a demonstration after its prohibition; and 2 - those who have participated in the organisation of an undeclared or prohibited demonstration"*.

Moreover, article 21 lays out that whoever takes part in an unarmed mob (i.e., very often undeclared demonstrations are considered as "mobs") and has not left it after warnings, will be punished with imprisonment from one to three months and/or a fine of 1,200 to 5,000 Dirhams.

These punishments for minor infringements such as an "inaccurate declaration" or the participation in an undeclared but peaceful demonstration, are disproportionate. According to international norms, the principle of proportionality also applies to the responsibility driven by the participation in a gathering or assembly, and in all cases the individuals who did not commit any objectionable act should not be held accountable, considering the dissuasive effect that could have on the organisation of future events.¹⁴

13 Report of the Special Rapporteur, A/HRC/20/27, para. 42: *"The Special Rapporteur stresses the importance that regulators give the organizers of rallies "in due time justified reasons for the imposition of restrictions, and the possibility of a fast appeal"*.

14 Second Report of the Special Rapporteur, A/HRC/23/39, paras. 77-78.

The anti-terrorism law is characterised by more severe punishments (within the scope of the modifications made to the penal code) such as article 218-2 which provides for punishments going from two to six years of imprisonment and a fine going from 10,000 to 200,000 Dirhams for any person who praises any action of a terrorist nature through speeches, slogans or threats pronounced in public spaces or meetings.

6. Gender and Freedom of Assembly

It is important to stress that under article 19 of the constitution, *“Men and women enjoy equal rights and freedoms in civil, political, economic, social, cultural and environmental matters, stated in this Title [i.e. that relating to freedoms and fundamental rights] and in the other provisions of the Constitution, as well as in the conventions and international covenants duly ratified by Morocco”*.

However, women suffer from specific difficulties to exercise their right to freedom of assembly. The Family Code, the law that specifically governs the status of women, does not include any restriction on women's freedom of assembly, even if it bears provisions which put women in an inferior status compared to men on certain questions.¹⁵ On the other hand, cultural and religious considerations significantly interfere with the freedom of women to assemble (especially in public spaces). For example, **the common law in force** in certain areas and for certain “tribes” can be a barrier for the participation of women in decisional assemblies and for their right of assembly. In particular, the common law relating to collective grounds governed by the Dahir 1919 prevents women from taking part in the management of collective grounds and from sitting in the tribal assembly (Jmaa) as the custom does not recognise them as bearing rights. The strength of this common law and the ignorance of positive laws protecting their rights are a barrier to the organisation and defence of their interests for these women, who are afraid to demonstrate and to organise to plead their cause.

¹⁵ In particular, but not exclusively, the Family Code does not give women the right to oppose the remarriage of her husband and if she refuses her husband from having a second wife, the judge shall proceed to divorce by dissension. The legal inheritance shares accruing to heirs are always lesser for women than for men (a woman receives half less than her brother).

Recommendations

1. Implement the new constitutional provisions relating to freedom of assembly by drafting a law guaranteeing its effective exercise;

In the absence of a new law, amend Dahir no. 1-58-377 and law No. 76.00 of July 23, 2002, specifically to:

2. Remove restrictions on people wanting to stage a demonstration (for foreigners);
3. Simplify the procedure of notification in order to make it really accessible to all;
4. Make it mandatory for the administration to submit a receipt of notification and punish the non-observance of this procedure by public servants;
5. Restrict and specify cases in which a demonstration can be banned and make compulsory for the administrative authority to provide substantiated reasons to the ban;
6. Allow an effective and fast judicial remedy in the event of restrictions or prohibition of a public assembly or a demonstration, within deadlines permitting the holding of the event if the court favours the organisers;
7. Modify articles 9, 10, 14, 20 and 21, and any article that provides for heavy sanctions against organisers and participants for minor infringements, in particular freedom-depriving punishments, or that burden participants with a collective responsibility for illegal acts of others
8. Set up a mechanism for receiving and examining allegations of violations of fundamental rights, excessive use of force and ill-treatment in the context of policing assemblies.



"Demonstration for the opening of the Shuhada street to Palestinians,
Hebron, West Bank, 22 February 2013."
by ACTIVE STILLS

PALESTINE

Introduction

This chapter examines the legal framework regulating freedom of assembly in the Occupied Palestinian Territory (OPT). In June 1967, Israel occupied this Territory, constituent of the Gaza Strip and the West Bank, including East Jerusalem. Israel captured the Gaza Strip (until then under Egyptian administration) and the West Bank (previously governed by Jordan), illegally annexing East Jerusalem. While East Jerusalem is an integral part of the OPT, Israel applies and enforces Israeli law in the annexed territory.¹

Since the first day of the occupation, Israel afforded the military commander full legislative, executive and judicial authority, establishing the pre-eminence of military orders over the law in force prior to the occupation.² Accordingly, domestic legislation remains valid only as long as it does not contradict Israeli military orders (i.e. decrees issued by Israeli military commanders).³ This provision is in clear contravention of international humanitarian law, which stipulates that the Occupying Power must respect, unless absolutely necessary to do otherwise, the law in force prior to the occupation.⁴ Military orders directly become law for all Palestinians in the OPT. Israeli settlers residing in the same territory, on the other hand, are subject to Israeli civil, rather than military law.

Pursuant to the Declaration of Principles (Oslo I) signed between the Palestine Liberation Organisation and Israel, the Palestinian Authority (PA) was established in 1994 as Palestine's provisional government. The Interim Agreement on the West Bank and the Gaza Strip (Oslo II), signed in 1995, determines the PA's authority over particular areas of the OPT, dividing the West Bank into three distinct administrative areas. Area A (comprising 17% of the West Bank, including the major Palestinian cities and towns) is under complete civil and security control of the PA and Area B (24% of the West bank) is under Palestinian civil control and joint Palestinian-Israeli security control. Area C, which constitutes 59% of the West Bank, comprising most of Palestinian agricultural and grazing land, water sources and underground reservoirs in addition to Israeli settlements and their associated infrastructure, military bases and security zones, is under full Israeli control.⁵ To the extent that the PA exercises some control over parts of the OPT, it is responsible for enforcing law and order. The PA's legislature is the Palestinian Legislative Council (PLC), whose laws add another layer of sources of law that are applied in the OPT.

1 The framework for Freedom of Assembly under Israeli law is addressed in the country chapter on Israel.

2 Military Proclamation No. 2 (1967) Concerning Regulation of Authority and the Judiciary (hereinafter Military Proclamation No. 2), Article. 1, p. 3.

3 Military Proclamation No. 2 of 7 June 1967, Article 3.

4 See Article 43 of the Hague Regulations. Article 64(1) of the Fourth Geneva Convention reaffirms this fundamental principle by stipulating that the local penal laws remain in place (unless they constitute a threat to the security of the Occupying Power or an obstacle to the application of the Convention). According to Article 64(2), legislation by the Occupying Power is only authorised if it is essential for the application of the Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power.

An analysis of the validity of Israeli military orders under international law is beyond the scope of this study.

5 This division was supposed to be temporary, until a final settlement was reached by the parties. The Oslo Accords suggest a five year time frame, during which authority would be gradually transferred to the PA. Questions pertaining to the legal validity of the Accords are beyond the scope of this report.

In 2006, Hamas won the Palestinian legislative elections and eventually took governmental control over the Gaza Strip; while the Fatah dominated PA continues to exercise authority over the West Bank. Since 2007, as a result of the Hamas-Fatah split as well as Israel's imprisonment of several PLC members, the Palestinian Legislative Council has been unable to operate. However, legislation relevant to freedom of assembly in Palestine was adopted prior to the split and is *de jure* applicable to the entire Occupied Palestinian Territory. In addition to laws adopted by the PLC, sources of Palestinian law include presidential decrees, as well as certain legal provisions inherited from previous administrations. For example, the West Bank and the Gaza Strip have two distinct penal laws. In the Gaza Strip, the British Mandate Criminal Code Ordinance, No. 74 of 1936 (hereafter Penal Code of 1936) remains in force, while in the West Bank the Jordanian Penal Code No. (16) of 1960 (hereafter Penal Code of 1960) is applied. In 1998 late Palestinian President Arafat declared the annulment of Israeli military orders,⁶ with no effect on Israel's enforcement thereof.

The domestic legal framework relevant to freedom of assembly in the OPT is made up of a complex patchwork of various sources of law enforced by two separate authorities (Palestinian and Israeli).⁷ The PA applies and enforces laws enacted by its own legislature as well as those it considers as its "legal heritage, while the Israeli Occupying Power applies military orders to the same territory. Military legislation constitutes a distinct body of law, existing and enforced independently of and without regard to Palestinian legislation.

Applicability of International Human Rights and Humanitarian Law

The international legal framework applicable to the OPT comprises two complementary bodies of law; international human rights and international humanitarian law (IHL). Obligations stipulated in human rights law apply at all times (during armed conflict and peace time), not only within the territorial area of the State, but also to all persons subject to the jurisdiction or effective control of that state.⁸ In other words, Israel must not only protect the human rights of Israeli citizens, but also of Palestinians living in the occupied territory (to the extent that it continues to exercise effective control therein). International human rights law applies at all times (during war and peace).⁹ International humanitarian law, which governs situations of armed conflict, including occupation, also applies in the OPT. Despite Israel's claims to the contrary, it is universally acknowledged that international human rights law

6 Presidential Decree Number 20 of 1998. This decree has had no impact on Israel's ability or willingness to enforce military orders in OPT.

7 Examining the validity of the various sources of law applicable to the OPT is beyond the scope of this study.

8 Art. 2 ICCPR; see also Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 10: "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party".

9 See International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), para. 25.

complements the protection conferred by IHL in conflict situations.¹⁰ While IHL remains the applicable legal framework in the OPT, Palestinians' right to freedom of assembly is regulated by international human rights law.

I. Palestinian Legislation

1. General Legal Framework

The Palestinian Basic Law, which acts as the country's constitution, guarantees the protection of and respect for human rights and fundamental freedoms. The right to Freedom of Assembly is enshrined in Article 26 of the Basic Law. The Basic Law further codifies the right of every person to freedom of opinion and expression "in any form" (Art.19) and to judicial redress (Art. 30).

*"Palestinians shall have the right to participate in political life, both individually and in groups. They shall have the following rights in particular: [...] (5) to conduct private meetings without the presence of police members, and to conduct public meetings, gatherings and processions, within the limits of the law."*¹¹

Article 26 Palestinian Basic Law

Palestine, which has only recently been upgraded to non-member observer State status by the UN General Assembly, has not yet ratified the main regional and international human rights instruments. The Palestinian Basic Law, however, demands that the PA do so without delay (Art. 10). Other bodies of law also demand the respect of human rights and fundamental freedoms in accordance with international law by Palestinian officials. Intelligence and Preventive Security officers must for example respect the right to freedom of assembly in accordance with both Palestinian and international law in the exercise of their duties.¹²

¹⁰ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, ICJ Reports 2004, para. 112 (hereinafter Wall case). International Committee of the Red Cross (ICRC), *IHL and Human Rights Law* (29 October 2010), available at <http://www.icrc.org/eng/war-and-law/ihl-other-legal-regimes/ihl-human-rights/overview-ihl-and-human-rights.htm> Al-Haq, *The Applicability of International Human Rights Law to the Occupied Palestinian Territories*, available at <http://asp.alhaq.org/zalhaq/site/eDocs/txtDocs/intl%20law/HR/hrapplicability.htm>. BTselem, "International Law", 8 September 2011, available at http://www.btselem.org/demonstrations/international_law

¹¹ International Court of Justice, Wall case (2004), para. 106.

¹² The Code of General Intelligence No. (17) of 2005 states: "[t]he Intelligence shall respect the rights and guarantees provided for in the Palestinian laws and rules of international law in this area." Article (8) of the Decision Law No. (11) of 2007 on preventive security states: "the Public Administration of the Preventive Security shall respect the rights, freedoms and guarantees provided for in the Palestinian laws and international conventions and treaties."

“(1) Basic human rights and liberties shall be protected and respected.
(2) The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.”

Article 10 Palestinian Basic Law

The legal parameters for freedom of assembly are stipulated in the **Law of Public Assemblies** No. 12 of 1998 (hereafter Public Assemblies Law), and its Implementing Regulations (enacted by the executive). The Public Assemblies Law reinforces the constitutional guarantee of freedom of assembly by affirming that *“Citizens have the right to hold public meetings, seminars, and rallies freely, which shall not be affected or restricted unless in accordance with the controls stipulated by this law.”*¹³

An assembly is defined as a public gathering of fifty or more persons in a public open place (Art. 1). Public assemblies require advance written notice submitted to the Governor or the Chief of Police (Art. 3). In the absence of a written response by the regulating authorities *“the organising party has the right to convene the public meeting on the date specified in the notice”* (Art. 4d). Only gatherings in the open air and involving 50 or more persons require notification. In other words, meetings of less than 50 individuals as well as any in-door meetings are not subject to the notification procedure. Without prejudice to the right to assemble, the Governor or the Chief of Police may intervene in the duration or path of the meeting in order to manage traffic, organisers are informed about such measures in writing within 24 hours after the submission of the notification.¹⁴

Establishing a presumption in favour of freedom of assembly, in line with international bodies’ recommendations, Palestinian law considers assemblies as peaceful unless they violate legal statutes, including the applicable Penal Code.¹⁵ The Penal Code of 1960, in force in the West Bank and the Penal Code of 1936, effective in the Gaza Strip, prohibit gatherings with the intent of committing a criminal offence or of breaching public security.¹⁶

2. Restrictions

The Implementing Regulations of the Public Assembly Law (which are enacted by the executive) define the legal grounds for restricting freedom of assembly in Palestine. Article 4

¹³ Art. 2 Public Assemblies Law.

¹⁴ Public Assembly Law No (12) of 1998, Art. 4c.

¹⁵ See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (FPAA), Human Rights Council, 20th session, A/HRC/20/27 (2012), para. 26; OSCE/ODIHR Guidelines on freedom of peaceful assembly, 2010, Warsaw, 2nd edition, section A, Guidelines on freedom of peaceful assembly para. 2.1.

¹⁶ Articles 164 and 79, respectively.

thereof stipulates that gatherings shall not take place in “areas of tension;” they must be carried out in accordance with the law and preserve public order. The same law prohibits “*incitement against national unity*”, i.e. any action that may be considered to undermine the unity of the Palestinian people.¹⁷ The Implementing Regulations further afford the Police the right to end a public gathering if it deviates from its purpose, exceeds the authorised conditions or if it breaches security and public order. The Police may also disperse a crowd when “*riots threatening the safety of citizens or their property*”, occur and in order to maintain security and public order (Art. 7). The penal law enacted in Palestine stipulates additional legal restrictions. The Penal Code of 1960 allows the competent authorities to use force to disperse the crowd in the West Bank (Art. 167) and the Penal Code of 1936 authorises the use of force in order to disperse or arrest participants of assemblies in the Gaza Strip (Art. 82 - 83).

“The rally must keep away from places of tension, and the purpose of the meeting shall not contradict with the law or public order.”

Article 4 of Implementing Regulations

Palestinian law provides no definition for the vague terms “areas of tension” and “national unity.” In addition to allowing for arbitrary restrictions at the discretion of law enforcement officials, the lack of precision of these terms undermines Palestinians’ ability to foresee the consequences and legality of their actions. Without clarifying the concrete meaning of “areas of tension” or undermining “national unity” Palestinians are unable to assess whether they are breaching the law by gathering in a certain area or discussing a certain topic. The restrictions stipulated in the Implementing Regulations violate Palestinians’ right to peaceful assembly by disproportionately limiting the latter and by codifying restrictions that go beyond those permitted by the Public Assemblies Law and international law.¹⁸

3. Procedures

The notification procedure for assemblies in Palestine is regulated in the Public Assemblies Law. Articles 3 and 4 thereof demand the submission of a signed written notification by the organisers to the Governor or Chief of Police 48 hours prior to the gathering. The notice must specify the purpose, time and place of the meeting. In the absence of a written approval by the competent authorities, the meeting may be convened as planned (Art. 4d). According to the Implementing Regulations, the Chief of Police has the right to request a meeting with the organisers to discuss the purpose and subject of the meeting, demonstration or gathering, as well as its place, time,

¹⁷ Article (9) of the Implementing Regulations, which demands that: “*The organizers of the meeting or the march shall take into account the provisions of the Presidential Decree No. (3) of 1998 on the consecration of the national unity and prevention of incitement.*”

¹⁸ Pursuant to international human rights standards, any restriction must be applied following the principles of legality, necessity and proportionality. In consequence, as stated by the UN Human Rights Committee, “*States should always be guided by the principle that the restrictions must not impair the essence of the right...the relation between right and restriction, between norm and exception, must not be reversed*” (General Comment No. 27(1999), para. 13). See also Report of the Special Rapporteur on FPAA (2012), paras. 15-17, OSCE Guidelines (2010), paras. 69-112.

duration and course.¹⁹ As said, the Governor or the Chief of police may modify the duration or the route of the assembly for traffic purposes (see section General Framework above).

4. Protection

Palestinian law explicitly states the Palestinian Authority's obligation to protect peaceful assemblies. In addition to the constitutional protection stipulated in the Palestinian Basic Law, Art. 5 of the Public Assemblies Law affords the organisers of a gathering the right to demand protection measures from the competent authorities. The Implementing Regulations reaffirm this right by requesting that the Chief of Police provide protection for gatherings or marches (Art. 5).

Moreover, the Basic Law considers the violation of human rights and freedoms as a crime, establishing the criminal and civil liability of the perpetrators as well as guaranteeing a fair remedy to those whose rights have been violated (Art. 32). Article 32 of the Basic Law comprehends the accountability of law enforcement officials. However, Palestinian law fails to specify the scope and conditions of such liability in policing assemblies. The Public Assemblies Law and its Implementing Regulations lack for example, any provisions regarding the use of force by law enforcement and security officials, including the use of weaponry and the excessive use of force during assemblies. This shortcoming undermines the legal protection afforded to Palestinians in exercising their right to assemble peacefully.

"The Chief Police shall assess the security situation, develop security controls, and provide protection for the meeting or the march to ensure the protection of the public and public safety."

Article 5 Implementing Regulations

5. Sanctions

The Public Assemblies Law penalises any violation of this statute, codifying a punishment of imprisonment for a term not exceeding two months or a fine not exceeding fifty Jordanian Dinars (Art. 6). This norm applies to anyone who violates any provision in the Public Assemblies Law, including organisers and participants of public assemblies as well as government officials. Article 10 of the Implementing Regulations establishes the liability of organisers who fail to respect the required security conditions stipulated by law.

Moreover, the Penal Code no. (74) of 1936 penalises the participation in an illegal gathering²⁰ or a riot²¹ in the Gaza Strip, imposing a punishment of imprisonment for the periods of one

¹⁹ Implementing Regulations, Article 3.

²⁰ Article 80 Penal Code of 1936.

²¹ Article 81 Penal Code of 1936.

and two years respectively. Failure to leave a gathering or riot upon the request of the relevant authorities is punishable by five years in prison.²² In the West Bank, the Penal Code of 1960 criminalises the participation in an illegal gathering, imposing a prison sentence of up to one year and/or fining of up to fifty Dinars (Art. 165). Any person who fails to leave a gathering upon request of the Police to disperse may be sentenced from three months up two years in prison (Art. 168). The same Article establishes the liability of any demonstrator who carries a weapon, imposing a prison sentence of six months to three years, or “any more severe penalty” (Art. 168). Sanctions codified in the Public Assemblies Law are applied as *lex specialis* to any potentially conflicting regulations stipulated in the Penal Codes, overriding the latter.

“If the crowd did not obey the order of the police to get dispersed – without the use of force- the penalty of imprisonment shall be from three months to two years. Furthermore, if any of the demonstrators uses a weapon, he shall be punished by imprisonment from six months to three years, as well as any more severe penalty he may deserve.”

Art. 168 Penal Code of 1960

6. Gender Equality and Freedom of Assembly

Article 9 of the Palestinian Basic Law determines that “*Palestinians shall be equal before the law and the judiciary without distinction based upon race, sex, colour, religion, political views or disability.*” In 2009 President Abbas issued a presidential decree, unilaterally declaring adherence to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). While CEDAW obliges States Parties to adopt appropriate legislative measures prohibiting all discrimination against women,²³ no enforcement mechanisms have been set in place which would allow Palestinian women to claim these rights. The legal framework regulating freedom of assembly in Palestine does not comprise any specific provisions protecting women from violence or other infringements on their rights, leaving them particularly vulnerable to rights violations. The Draft Palestinian Penal Law, which has been under review by the competent authorities for several years, contains specific provisions on the protection of women. However, this draft law will only become effective upon adoption by the PLC.

²² Article 84 Penal Code of 1936.

²³ Art. 2 (b) CEDAW.

II. Israeli Military Orders

Since Israel unilaterally withdrew all Israeli settlers and ground troops from the Gaza Strip in 2005, the Occupying Power²⁴ no longer enforces military orders relating to freedom of assembly in that part of the OPT.²⁵ In the West Bank on the other hand; Palestinians' freedom of assembly continues to be regulated by restrictive and prohibitive military legislation, as will be explained below. Despite the Oslo Accord's *de jure* limitation of Israel's comprehensive control to Area C, Israeli military orders are enforced in the whole West Bank, rendering Palestinians in the entirety of the territory equally vulnerable to the violation of their right to assemble peacefully.

1. General Legal Framework

The legal parameters for freedom of assembly applied by the Israeli government in the West Bank are stipulated in Israeli Military Order (IMO) No. 101, titled "Order Regarding Prohibition of Incitement and Hostile Propaganda Actions."²⁶ The order does not explicitly recognise Palestinian's right to peaceful assembly. Rather than codifying a right, this order seems to consider assemblies as a threat, and puts important obstacles on the exercise of this right.²⁷

"A procession, assembly or vigil shall not be held other than in accordance with a permit from a military commander."

Israeli Military Order 101 (3A) - Amendment Order No. 1423

An assembly is defined as any gathering of ten or more persons, whether in a private or public space, where opinions are expressed on "*a political subject, or which may be construed as political.*"²⁸ Any gathering of 10 or more persons walking together for a "political purpose or for a matter that may be construed as political" whether or not they "were arranged as a group" is considered to be a procession.²⁹ A vigil is defined in Amendment Order No. 1423 as "*ten or more persons who have gathered in a place for a political purpose or for a matter that may be construed as political.*" The order makes no distinction between peaceful and

²⁴ Israel's unilateral withdrawal had no impact on its status as Occupying Power under international law. Israel retains effective control over the entirety of the occupied territory, including the Gaza Strip. See Al-Haq, *One Year after the "Disengagement": Gaza still Occupied and under Attack*, available at <http://www.alhaq.org/publications/publications-index/item/one-year-after-the-disengagement-gaza-still-occupied-and-under-attack>.

²⁵ With the notable exception of the so-called "buffer zone", to which Palestinians have no access.

²⁶ Citations of IMO 101 are based on BTselem's translation of this order, available at http://www.btselem.org/download/19670827_order_regarding_prohibition_of_incitement_and_hostile_propaganda.pdf.

²⁷ IMO No.101 (3A) – Amendment No. 1423.

²⁸ Amendment (AM) Order No. 1079 – para 1 of 101.

²⁹ Para 1 AM Order No. 1079.

non-peaceful assemblies, in contrast to international law, banning any convention of 10 or more individuals who express views that may be interpreted as political, unless permitted by the military commander. **The permit system further pre-empts the possibility of holding spontaneous assemblies.** In addition to the general ban on assemblies, Israel has issued orders prohibiting in advance all assemblies in certain villages in the OPT, such as Bil'in and Ni'lin.³⁰

2. Restrictions

Israeli Military Order 101 imposes severe and sweeping restrictions on Palestinians' right to Freedom of Assembly, in violation of international law (as well as Israeli law). The definition of assembly established in this military order constitutes a restriction of Freedom of Assembly in and of itself. The order bans assemblies, processions and vigil, which it defines as any gathering of 10 (or more) people, in a private or public space, expressing views that may be interpreted as "political". Moreover, Military Order 101 prohibits printing and publicising any material that has a political significance, which includes (but is not limited to) photographs, films and other recordings, pictures, drawings, maps, books, cassettes, posters, newspapers and reports."³¹

The order further proscribes supporting, sympathising or identifying with a hostile organisation (as defined in this order), by "*displaying a symbol or slogan or singing a hymn.*"³² Furthermore, "*it is forbidden to hold, wave, display or affix flags or political symbols.*"³³ Under the heading "incitement," the order also prohibits any attempt "to influence public opinion" in a manner that is liable to harm public order as well as the intention or facilitation of such influence.³⁴ Furthermore, the Military Commander, or any soldier to whom the authority is delegated, may close down any café, club or public space for the period of time s/he specifies³⁵ and may establish conditions for submitting a request to obtain a permit for an assembly.³⁶ As indicated above, any assemblies or other forms of protest are *a priori* prohibited in the villages of Bil'in and Ni'lin.

The fact that any private or public meetings of 10 persons (or more) necessitate a permit from the Military Commander affirms that this law presupposes that any such gathering presents an intrinsic danger to public order in the OPT. The regulation of assemblies is based upon the content of the message that is communicated, in contravention of international standards.³⁷ Given that any small gathering of persons may be qualified as an assembly, even family members expressing political views in their own home may become potential offenders. Moreover, the order provides no definition of the term "political", leaving it open to interpretation by the Israeli authorities

30 See orders issued by the OC Central Command on 17 February 2010 prohibiting demonstrations in Billin and Nillin.

31 IMO 101, paragraph 6 in conjunction with paragraph 1 – Amendment Order No. 1079.

32 IMO 101 (7A)a.

33 IMO 101, para.5 – Amendment Order No. 1079

34 IMO 101, para (7) a and b.

35 IMO 101 (4).

36 IMO 101 (3B).

37 Restrictions of freedom of assembly shall not be based on the content of the message that is communicates. See OSCE Guidelines (2010), para. 94, page 57 and Second Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 23rd session, A/HRC/23/39, para. 61

and allowing for arbitrary restrictions. The lack of precision of the term further prevents Palestinians from foreseeing the consequences of their actions and from knowing whether or not their gathering violates military law.³⁸

Military Order 101 (2) allows the Military Commander to delegate his/her powers under this order to any soldier or member of the police. In other words, any soldier in the OPT may (if authorised to do so) close public places and prohibit any gatherings or publications, rendering Palestinians even more vulnerable to restrictions of their rights to peaceful assembly and expression.

The restrictions imposed on Freedom of Assembly by Israeli military law violate the principle of proportionality. This principle demands that authorities choose the least intrusive means for achieving the legitimate objective they are pursuing and prevents them from routinely imposing restrictions that would fundamentally alter the character of an event.³⁹ Prohibition of assemblies must be a measure of last resort; as expressed by the Special Rapporteur on FPAA, “only ‘certain’ restrictions may be applied, which clearly means that freedom [of assembly] is to be considered the rule and its restriction the exception”.⁴⁰ A blanket ban of any gatherings involving 10 or more persons who express political views and/or an *a priori* prohibition imposed for a protracted period of time in specific areas of the OPT, not constitute a proportional restriction, because no consideration has been given to the specific circumstances of each gathering and, thus, the principles of necessity and proportionality have been neglected.⁴¹

The restrictions’ lack of proportionality is further evidenced by the indiscriminate manner in which they are applied to any kind of publication or expression of “political” opinion. This includes the prohibition of waving a flag during a peaceful procession or in a private space and any other actions that may not be construed as a threat to public order.

“A military commander may order any owner of a café, club or other place in which the public gathers, to close the café, club or public gathering place for the period of time he specifies. Where such an order is given, any person in the place that was closed shall be deemed to have violated the order.”

Israeli Military Order 101 (4)

38 See note no. 18 above.

39 OSCE Guidelines, para 2.4, page 16.

40 Report of the Special Rapporteur on FPAA, para. 16; see also OSCE Guidelines, para 104, page 59.

41 To this regard, the Special Rapporteur has ascertained that “blanket bans, are intrinsically disproportionate and discriminatory measures as they impact on all citizens wishing to exercise their right to freedom of peacefully assembly” (Second Report of the Special Rapporteur on FPAA, para. 63).

3. Procedures

IMO 101 (3) Amendment Order No. 1423 demands a request for a permit from the Military Commander for any assembly, procession or vigil (subsection A). The order delegates the establishment of the conditions for submitting a permit request to the same Military Commander (subsection B). The military order does not specify any procedures for obtaining such a permit, nor does it provide for a timeframe or effective remedies through administrative and/or judicial review. Palestinians are requested to apply at the local District Coordination Office (DCO) for permits (as a result of the Oslo Accords a DCO was established in each district of the OPT). However, due to the lack of transparency and accessibility of the permit system and the high improbability of obtaining a permit, Palestinians rarely submit permit requests for peaceful assemblies.

4. Protection

The aim of Israeli military legislation is not the protection of rights and freedoms of the Palestinians. To the contrary, military orders aim at restricting the rights of the occupied population and ensuring full Israeli military control over the occupied territory. Consequently, Israeli military law does not codify any positive obligation of the State to protect peaceful assemblies in the OPT nor does it stipulate any liability of law enforcement and security officials for excessive use of force in policing assemblies or any other human rights violations. On the contrary, paragraph 9 of IMO 101 affords every soldier the authority to use *“the degree of force necessary to carry out a command given under this Order to prevent violations of this Order”*, without clarifying the degree of force to be applied according to the circumstances of the case, thereby, leaving its definition to the discretion of law enforcement officials. In sum, the applicable law does not set out, in contravention with international human rights law, the occupying authorities' obligation to protect those willing to exercise freedom of assembly;⁴² besides, it fails to regulate in restrictive and precise terms the use of force when policing assemblies, leaving the door open for disproportionate and indiscriminate interventions by Israeli military officials.⁴³ Moreover, as mentioned above, the Military Commander may delegate his authority to any soldier serving in the OPT, rendering Palestinians even more vulnerable to violations of their right to assemble peacefully.

5. Sanctions

Any person who organises, participates or encourages a procession, assembly or vigil without a permit or who violates in any other way the provisions of IMO 101 is liable for imprisonment

42 See report of the Special Rapporteur on FPAA, para. 33.

43 According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials may use force and firearms only if other means remain ineffective (art. 4). When force is used, officials have to minimize damage and injury and respect and preserve human life (art. 5b).

for ten years and/or a fine of ten thousand liras (equivalent of approximately 2000 Euros).⁴⁴ In other words, any Palestinian who violates any of the above mentioned prohibitions will be subjected to sanctions. This implies, anyone who attempts to influence public opinion, who supports, sympathises or identifies with a “hostile organisation,” anyone who waves a flag, discusses a matter of political significance, or circulates a picture or a movie with such connotations is a potential offender who is liable for prison sentence of up to 10 years. In Israel, on the other hand the maximum penalty for participating in a banned gathering is one year in jail and no extra fining.

In addition to being disproportionate and entailing a clear deterrent effect for those wishing to assemble, these sweeping sanctions contravene the principle that individual participants in any assembly who themselves do not commit any violent act should not be prosecuted.⁴⁵ While the military order codifies sweeping penalties for organisers and participants of assemblies, no mention is made of the criminal liability of Israeli law enforcement officials, whereas the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulate that “[g]overnments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law” (art. 7).

“(A) A person who organises a procession, assembly or vigil without a permit, calls for or instigates their being held or encourages them or participates in the in any way (Amendment Order No. 1423); or (B) A person who violates the provisions of this Order or any order given pursuant to it or does an act that is declared an offense under this Order shall be liable for imprisonment for ten years or a fine of ten thousand liras, or both”.

IMO 101 (10) - Amendment Order No. 718

6. Gender Equality and Freedom of Assembly

Israeli military law does not stipulate any specific provisions on women’s rights. Given that the objective of military orders is not the protection but the restriction of Palestinians’ rights and freedoms, the lack of regulations ensuring the protection of women’s rights is not surprising. Despite Israel’s ratification of CEDAW, none of the latter’s provisions have been incorporated into military legislation applicable to the occupied population. The fact that Israeli law recognises the equality of men and women, is irrelevant for Palestinians in the OPT, to whom it does not apply.

⁴⁴ Paragraph 10 A and B.

⁴⁵ OSCE Guidelines, para. 111, page 62.

Recommendations

1. Recommendations to the Palestinian Authorities:

- 1.a. Amend the Implementing Regulations of the Public Assemblies Law to ensure the legality and proportionality of restrictions and sanctions stipulated therein;
- 1.b. Repeal provisions in the penal codes applied in the OPT that criminalise and impose prison sentences for the participation in unauthorised assemblies and/or the failure to disperse;
- 1.c. Provide a legal definition for vague terms used in Palestinian legislation to restrict Palestinians' freedom of assembly, including but not limited to "public order," "public safety and security", and "areas of tension";
- 1.d. Ensure that any restrictions of the right to freedom of assembly are codified in accordance with Palestinian law, including the Palestinian Basic Law and the Public Assemblies Law;
- 1.e. Engage with the authorities in the Gaza Strip to ensure joint and legitimate law making throughout the OPT.

2. Recommendations to the Israeli Authorities:

International law prevents the Occupying Power from using its legislative capacity as a means of oppressing the population.⁴⁶ Israel should hence afford Palestinians the right to freedom of assembly and expression, under a civil system representative of the civilians it sets out to protect, instead of the military legislation they are currently subject to. Legislative reforms conducive to the protection of freedom of assembly for Palestinians should begin with the revocation of Military Order 101.

⁴⁶ See Jean S. Pictet (ed.), *IV Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary*, ICRC, Geneva, 1958, pp. 336.



"Boy amid protesters in Al Bab, Syria, February 2013."
by Chris Huby/Haytham Pictures

SYRIA

Introduction

In July 2012 the International Committee of the Red Cross (ICRC) declared that the situation in Syria had evolved into an internal armed conflict and that all parties in the conflict were therefore compelled to abide by the principles of international humanitarian law; violations of these principles by any side could possibly constitute a war crime.¹ Over more than two years, the violent and indiscriminate repression exerted by the Syrian government against a peaceful movement of protest demanding democratic reforms in the country has resulted in dozens of thousands of deaths, millions of refugees and internally displaced persons, a rapidly escalating regional humanitarian and military crisis, with no political perspectives over the short term.

The anti-government protests in Syria erupted in Deraa, south of the capital Damascus in mid-March 2011 when the State security services arrested a group of high school students for writing slogans against the government on the walls of their school. The students were illegally detained and subjected to torture, which prompted citizens to organize peaceful protests. On 17 March the government and security forces responded by opening fire to disperse the demonstrators, thereby killing, wounding and arresting many of them. The repression, combined with the many reasons of social discontent – such as the monopoly of the ruling regime on wealth and power, the rampant corruption, continued enforcement of a state of emergency since more than half a century, widespread poverty and discrimination policies against minorities — widened the scope of demonstrations.

Months of peaceful demonstrations and sit-ins calling for freedom and dignity followed, with protestors continuing to be mowed down by live bullets. The protest movement spread to almost all Syrian territory, with hundreds of thousands of Syrians taking to the streets and chanting slogans of freedom and calling for the “fall of the regime”. The authorities continued using excessive force against peaceful protesters, arbitrarily arresting tens of thousands of Syrians and systematically practicing torture on a wide scale. Through its indiscriminate and massive use of force against its civilian population, the Syrian government again committed grave human rights violations amounting to crimes against humanity.

In this context, large numbers of soldiers and officers in the Syrian army and security forces started defecting and joining the peaceful demonstrators. At first, these combatants organized to protect demonstrators; they later came together and were joined by civilians in what became known as the “Free Syrian Army” (FSA), which began to wage battles against the government’s forces. As clashes between the FSA and governmental forces increased, the armed opposition was able to take over several regions of the country, drawing on the support of a large portion of the population. In response, the government increasingly used lethal weapons, including against civilian-populated areas, which led to massive destruction and large numbers of casualties.

¹ See last report of the ICI A/HRC/23/58, June 2013.

In July 2013, the Secretary-General of the United Nations declared that the number of 100,000 deaths had been reached.²

1. General Legal Framework

The Syrian government has acceded to and ratified most of the international declarations and covenants on human rights which emphasize individuals' right to participate in peaceful assemblies.

- ▶ International Covenant on Political and Civil Rights
- ▶ International Covenant on Economic and Social Rights
- ▶ Convention on the elimination of all forms of discrimination against women (CEDAW)
- ▶ Convention on the elimination of racial discrimination (CERD)
- ▶ Convention n°87 of the International Organization of Labour
- ▶ Universal declaration on Human rights

The Syrian constitution of 1973 was drafted so as to serve the interests of the ruling Baath party and the Al-Assad family, shield them from all legal liability and ensure their continuity in power. Article 8 provided for the dominance of the Baath Party over political power (Control over the 3 branches of power), and its leadership of state and society. It vests broad powers in the President of the Republic to appoint and dissolve governments and dissolve the People's Assembly and to issue laws and preside over the judiciary by chairing the Supreme Judicial Council, appointing its panel of judges and members of the Supreme Constitutional Court.

The former Syrian constitution explicitly guaranteed this right in Article 39: *"Citizens have the right to meet and demonstrate peacefully within the principles of the constitution. The law regulates the exercise of this right"*.

Nonetheless, this right has been violated for over half a century because of the state of emergency in force since March 8, 1963 (day on which the Baath Party acceded to power through a military coup). The state of emergency granted the security apparatus, the military and police extensive powers to prevent the gathering of three or more individuals, prosecute those involved and suppress rallies and demonstrations. Many protesters have been tried and sentenced to heavy penalties by the Supreme State Security Court (SSSC) and military courts whose broad powers were enshrined in the state of emergency and extraordinary laws issued to protect security services and ensure their impunity.³

2 <http://www.un.org/apps/news/story.asp?NewsID=45497&Cr=syria&Cr1=>.

3 Examples of such repression include the way security and military forces handled the mass protests in Kurdish regions against discriminatory practices on March 11-12, 2004, leaving at least 36 people dead, over 160 people injured and detaining more than 2,000 people. See Human Rights Watch, *Group Denial. Repression of Kurdish Political and Cultural Rights in Syria*, 2009.

In the wake of the mass protests throughout Syria in March of 2011, the Syrian President issued several decrees as part of reform plans to mitigate people's resentment towards his government. A decree abolished the Damascus-based SSSC,⁴ an other decree lifted the state of emergency, regulated peaceful demonstrations,⁵ a third decree permitted the establishment of political parties,⁶ and amended the constitution, waiving the constitutional privileges granted to the Baath Party. These encouraging reforms however went unheeded and were either not implemented in practice, or were circumvented by new repressive measures.

The 2011 constitutional reform

Under pressure from the mass protests that began in mid-March 2011, the Syrian regime was forced to form a committee to draft a new constitution that was later submitted for public referendum on 26 February 2012, amidst widespread protests regarding the whole process carried out in a context of extreme political violence against protesters and opponents.

Although the new constitution⁷ vests broad powers in the President of the Republic no less than the former constitution, it abolished the controversial half-century old Article 8. The constitution also explicitly recognized **freedom of association** under different forms of citizens' participation, such as political parties, associations and trade unions.

Breaking up with long-standing mono-partidism, Article I of the new Constitution states that the political system in the state is founded on the principle of **political pluralism** and that power is exercised democratically through the ballot. Article 9 of the new constitution provides for the **protection of cultural diversity** in Syrian society as a national heritage on the contrary to the old constitution that only recognized the Arab component while denying the existence of other communities in Syria.

Article 38 states that every citizen shall have the **right to move within or leave the territory of the state**, unless prevented by a decision from the competent court or the public prosecution office or in accordance with the laws of public health and safety, while the old constitution did not recognize the individual's right to leave the country. In fact, since the mid-eighties "travel bans" (formal or informal) targeted political opponents and human rights defenders. In 2009, the Syrian Centre for Media and Freedom of Expression (SCM) documented more than 300 cases of people banned from travelling abroad. This practice has ceased since the Revolution.

4 Legislative decree No. 53 of 11 April 2011.

5 Legislative decree No. 54 of 11 April 2011.

6 Legislative decree No. 100 of August 2011.

7 Decree No. 94 of 28 February 2012 was issued on publishing the mentioned Constitution.

Regulations of freedom of peaceful assembly and association

Article 10 of the new constitution (similar to art. 9 of the former constitution) provides for the establishment of grassroots organizations, trade unions, associations and other social organizations that can participate “*in the various sectors and councils specified in the law in their areas of interest*”.

Article 44 of the new constitution provides that citizens shall have the **right to peacefully assemble**, demonstrate and strike from work within the framework of the constitution principles, and the law shall regulate the exercise of this right. Article 45 provides for the **freedom of forming associations and unions** on a national basis, formally recognizing for the first time civil society participation in political life.

As another result of this reform process, a **law regulating peaceful demonstration** was introduced for the first time ever in the country as Legislative Decree No. 54 of April 21, 2011⁸ (hereafter “the Demonstrations Law”). It regulates peaceful demonstrations, and defines a demonstration as the peaceful gathering or marching of people in or near a public place or road in order to express an opinion, announce a demand, protest matters or reiterate the implementation of certain demands. However, the said law has not met expectations and suffers from shortcomings, as we will see further.

2. Procedures

Article 5 of the Demonstrations Law requests that organizers obtain a license for their demonstration at least five days in advance. The request should include the demonstration date, starting time, gathering place, course, ending time, goals, causes and slogans.

The law does not differentiate between demonstrations and sit-ins, gathering the two in its definition of a demonstration.

The competent authority decides on the licensing application within one week of receipt, which is a very long period of time. According to the UN Special Rapporteur on the rights to Freedom of Peaceful Assembly and of Association and other human rights bodies, a notification procedure is preferable to an authorization,⁹ as assembly is a fundamental right

⁸ Article 2 of legislative Decree No. 54 states its objectives: a - Regulating the right to peaceful demonstration, as one of the basic human rights guaranteed by the Syrian Constitution. b - Preserving balance between the citizens' safety and exercising their right to peaceful demonstration, in addition to enabling the public authorities to protect public and private funds and properties and to maintain order.

⁹ See for example the *Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Human Rights Council, 20th session, A/HRC/20/27 (2012), para. 28; and OSCE/ODIHR Guidelines on freedom of peaceful assembly, 2010, Warsaw, 2nd edition, section A, Guidelines on freedom of peaceful assembly para. 4.1.

that should not require a license to exercise. The declaration has a main purpose of information to the authorities so they can take all measures necessary to facilitate and protect the exercise of this right.

3. Restrictions

The law also requires that **only duly licensed political parties, popular organizations, trade unions and civil society organizations can apply** for a license to assemble or demonstrate, meaning that unlicensed organizations cannot organize demonstrations, which constitutes an important restriction of the right of citizens to assemble and demonstrate peacefully.

The law adds the need to provide a notarized document in which the committee pledges to take responsibility for all damages that may affect the public and private properties, which implicates a disproportionate liability of organizers for acts that may be committed by others.

The law grants the competent licensing authority, the Ministry of the Interior, the right to **refuse to license** demonstrations with a reasoned decision that does not necessarily cite the exact reasons for refusal, meaning that the ministry needs only to invoke a broad justification of public order to refuse permission for a demonstration. In practice however, restrictions against people wishing to peacefully assemble can be far worse. In September 2011, a lawyer and human rights activist presented a demand for an authorization to hold a peaceful gathering to the local authorities of the Hasakeh governorate. The lawyer got arrested by State security apparatus and arbitrarily detained for more than three weeks. After his release, the Hasakeh branch of the Syrian bar association, controlled by the government, initiated a disciplinary procedure against him.

In the case of refusal, the applicant may **appeal the decision** before the Damascus-based Administrative Court, but it is known for its sluggish procedures. This hinders the ability to keep the assembly in the timeframe first set by the organizers and may render the assembly meaningless.

In practice, the Syrian government and the competent licensing authorities have only authorized demonstrations that are loyal to the regime and usually directed and supervised by the government. Examples of such loyal demonstrations include those seen in the early days of protests in Syria when employees and school students were forced to participate in demonstrations and rallies in support of the government.

Moreover, **several other laws also set draconian conditions and obligations on assembly organizers** in a clear attempt to intimidate protesters, *de facto* jeopardizing the very possibility to hold demonstrations.

On February 2, 2012 the **Law No. 19 on anti-terrorism** was issued, providing for heavy criminal penalties for conspiracy, terrorist actions, establishing, organizing and managing terrorist organization, joining, training and funding terrorist acts, smuggling, manufacturing, embezzling

and possessing means of terrorism, threats of terrorist actions or promoting terrorism business. This new legislation is an example of by-passing the suppression of State security courts and the lift of the state of emergency. It allows hastily prosecuting civilians, especially people detained in relation with organizing or participating in protests, in terrorism courts headed by military officers, which fall short of any guarantee of a fair trial. It also gives ground to heavier sanctions on the conviction of terrorism.

On February 8, 2012 the legislative decree No. 17 was issued to restrict Internet communications and combat cybercrime. It sets penalties for the crimes of violating the commitment to save a copy of the content and traffic data and to refrain from deleting, amending or correcting illegal content, as well as other “cyber-crimes” and the “incitement to commit crimes”. This vague wording in a context where peaceful protesters are systematically considered as criminals is a clear move to further criminalize the use of internet as a means of communication and mobilization for protestors.

4. Protection

The law provides for the duty of public authorities to protect the demonstrators but fails to specify that protection and the means to be used by public authorities toward that end. The notion of proportionality, and the presumption in favour of peaceful assemblies does not exist in the law.

Importantly, the text does not specify the means to disperse unauthorized demonstrations, nor does it integrate the principles of proportionality and progressivity in the use of force by the police, nor the obligation to issue warnings before starting to disperse a demonstration. According to recommendations of international Human rights bodies and treaties,¹⁰ the law should explicitly forbid the police to use live bullets except in cases of imminent threat of life or serious injuries, hence never in the context of peaceful assemblies.

An important loophole for the legal protection of freedom of assembly has been the continued enforcement of the state of emergency which allowed to arbitrarily arrest peaceful protesters and try them before military courts and granted security agencies impunity for their crimes. The continuation of this state of affairs through other repressive laws (see “3. Restrictions”) despite the lift of the state of emergency prevents any credible pretention to protect the right to peacefully assemble.

It must be very importantly highlighted that pro-governmental para-military militias - known by the name of “shabeeha” - have been systematically used by the Syrian government, to suppress public protests. These militias are identified in the reports of local and international

¹⁰ UN Code of Conduct for Law Enforcement Officials (adopted on 17 December 1979), the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted on 27 August to 7 September 1990), *OSCE Guidelines*, 2012 Report of the UN Special Rapporteur on Freedom of peaceful assembly and association.

NGOs and the Independent International Commission of Inquiry as responsible for committing massacres, extra-judicial killings and other grave crimes under international law. According to International Humanitarian Law, governmental authorities are accountable for crimes committed by non-State actors which they effectively control.¹¹

5. Sanctions

First of all, the law holds demonstration organizers liable in the event that private or public property sustains damages, obliging the organizers to sign a pledge before a public notary taking responsibility for all damages caused by the demonstration. In this fashion, the law assigns the protecting responsibility to the organizers, even though such protection is the responsibility of law-enforcement forces. It also makes organizers bear liability for other people's illegal behaviour. This is contrary to international standards that hold that only individual responsibility should be held, as opposed to a collective responsibility that burden organizers with the legal consequences of others' behaviour.

Second, the sanctions foreseen by law for organizing or participating in an illegal (unauthorized) gathering are heavy. As seen above, the possibility of trying civilians before military courts and field courts¹² rids people of their right to a fair trial, to legal certainty and to a right of appeal. In fact, international human rights bodies have repeatedly stated that military tribunals should not try civilians.¹³ Instead, these courts have been used to try thousands of peaceful protesters, journalists, aid workers and human rights defenders and sentence them to long jail sentences, subject them to torture in detention and intimidate them and their relatives.

Numerous cases of human rights defenders exemplify this practice: on February 16, 2011 M. Mazen Darwish, President of the Syrian Center for Media and Freedom of Expression (SCM) a group monitoring violations against freedom of expression, was arrested along with 15 of his colleagues in their office in Damascus. He was held incommunicado for more than a year along with 5 of his colleagues, before being transferred to the central prison of Damascus and brought before a terrorism court. So does Mrs. Muntaha Al Atrash, a journalist and Spokesperson of the Syrian Human Rights Organisation – Sawasiyah, who was referred to a terrorism court in July 2013 for expressing publicly her support to the victims of the repression.¹⁴

11 A/HRC/23/58, June 2013.

12 Terrorism courts are military courts with the jurisdiction to trial civilians. The procedure is completely violating basic international fair trial standards and leads to sentences that can extend 15 years of detention.

13 UN Working Group on Arbitrary Detention (Opinion No. 27/2008).

14 See *Syria: Rights Activists Face Terrorism Charges*, 17 May 2013, joint statement <http://www.euromedrights.org/eng/2013/05/17/syria-rights-activists-face-terrorism-charges/>.

6. Gender Equality and Freedom of Assembly

Article 23 of the Syrian constitution declares that the State shall **provide women with all opportunities** enabling them to effectively and fully contribute to political, economic, social and cultural life, and that the state shall work on removing the restrictions that prevent their development and participation in building society. Article 33 provides that citizens shall be equal in rights and duties, with the new mention “*without discrimination among them on grounds of sex, origin, language, religion or creed*”.

Syria has ratified, although with many reservations, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Despite the constitutional protection of gender equality, some laws remain discriminatory, in particular the Personal Status Law, the Nationality Law and the Penal Code itself. Although women are not in principle barred from exercising their freedom of assembly as men do, other obstacles of social, cultural and economic nature reduce their participation in public life. Nonetheless, with the uprising women have been participating in protest movements in great numbers. This has led to an important number of casualties, but also to specific forms of repression and retaliations against women and girls. Between March 2011 and April 2013, more than 5,400 women have been arrested by the Syrian government, including 1,200 university students. According to the Violation Documentation Center, as of May 2013, 766 women and 34 girls under the age of 18 remain in government detention facilities.¹⁵ Dozens of cases of rape, sexual violence and kidnapping of women have been reported by local human rights organisations,¹⁶ and it can be affirmed that these crimes aim at breaking women’s political resistance as well as that of their male relatives, gender-based violence being used as a war weapon.

¹⁵ See <https://www.vdc-sy.info/index.php/en>.

¹⁶ See the written intervention submitted by 13 Syrian and international human rights organizations to the UN Human Rights Council http://www.euromedrights.org/eng/wp-content/uploads/2013/05/NGO-WI_Womens-rights-Syria_HRC23_EN.pdf.

Recommendations

Although the Syrian regime reformed the legal framework under popular pressure, the repression of demonstrations in practice has escalated until reaching internal armed conflict. Reports by human rights organizations and the Independent International Commission of Inquiry on the Syrian Arab Republic show that public authorities have resorted to dreadful violence against peaceful protesters, including the use of war weapons such as artillery, missiles and explosive barrel, and supported by armed militias.

The rule of law is not applying in Syria where arbitrariness and impunity have reached unprecedented levels. In this context, it would be vain to recommend more legal reform in the absence of any genuine process that would allow a transition. In the first place, the Syrian government and anti-governmental armed groups should cease fire and all forms of violence and violations of human rights that are being perpetrated daily in Syria, and fully abide by International humanitarian Law and human rights law. All persons who bear responsibility for international crimes, including crimes against humanity and war crimes must be held accountable.



"Burrial of opponent Chokri Belaid, Tunis, 8 February 2013."
by Pierre Terdjman/Agence Cosmos

TUNISIA

Introduction

Former President Ben Ali was forced to relinquish power and flee the country under pressure from the popular demonstrations that took place between December 2010 and January 2011, defying bloody police repression which caused dozens of deaths and thousands of injuries. In 2008, during the popular uprising of the Gafsa mining basin, demonstrations, gatherings and sit-ins lasted more than 6 months, creating the longest protest movement in Tunisia's contemporary history.

After January 14, 2011 and during the first period of political transition directed by the government of Béji Caïd Essebsi, freedom of assembly and association became the rule in spite of the declaration of a state of emergency. A consensual institution in charge of the political and institutional transition, the "Higher Authority for the realization of the Revolution's objectives, political reform and democratic transition," was created to reform legislation relating to elections, associations and the information sector. After the elections of October 23, 2011, the National Constituent Assembly elected a President of the Republic and an interim government from a 3-party coalition (the Troika). This is dominated by the Ennahdha party (Islamist) which has the greatest number of representatives in this Assembly.

The Troika government tried to impose restrictions on the exercise freedom of assembly by resorting to restrictive provisions of the old legislation – such as the requirement to give prior notice and the ban on assemblies in specific locations such as Habib Bourguiba Avenue. Several of these measures, which were decided on by the Ministry of the Interior, led to a reaction of civil society and prompted citizens to take on an active role in defending the progress made in the area of freedom of assembly and association. In the tense and uncertain context of Tunisia's democratic transition, new actors have emerged who are jeopardising freedom of peaceful assembly: individuals who do not belong to law-enforcement forces have violently attacked demonstrators on several occasions. So far, they have enjoyed impunity, especially after organising themselves into "Leagues for the protection of the revolution",¹ with explicit support from Ennahdha and the Congress for the Republic, which are both parties in government.

The organization of counter-demonstrations has become a common way to impede the meetings and gatherings of opposition parties and NGOs, creating a climate of tension and intolerance. This atmosphere of political violence definitely favored the lynching of an activist of the Nidha Tounès party, Lotfi Nagadh, in October 2012, and the assassination of the opposition leader Chokri Belaïd in February 2013. A number of Tunisians and civil society organizations, aware of the importance of freedom of assembly and association as a way of political struggle and a form of expression, demand that the new constitution currently being drafted, clearly guarantees these rights.

¹ See for example the communication of several United Nations Special Rapporteurs to the Tunisian government (Reference AL Assembly & Association (2010-1) G/SO 214 (107-9) G/SO214 (33-27) TUN 6/2012), to be found here : https://spdb.ohchr.org/hrdb/23rd/public_-AL_Tunisia_05.12.12_%286.2012%29.pdf.

For the time being, freedom of assembly in Tunisia is still governed by the laws which were in force under the regime of the former President, Ben Ali.

The Constitution of 1959 was the first victim of the 2011 revolution: it was firstly suspended² and then completely repealed.³ Article 8 of this Constitution enshrined freedom of assembly.⁴

A new constitution should replace the 1959 Constitution and will, *a priori*, be adopted by the National Constituent Assembly.⁵ The outline of this future Constitution, dated June 1st, 2013, sets out this freedom in Article 36: *"The right of assembly and peaceful demonstration is guaranteed. It is exercised according to procedural provisions as defined by the law without hindering the essence of this right."*

However, whilst awaiting the long-anticipated arrival of a new constitution at the summit of the pyramid of legal acts in Tunisia, it is worth studying the current legal framework which governs the freedom of assembly.

1. General Legal Framework

Article 21 of the International Covenant on Civil and Political Rights (ICCPR), is the first international reference which governs the exercise of this freedom. Tunisia has taken all the legal formalities necessary for said Covenant to become a source of national law.

The draft Constitution of June 1st, 2013, in its Article 19, states that *"international treaties approved by the People's representatives Assembly and then ratified, are superior to the law and inferior to the Constitution"*. However, the People's representatives Assembly is the name that the Parliament will take in the future institutional order. The question of the recognition of formerly recognized treaties is thus at stakes, as the draft constitution seems to give preeminence on the law only to treaties approved by the new assembly. Will a specific action by the new assembly be necessary to give former treaties the same supra-legal status?

Hence doubt persists on the superiority of the ICCPR over the law.

The law which governs the exercise of this freedom falls short of the guarantees foreseen by the said Agreement.

² See The Decree-Law n°14 of 23/03/2011 relating to the provisional organization of the public authorities, J.O.R.T n°20 of 25/03/2001.

³ See The Incorporating Law n°6 of 16/12/2011 relating to the provisional organization of the public authorities, J.O.R.T n°97 of 20-23/12/2011.

⁴ *"Freedoms of opinion, of expression, of the media, of publication, of assembly and of association are guaranteed and exercised in conditions defined by the law..."*

⁵ Under the terms of Article 3 of Incorporating Law n°6 of 16/12/2011 relating to the provisional organization of the public authorities, the draft constitution would be submitted to the referendum if it were not approved by a majority of two thirds of the members of the Constituent Assembly.

In fact, freedom of assembly is also governed by **Law No. 69-4 of 24/01/1969 which regulates public meetings, processions, parades, demonstrations and gatherings.**⁶ This law distinguishes meetings which are held in public or private places, i.e. outside public roads, and those held on public roads. Article 8 of the 1969 Law stipulates that *“Meetings cannot be held on public roads”*, however demonstrations or processions can be carried out after a declaration in due form.

According to the first Article of the 1969 Law, *“Public meetings are free. They can take place without prior authorization under the conditions provided for in this law.”* However the restrictions and penalties are important, and clearly go beyond the limits that international law permits and recommends.

On the other hand, as the legal norms do not mention any differential treatment, **foreigners enjoy the same rights and obligations regarding the law on assemblies as Tunisian citizens.**

2. Procedures

Public meetings out of public roads: Under the terms of Article 2 of the 1969 Act, *“Any public meeting shall be preceded by a declaration indicating on which day and at which time it will be held. Electoral meetings, however, are governed by special regulations relating to electoral matters.”*

The declaration is presented to the head offices of the Governorate or to the delegation (in Tunis, the capital, it must be presented to the Department of National Security) and signed by two persons *“who enjoy their civil rights and who are domiciled in the constituency where the meeting is to be held”*.

The declaration must take place **at least three days** and at the most fifteen days before the date of the meeting. The declaration is submitted against **a receipt** on which the date and time of the filing should be indicated. Article 3 specifies that *“the declaration must indicate the purpose and reasons for the meeting.”*

Demonstrations on public roads: Article 9 of the 1969 law states that: *“All processions, parades and, generally speaking, all demonstrations on the public highway, irrespective of their nature, are subject to a mandatory prior declaration.”*

Similar to the provisions concerning public meetings, the declaration (according to Article 10) *“Must indicate the place of the gathering and the itinerary, together with the banners or flags which will be carried.”*

⁶ Official Bulletin (J.O.R.T.) of 28-31 January 1969, p.117 & s.

International standards details on the place, time and itinerary of the planned event may be subject to review and modification by the authorities in order to guarantee that peaceful demonstrators can effectively and fully enjoy freedom of assembly. However, information regarding banners or flags cannot be used to scrutinize in advance any message to be displayed in the assembly and *“criticism of government or state officials should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of assembly”*.⁷

The provisions concerning the “reasons for a meeting” and “banners or flags” are thus problematic.

3. Restrictions

Restrictions on meetings

There are three conditions to meetings under the 1969 law. Firstly, Article 4 provides for a **time limit**: Meetings cannot *“continue beyond midnight. However, in localities where the closure of public establishments takes place later, they can continue until the time set for the closure of these establishments.”*

Article 5 then puts a heavy responsibility on organizers to control order during the meeting, including on the speeches pronounced by participants: *“each meeting must have a supervisory committee of at least three persons. This committee is responsible for maintaining order, preventing any infringement of laws, conserving the nature of the meeting to that which was given to it by the declaration, forbidding any speeches contrary to public order and good morals, or containing provocation for acts qualified as crimes or offences.”*

Lastly, the law foresees that *“A civil servant shall be appointed by the Security services to attend the public meeting”*. Under Article 6, this civil servant has the right to pronounce the dissolution of the meeting (if he is requested to do so by the meeting’s supervisory committee, or if clashes or assaults occur).

Going beyond these three conditions, the 1969 law gives the authorities the option, under Article 7, to *“Forbid by decree any meeting which is liable to disturb security and public order (...). In such a case, the organizers can appeal to the Secretary of State for the Interior who will give a final ruling.”*

⁷ OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, 2010, 2nd edition, para. 94.

According to international human rights standards and recommendations,⁸ limitations or bans may only be imposed when well-founded and compelling reasons exist to believe that the planned assembly will seriously undermine public order and security. Otherwise, any assembly should be held without prior restraints, in order not to undermine the essence of this freedom.

The burden of justifying the need to interfere with freedom of assembly should lie on the authorities, thus, if limitations on grounds such as “good morals” are imposed, it is not sufficient to allege merely that morality would be offended. Reliance on categories such as “good morals” and “public order”, particularly when it encompasses forbidding speeches and criminalizing public meetings, can easily lead to arbitrary restrictions on freedom of assembly and expression seeking to penalize those moral views that differ from the ones held by those in power.

Restrictions on demonstrations

Article 12 states that *“The responsible authorities can ban any demonstration which is liable to disturb security and public order by decree.”*

Article 13 of the 1969 law forbids *“All unarmed gatherings which are liable to disturb the public peace.”* It can be inferred from this article that **spontaneous gatherings or assemblies are prohibited**, as virtually any gathering in a public place will convey some kind of disturbance to undefined “public peace”.

This vague wording can give ground to arbitrary or general bans that fall short of international standards. Indeed peaceful intentions of the organizers and participants in demonstrations should be presumed unless there is compelling and well-founded evidence that violence will be used or advocated.

That is, granted that the decision to ban an assembly is a measure of last resort, the duty of the authorities to provide timely and fulsome arguments when assessing if demonstrations are “liable to disturb security and public order” should be established in the law in order to meet international standards.⁹

In addition, assembly organizers should be provided with the possibility of an **expedited appeal procedure** before an independent and impartial court when restrictions are imposed, as stressed by the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association.¹⁰

8 Such as the Human Rights Committee, the body in charge of monitoring the application of the ICCPR, as well as the Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association.

9 2d 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. 48.

10 1st Report of the United Nations Special Reporter on the right to peaceful meetings and the freedom of association, Maina Kiai, A/HCR/20/27, para. 42.

However, in Tunisia, although admittedly there is the right of recourse before the administrative tribunals, very often this recourse is not fast enough to enable – in the event of winning the suit – the upholding of the demonstration or public meeting.

For example, the Ministry of the Interior banned demonstrations on April 9, 2012 on the main avenue of Tunis, Habib Bourguiba. The administrative tribunal was referred to for a stay of execution on the said decision, and could only render its judgment on 12/06/2012 – after the Minister withdrew his decision which forbade all demonstrations on Habib Bourguiba Avenue.

Finally, **other measures restrict the exercise of freedom of assembly, in particular the application of the state of emergency.** As an exceptional measure that puts the exercise of public freedoms into parenthesis, the state of emergency should be established by law and adopted by the Parliament. However, in Tunisia it is organized through a decree, Decree n° 78-50 dated of January 1978.

Actually Tunisia has lived under the state of emergency since January 14, 2011, date on which former President Ben Ali was toppled and fled. The authorities democratically elected after the Revolution – paradoxically— regularly use it.¹¹

The proclamation of the state of emergency bestows power on the governor, in Article 4, to: *“1) Forbid the movement of persons.... in the areas provided for and for as long as security and public order requires.”* The Ministry of the Interior or the governor can, under Article 7, *“Order the temporary closure of concert halls, drinks outlets and meeting places of any kind. Meetings which are liable to provoke or cultivate disorder can also be forbidden.”* Offences committed are, under Article 9 of the said decree, *“punishable by six months to two years imprisonment....”* The executive power defines both the offences and the punishments, and under the state of emergency the authorities do not need to give reasons to restrict or ban meetings, and they can issue general bans prohibiting any kind of meeting or demonstration,¹² far from what international standards require as necessity and proportionality.

4. Protection

The law of 1969 does not expressly protect the right to peaceful demonstration. That is to say, the law does not clearly protect citizens who exercise their right to demonstrate against attacks by counter-demonstrators or *agents provocateurs*. The State, however, has a duty

11 The President of the Republic, Moncef Marzouki, decided - after discussions with the head of government, Hamadi Jebali, and the President of the National Constituent Assembly, Mustapha Ben Jaafer, to continue the state of emergency for 3 months from March 3rd, 2013 through to June 3rd, 2013,” indicated the presidency in a release.

12 As a recent example, the general ban issued by the Ministry of interior on demonstrations on Habib Bourguiba Avenue in Tunis, dated 28 March 2012.

to protect peaceful assemblies and the police must make a distinction between violent individuals and those who conduct themselves peacefully in a demonstration.¹³

The law, however, gives the police force the option to react in many different ways.

After giving warnings, the police may resort to the use of force¹⁴ - including the use of firearms against demonstrators who refuse to disperse, even if they have not used any violence. Article 22 even authorizes police forces *"In the event that the demonstrators attempt to achieve their aims by force, and despite the use of all the means (...) to make them disperse..."* to shoot *"directly at them."*

The options offered to the police by the law, combined with long-standing impunity, have often led to excessive use of force, as shown for example in the report of an independent committee on the repression against demonstrators in Siliana.¹⁵

According to international standards, the use of force is only allowed when less restrictive measures would not reach the legitimate aim pursued.¹⁶ In the context of assemblies, law enforcement officials should avoid the use of force when dispersing those that are unlawful but non-violent.¹⁷

The State also has the responsibility of protecting peaceful demonstrators against *agent provocateurs* or violent counter-demonstrators. This responsibility arises from the obligation to facilitate the exercise of peaceful assembly and to distinguish between violent and non-violent protesters. In practice however, in recent years authorities have failed to comply with this obligation, and human rights organizations even accuse authorities to resort to violent groups (in particular those organized under the name of revolution protection leagues) to repress and break up protests or lawful meetings of licensed political parties.¹⁸

5. Sanctions

Non-compliance with one of the provisions stipulated in the 1969 law could expose its perpetrators to numerous and disproportionate penalties.

13 According to the Special Rapporteur, *"States have a positive obligation to actively protect peaceful assemblies (...) The organizers and stewards of assemblies should not assume this obligation"*, Report A/HCR/20/27, para. 33.

14 Articles 15 to 21.

15 The Tunisian Forum for Economic and Social Rights, *The events of Siliana, March 2013*.

16 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), para. 12.

17 Ibid, art. 13.

18 For example, the meeting of the *Nida Tounès* party in Djerba on 22/12/2012, that was interrupted by about one hundred LPR militiamen and Ennahdha activists who took over the meeting room and threw projectiles at the audience; or the meeting of the *Democratic Patriots* party which was held in Kef on 2 February 2013.

For example, *“An incomplete or inaccurate declaration”* is punishable with up to one-year imprisonment, as well as participating in a demonstration which has not been the subject of a declaration or which has been banned (Art. 26). Article 29 provides for a sentence of one month to one year of imprisonment for *“Any unarmed individual who, participating at an armed or unarmed demonstration, does not withdraw after the first warning. The sentence shall be six months to three years of imprisonment if the unarmed individual continues to participate in the unarmed demonstration whose dispersion requires the use of force...”*

Holding a banned meeting, or *“making premises available to the organizers to hold the meeting – without assuring that the declaration of this meeting had been made in accordance with the law”* is punishable with up to two years imprisonment (art. 24).

This burdens organizers with heavy responsibilities in the event of non-compliance with certain provisions of the law, for example, if *“A speech contrary to public order and good morals”* is made by a participant during the meeting. This implies both a limitation of the freedom of expression and a collective responsibility for an individual act.

These penalties are disproportionate as, according to the Special Reporter on freedom of association and peaceful assembly, *“When organizers neglect to present a notification to the authorities, the meeting should not be automatically dispersed and the organizers should not be subject to criminal or administrative penalties accompanied with fines or prison sentences”*.¹⁹

¹⁹ A/HCR/20/27 Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 29.

Recommendations

1. Include the right to freedom of assembly in the new Constitution currently in a drafting process and the State's obligation to protect and facilitate this right;
2. Repeal the state of emergency and refrain from recurring to exception laws to ban peaceful meetings and protests;
3. Amend the Law n° 69-4 of 24/01/1969 to bring it in conformity with international standards, and in particular:
4. Repeal all provisions allowing the authorities to restrict or ban meetings and demonstrations based on their content, slogans or banners or the suspicion of breaching "good morals";
5. Amend the provisions that foresee that the supervising committee of a meeting should uphold public order and be held responsible for others' speeches or acts;
6. Repeal article 6 of the law that provides for a security agents to attend public meetings with the authority to dissolve it;
7. Ensure that administrative authorities who decide on meetings and demonstrations apply the standard of necessity and proportionality on a case-to-case basis, and recur to restrictions or ban as last resort; for this purpose, consider the training of administrative public servants;
8. Ensure that police forces only resort to the use of force in a necessary and proportionate manner and as last resort. In particular, the use of firearms against demonstrators should be strictly prohibited except under exceptional circumstances that should be clearly defined by law, and after several warnings allowing participants to voluntarily disperse. For this purpose, also consider the training of law-enforcement agents in human rights and protest-handling;
9. Clearly reaffirm in law and practice the obligation of the State and police forces to protect peaceful protesters including against violent counter-demonstrators and agents-provocateurs;
10. Repeal the provisions in Law n° 69-4 that foresee severe criminal penalties for misdemeanors and breaches to this same law;
11. Include in the law on assemblies and in police instructions the principle of tolerance for undeclared but peaceful gatherings and demonstrations.



"Demonstration in Taksim square, Istanbul, June 2013."
by Pierre Terdjman/Agence Cosmos

TURKEY

Introduction

Turkey is a country in continued transition and evolution that has been directly affected by the Arab Spring, due to its geographic position and its stature of country in democratic transition located between Europe and the Middle-East, and with a very specific conformation of Islamic government and secular state. Turkey is a member to the European Convention on Human Rights, which implies very strict obligations, and it has been engaged for years in an uneven process of adhesion to the European Union.

While the *coup d'état* of September 12, 1980 had *de facto* curbed all the fundamental rights including freedom of expression, association and assembly, they were *de jure* restricted with the Constitution that came into effect on November 9, 1982. The 1982 Constitution was amended 17 times including the last one with the referendum of September 12, 2010 and a new constitution is currently under discussion, although the discussions seem to be in a dead end at the time of writing this study.

In the same time, a negotiated solution process is under way between the government and the Kurdistan Workers' Party (PKK), trying to put an end to three decades of deadly conflict and freedom restrictions. Indeed, since the 1980s ruling parties have been reluctant to enlarge fundamental rights and freedoms by legitimating restrictions with security reasons and the fight against terrorism. The negotiation of accession to the EU has allowed the amendment of hundreds of legal provisions to better protect human rights and democracy.

However, a long way remains to upholding fundamental rights and freedoms. Thousands of political activists, human rights defenders, trade unionists, lawyers and intellectuals, are detained under anti-terror law for their peaceful activities. Recently, the peaceful "Taksim Square" protests in Istanbul that quickly spread throughout the whole country, were met with fierce repression by police forces and numerous judicial and administrative investigations against peaceful protesters. These events have shed light on the authoritarian ways of Turkish authorities, their uncurbed use of excessive force against peaceful protesters and their use of the judiciary as a means of retaliation against criticism.

This study will look at the legal and institutional framework governing freedom of assembly in Turkey, as a first step to understand what happens in practice and what reforms should be undertaken to better promote human rights.

1. General Legal Framework

Turkey has ratified the regional and international conventions that enshrine freedom of assembly such as the European Convention on Human Rights and the UN International Covenant on Civil and Political Rights. Article 90 of the Constitution recognises the pre-eminence of international ratified treaties over national law.

The right to freedom of peaceful assembly is regulated under the Article 34 of the Constitution as a constitutional right under the title of “Right to Hold Meetings and Demonstration Marches”: *“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission”*.

The constitution recognises the equality between men and women (Article 10). There is no regulation against women’s right to freedom of assembly.

The Law on Meeting and Demonstration No. 2911 (Hereafter “the Law”, unless otherwise mentioned), defines under its Article 2 **a) Meeting:** “means that (...) meetings that are organised in open and closed places in the framework of this law by real and juridical persons on specific issues to enlighten people and to create public opinion; b) **Demonstrations:** *“demonstrations (marches) that are organised in the framework of this law by real and juridical persons on specific issues to enlighten people and to create public opinion”*.

The Constitution importantly protects “public statements” by stating that *“Everyone has the right to express and spread his/her thoughts and opinions, individually or collectively, with verbal, written, visual or other means”*. However, the Article 26 of the Constitution expresses in its last paragraph, *“The forms, conditions and methods that would be used to express and spread freedom of thought is regulated by law”*. Despite the Article 26 of the Constitution, there is no law or provision with regard to spontaneous assemblies or collective or individual expression of thought. In other words, these rights are regulated by secondary legislative tools which are open to broad interpretation and can be easily violated, whereas if these rights were regulated by law, there can be more guarantees for citizens,

There are several other laws that effect the right to freedom of peaceful assembly: 1) Martial Law No. 2935, 2) Anti-Terror Law No. 3713, 3) The Law on Private Security Services No. 5188, 4) The Law on the Duties and Responsibilities of Police No. 2559, 5) The Law on Associations No. 5253, 6) The Law on Political Parties No. 2820, 7) The law on the Basic Principles of Elections and Electors’ Records No. 298, 8) The law on Province Administration No. 5442, 9) Turkish Penal Code No. 5237 (TPC).

As a result of **ambiguous and wide scope of the definition of terrorism** in the Article 1 of the Anti-Terror Law, thoughts expressed in demonstrations and marches can be deemed as terrorist activities rather than freedom of assembly and expression. In addition, within the framework the Articles 6 and 7 of the Anti-Terror Law those who join demonstrations can be accused of being terrorist or committing terror crimes for their slogans and placards in the demonstrations. As of 30 November 2002, there is no city or region administrated by the Martial Law. However, the Martial Law was suspended but not abolished. So, the Martial Law no 2935 can still provide wide authority to those who are in power to allow or ban any form of assembly.

2. Procedures

Freedom of assembly in Turkey is governed by a **declaration** regime. **However, an authorisation is needed for the meetings open to public and in the open air.**

Article 4 of the Law states **exceptions** to the notification procedure. Meetings that are not subject to authorisation, are: indoor meetings; scientific, sportive, trading and economic activities; national or religious days, and traditional activities such as wedding ceremonies.

Article 9 of the Law sets out the declaration procedure. An assembly committee composed of at least 7 people (over 18 years old) must be formed. Although the Article 34 of the Constitution states that *“the formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law”*, the Law actually leaves it to a decree to regulate the authorisation conditions (in article 10). Notifications should be lodged to the governors in provinces and districts, at least 48 hours before the meeting.

As mentioned in the Article 10, *“a receipt should be given in exchange of this notification with the date and time on it”*. If the notification is not taken by the governorate, this is detected in writing and a complaint is issued via public notary and according to the same article *“the time of the complaint is accepted as the time of notification”*.

Foreigners must request an authorisation to the Ministry of Interior Affairs to organise meetings, by *“informing the most senior local civil servant of the district where the meeting will be held at least 48 hours prior to the meeting”* (Article 3/2).

There is no provision on **spontaneous assemblies** and undeclared assemblies are banned and give rise to sanctions (see *infra*). In practice, spontaneous assemblies are treated as collective public statements (permitted) or are dispersed as illegal, according to the political assessment of the authorities.

According to Article 18 of the Law, restrictions or ban decisions should be handled to the organising committee at least 24 hours before the meeting.

3. Restrictions

The Article 34 of the Constitution declares that *“The right to hold meetings and demonstration marches shall only be restricted by law on the grounds of national security, and public order, or prevention of crime commitment, public health and public morals or for the protection of the rights and freedoms of others”*.

These restrictions conform to Article 11/2 of the European Convention on Human Rights and to the International Covenant on Civil and Political Rights. However, the Constitution does not include the safeguard present in international conventions that restrictions can only be taken “as necessary measures in a democratic society”.¹ In fact, the Law on assemblies introduces extensive restrictions.

Article 17 of the Law limits the restrictive measures to “*legitimate aims*” but leaves a large appreciation margin to the administrative authorities and does not foresee as such proportionality. Furthermore, the Law does not oblige the administration to explain and argue what are the necessities of public order, security or prove the imminent danger.

The Law puts important restrictions on content and messages that are tolerated in assemblies, in flagrant contradiction with international standards. Indeed, Article 23 on Sanctions (see point 5. below) states that one shall be punished with prison in case of bearing “*symbols of illegal organisations, uniforms with these symbols, chanting illegal slogans, carrying illegal posters, signs, pictures etc.*” The concept of “illegal organisation” may change according to State policies, and that of “illegal slogans” or “illegal pictures” is too broad and vague to be acceptable under international law.²

The Law also sets **blanket restrictions on time** (Article 7 “*the meetings should start with the rise of the sun and should be finalised an hour before the set of the sun*”) **and place** (Article 22/1, *meetings cannot be conducted, “in general roads and parks, temples, buildings that provides public services and its premises and in the area surrounding one kilometre of the Grand National Assembly of Turkey”* and demonstrations “*cannot be organised on the intercity roads*”). Local public administration can unilaterally determine the location of a meeting with a large discretionary power, as the organizers do not take part in this determination (Article 6 of the Law). They can also decide on general bans of assemblies in certain places. For example, in April 2013 Istanbul Governorate banned meetings in Taksim Square to prevent Mayday demonstrations in this highly symbolic place.

Foreigners are restricted from organizing and participating in assemblies (see above), and have to be authorised the Ministry of Interior Affairs and district authorities.

1 See also Human Rights Council, Resolution 15/21, 15th session, 30 September 2010, UN Doc. A/HRC/RES/15/21, OP 4; Human Rights Committee, *Belyazeka v Belarus*, Communication no. 1772/2008, 23 March 2012, para. 11.7; Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council, 20th session, 21 May 2012, A/HRC/20/27, para. 16.

2 On content-based restrictions and the limits of criticism, see European Court of Human Rights, *Incal v Turkey*, judgment of 9 June 1998, para. 54; Second Report of the Special Rapporteur on FPAA, Human Rights Council, 23rd session, 24 April 2013, A/HRC/23/39, para. 59; OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, 2010, Warsaw, 2nd edition, section B (Explanatory notes), paras. 94-97.

Restrictions based on the belonging to one of the above-mentioned groups are clearly defined in the Law, but restrictions on time and place of assemblies are left to the administrative authority (province and district governors).

Finally, **restrictions or ban decisions can be appealed before an administrative court**, and the judiciary should evaluate the situation in 24 hours. However, the judiciary system does not work timely and effectively enough to ensure an effective remedy in these cases, and to enable the assembly to take place on the planned date.

4. Protection

State's positive obligation to protect peaceful assemblies

The Article 34 of the Constitution as well as the Law define freedom of assembly as a right and Article 29 of the Law states that who restricts this right will be sentenced. However, the Law mainly focuses on restrictions and it is impossible to say that the protection obligations of the State are clearly defined in it.

The organising committee can be held responsible for the peacefulness and order of the assembly, and has to help the law-enforcement identifying the crime and criminals, which amounts to shifting the protecting responsibility from the State to the organisers, in contradiction to international standards and the State's constitutional obligations to protect citizens and to facilitate freedom of assembly.

Use of force

There are several police laws and circulars that are relevant to the use of force in the context of demonstrations. The general Law No 3201 on Security Affairs, and the more specific Law No 2559 (1934) on Police Attributions and Obligations, amended by law No 5681 of 2007.

The latter authorises the use of weapons against a group that "*resists the police or prevents them to carry out their duty*".

Article 24 of the Law on meetings and demonstration states that a warning will be made and force will be used in case of the participants do not disperse after the warning.

The principles of proportionality and graduation in the use of force are stated in an Order on rapid intervention forces (*Polis Çevik Kuvvet Yönetmeliği*) of December 30, 1982. It establishes strict procedures for the dispersal of demonstrators, such as 3 warnings; the establishment of minutes proving the warnings were heard from the furthest point in the crowd; and the gradual use of physical force, material force and weapons.

A Circular was issued on February 15, 2008 to regulate the conditions of use of tear gas. It also puts strict conditions on its use, such as the presence of medical staff, warnings before use, gradual and proportionate increase, the clearing of exits for the crowd to disperse, the prohibition of direct firing at people in all cases, and the prohibition of suing gas against people who have stopped resisting or attacking.

However, due to the vague provisions of the Law on Security Affairs, law-enforcement officers enjoy an extraordinary large decision margin for the forceful dispersal of assemblies. Numerous judgements of the European Court of Human Rights have shed light on violations and have recommended that the law should regulate the use of force more strictly and not leave it to the arbitrary decision of civil servants.³

Accountability and remedies

It is possible to refer to administrative courts to lodge an official complaint in case of State's failure to comply with its protection obligation. However it is doubtful whether they are an effective remedy as foreseen in Article 13 of the European Convention on Human Rights.⁴ Indeed, according to statistics of the European Court of Human Rights (ECtHR), between 1995 and 2011, 87.5% of ECtHR judgements on Turkey reveal that there has been a violation, while the Turkish courts had not judged so.

Law-enforcement officials are theoretically accountable for excessive use of force and human rights violations. However, according to Article 129 of the Constitution, an authorisation is compulsory to investigate public officials. The "Law on the Trial of Officers and Other Public Officials No. 4483" reiterates this authorisation system.⁵

In 2012, a national Ombudsman institution was created, and it can receive individual complaints against civil servants. Its independence and effectiveness as an effective remedy is still to be demonstrated in practice.

Since 2012 the possibility to lodge individual complaints to the Constitutional Court was also opened. This court can be referred to once all other domestic mechanisms have been exhausted. Although this could be a positive step in the access to effective remedy, as the independence of this court has not been proven, it is worrisome that one more domestic step has been added, delaying possible recourse to the European Court of Human Rights.

³ *Abdullah Yasa and others v. Turkey; Oya Ataman v. Turkey; Ali Güneş v. Turkey; DISK and KESK v. Turkey.*

⁴ "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." <http://www.hri.org/docs/ECHR50.html>.

⁵ See for example the case on the murder of Hrant Dink and its investigation phase. Cases against 40 public officials (army and police officers) were obstructed with authorisation procedures. ECtHR *Dink vs. Turkey* (Application no, 2668/07, 6102/08, 30079/08, 7072/09 et 7124/09) decision, (14 September 2010).

Finally, a draft law is currently under discussion to direct individual complaints against police officers directly to inspectors of the Ministry of the Interior, which would undermine the principle of a recourse to an independent and impartial tribunal.

5. Sanctions

Article 23 of the Law enumerates the numerous grounds for sanctions : a) **Holding an assembly without notification**, or holding it before or after the notified date and time; b) Bearing any kind of firearms, explosives, cutting and perforating tools, stones, sticks, poisons, gas or fog materials, as well as symbols of illegal organisations, uniforms with these symbols, covering faces to prevent identification, **chanting illegal slogans, carrying illegal posters, pictures** etc.; c) Holding an assembly outside of the timing restrictions foreseen in art. 7 or d) Outside the places mentioned in Articles 6 and 10 [i.e. the places that are determined by the administration]; e) Noncompliance to the methods and conditions mentioned in Article 20 and to the prohibitions and measures mentioned in Article 22 [see the paragraph on the article]; f) **Transgressing its own aims**, rules and limits defining meetings that are not required authorization according to Article 4; g) Gatherings aiming at committing a crime defined by law; h) Transgressing the aim mentioned in the notification; i) Holding an assembly before the end of the postponing or banning period; j) Maintaining the Assembly after the government's commissariat finalised it; k) The meetings that do not comply with the Paragraph 2 of Article 3 (about Foreigners) will be considered as illegal.

Article 28 of the Law provides several sanctions such as, a) 18 months to 3 years of imprisonment for those organise and lead illegal meetings; b) Up to 12 months of imprisonment for who do not conform to specific requirements yet organise meetings, and for the members of the organising committee who do not have the necessary conditions (juridical capacity and at least 18 year-old); c) 6 months to 2 years of imprisonment for the members of the organising committee who were not present during the meeting and who fail to perform their duties; d) Two to five years of imprisonment who uses violence against law-enforcement and government's commissariat.

Whereas participants are held responsible individually, organisers, as a committee, face collective responsibility according to the Article 28. Indeed organisers face special civil liability (For example to pay for cleaning, security...) and criminal responsibility (for example, in case of violence, material damage...).

These heavy sanctions and the extra liability for organisers are a strong deterrent to exercise the right to assemble and can amount to a limitation to the right to assembly.

The sanctions are detailed in the Law and mentioned above but the laws in general (and specifically the Law No. 2911) have problems in terms of transparency, predictability, clarity and the rule of law principles.

Penal courts of first instance examine the cases of individuals that allegedly violated the Law, while administrative courts examine the practices of governorates (province and district) when implementing the Law.

Judicial review is possible to appeal verdicts of first degree courts: in the State Council to appeal administrative courts verdicts, and before the Supreme Court of Appeal for penal courts.

However, there are serious concerns over the independence and impartiality of courts in Turkey, in particular the right to a fair trial, including transparency and access to the judicial procedure and charges, and the respect of equality of arms between accusation and defence.

Recommendations

1. Freedom of assembly should be regulated only with first degree law. The decree of the Ministry of Interior Affairs should be repealed;
2. Article 3 of the Law should be reformulated and underline that the right to hold meetings and demonstrations is a right that everyone can enjoy equally without discrimination or restriction; Article 6 should be changed to guarantee that meetings and demonstrations can be held everywhere and to abolish sweeping time limitations;
3. Article 9 should guarantee that individuals or any form of organisation can organize meetings and should not require an “organising committee”;
4. Notification procedures should be shortened, ideally up to 24 hours before the planned meeting or demonstration;
5. Governors or district governors should accept all notifications, and take restrictions according to the specific circumstances only when there is strong evidence of imminent risk for public order and safety. These limits and the obligation of authorities to demonstrate the risk before restricting freedom of assembly should be clearly stated in the law. Decisions to restrict (postpone, displace) or ban should be argued and notified in writing;
6. Spontaneous demonstrations should not be considered as illegal and should be tolerated as long as they remain peaceful;
7. An effective mechanism to appeal any decision banning or imposing restrictions on an assembly should be guaranteed by creating a specific rapid mechanism in administrative courts;
8. The use of force should be more strictly regulated, in conformity with the recommendations of the European Court of Human Rights, and the margin of decision of law-enforcement agents in the policing of assemblies should be reduced;
9. An independent police complaints mechanism should be created to guarantee an effective remedy to victims of excessive use of force and human rights violations;
10. The sanctions foreseen in the law should be reduce, in particular excluding criminal and freedom-depriving sanctions, and eliminating the organizers’ criminal responsibility regarding possible breaches of peace and order and possible damages, and limit their civil liability regarding cleaning and security, in order to promote freedom of assembly.



"Antiglobalization demonstration against the IMF summit,
Prague, Czech Republic, 26 September, 2000."
by Mat Jacob/Tendance Floue

THE EUROPEAN UNION

Introduction

This introductory overview of freedom of assembly in the European Union seeks to highlight issues that have arisen in European jurisdictions which correspond with the challenges facing the Euro-Mediterranean countries examined in later chapters of this report. It is not possible here to analyse in detail the legal framework in each of the 28 member states of the European Union (EU), and no attempt is made to provide a comprehensive account of the laws (or their interpretation) in each EU country (though a more detailed analysis of the legal regulation of freedom of assembly in Spain and the United Kingdom follows this general overview).

By selecting recent examples from different European countries (of both good and bad practices), this chapter illustrates the variety of legal measures that have been employed either to protect or limit freedom of assembly. It is worth recalling that many states in Europe themselves faced the challenge of political transition now confronting several Mediterranean countries. Protests and demonstrations also played a critical and enabling role in these European transitions. Perhaps more significantly, though, the protection and facilitation of the right to peaceful assembly in Europe has been vital to the emergence over time of a more pluralistic and inclusive public sphere. While some protests inevitably dominate news headlines more than others,¹ it is the degree to which a country's legal framework facilitates low-level demonstrations on a day-to-day basis that provides a crucial measure of the health of its democracy. Too often, however, even within the EU, the right to peaceful assembly is regarded as a threat to political stability rather than its very lifeblood – an inconvenience to be controlled and managed, rather than a fundamental freedom to be protected and facilitated.²

In many ways the practices that serve to chill or otherwise undermine the effective enjoyment of the right to assemble are remarkably similar across Western, Central and Eastern Europe and the wider Euro-Mediterranean region.

1. General Legal Framework

All EU Member States have ratified the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). The European Union itself is in the final stages of acceding to the ECHR. These treaty obligations (as outlined in Chapter 1) serve as the primary benchmark against which to assess the level of protection afforded to the right to peacefully assemble.

1 Recent examples include demonstrations in Paris (between 24 March and 27 May 2013) concerning the legalization of same-sex marriage; protests in Stockholm (from 20-24 May 2013) relating to immigration policies and the fatal shooting by police of a Portuguese man; and the anti-corruption protests in Bulgaria which began in February 2013. More generally, throughout Europe (and beyond) there have been Occupy and Blockupy related mobilizations; May Day and other anti-austerity protests; far-right and radical-left demonstrations (and counter-demonstrations); and rallies relating to international summits.

2 See, for example, Explanatory Memorandum, PACE Doc.13258, *Popular protest and challenges to freedom of assembly, media and speech*, prepared by the Rapporteur (Mr Arcadio Diaz Tejera, Spain), at para.3. Available at: http://assembly.coe.int/ASP/Doc/XrefDocDetails_E.asp?FileID=19955.

In most Member States of the European Union, freedom of peaceful assembly is a constitutionally protected right. Such constitutional provisions often emphasize that only *peaceful* assembly is protected (by qualifying the exercise of the right as “unarmed” or “without weapons”). In order to limit the scope for governmental interference, some constitutions also expressly prohibit prior authorisation³ – or even prior notification⁴ – for *indoor* assemblies. Indeed, in some constitutions, prior authorization has also been expressly prohibited for *open-air* assemblies (though this still leaves open the possibility of enacting a notification scheme for such events).⁵ In other jurisdictions, the constitution mandates notification only for assemblies in particular locations (such as places of transit).⁶

In addition, while many constitutional texts still refer to the right of assembly only of “citizens”, this has had to be interpreted to extend to all people, in light of international human rights obligations.⁷ An amendment to the Italian constitution was recently proposed that would change the wording of Article 17 from “citizens” to “everyone” “... has the right to assemble peaceably and unarmed.”⁸

Furthermore, a number of constitutional provisions explicitly mandate Parliamentary bodies to legislate for the procedures, rules and limitations applicable to certain kinds of assembly (again, primarily open-air assemblies).⁹ Indeed, almost all EU Member States have enacted specific laws to govern the regulation of assemblies. Of the 28 EU Member States, only Ireland has no such law (despite the fact that the Constitution makes express provision for the possible passage of a legislative scheme). Moreover, the absence of a specific law in Ireland does not mean that the Irish authorities are powerless to regulate assemblies.¹⁰

Well-drafted legislation can offer enhanced protection for those seeking to peacefully assemble by limiting official discretion, establishing crucial safeguards (for example, protection for spontaneous demonstrations or expedited appeal mechanisms), and providing clarity regarding any procedures to be followed. Of-course, many well-drafted laws are undermined by the way in which they are implemented, and many European countries still retain poorly-drafted provisions which run counter to international human rights standards (for example, by imposing onerous bureaucratic responsibilities on assembly organisers, placing

3 Eg. Article 26 of the Belgian Constitution; Similarly, Article 43(3) of the Bulgarian Constitution.

4 Eg. Article 8 of the German Basic Law.

5 Eg. Article 79 of the Constitutional Act of Denmark (1953; Article 45(1) of the Portuguese Constitution; Article 28(2) of the Slovakian Constitution; Article 21(1) of the Spanish Constitution.

6 Eg. Article 21(2) of the Spanish Constitution: “In the cases of meetings in places of public transit and of manifestations prior notification shall be given to the authorities”.

7 In this regard, the UN Human Rights Committee, in General Comment 15 (“The Position of Aliens under the Covenant”) has stated that non-nationals must also “receive the benefit of the right of peaceful assembly”. Available at: <http://www1.umn.edu/humanrts/gencomm/hrcom15.htm>.

8 See, <http://www.camera.it/leg17/126?tab=2&leg=17&idDocumento=560&sede=&tipo>.

9 Eg. Article 12 of the Austrian Constitution; Article 43(2) of the Bulgarian Constitution; Article 9(2) of the Netherlands Constitution; Article 57 of the Polish Constitution; Article 28(2) of the Slovakian Constitution. See also Article 40(6)(ii) of the Irish Constitution (cited below).

10 See, for example, section 21 of the *Criminal Justice (Public Order) Act 1994*. Available at: <http://www.irishstatutebook.ie/1994/en/act/pub/0002/sec0021.html#sec21>.

blanket prohibitions on assemblies in certain locations, providing for excessive sanctions, or conferring far-reaching discretionary powers on state or municipal officials).

It is worth noting the recent judgment of the European Court of Human Rights in *Vyerentsov v Ukraine* (2013).¹¹ The applicant had been charged with holding a meeting “without permission of the City Council”. While Article 39 of the Ukrainian Constitution itself provided that the right to assemble was conditional on citizens “*notifying the executive authorities ... beforehand*”, there was no law on assemblies nor notification procedure in Ukraine. The Strasbourg Court held that the absence of any law meant that the regulation of assemblies in Ukraine lacked the requisite degree of “foreseeability” so as to be “prescribed by law”. The Court emphasized that this legislative lacuna created a “structural problem” requiring the urgent implementation of specific reforms to protect “*such a fundamental right as freedom of peaceful assembly*.”¹² **The court’s judgment is of particular relevance for countries undergoing political transition.**¹³

It is also noteworthy that reforms of assembly laws in EU countries have not necessarily been progressive or human rights compliant. For example, in a 2011 judgment, the Croatian Constitutional Court declared unconstitutional a number of amendments to the *Public Assembly Act* that were enacted in 2005.¹⁴ In 2012, Polish NGOs¹⁵ and both the OSCE Panel of Experts and the UN Special Rapporteur on the Rights to Freedom of Assembly and of Association expressed concern about proposed amendments to the *Assemblies Act* in Poland.¹⁶ Subsequent amendments to the law have been challenged before the Constitutional Tribunal by the Ombudsman, Solidarity trade union and the Law and Justice Party. At the time of writing, however, this judgement remains pending.

Such examples underscore the responsibility of Parliamentarians to ensure that laws regulating freedom of assembly serve to facilitate, rather than undermine, the essence of the right. The drafting of amendments to assembly laws should involve public consultation and the participation of civil society organisations. Any revisions adopted must be informed by international human rights standards.

11 App. no. 20372/11, judgment of 13 April 2013. While Ukraine is not an EU Member State, it is a member of the Council of Europe and has ratified the ECHR.

12 At para.95 relating to Ukraine’s obligations under Article 46 ECHR. See similarly *İzci v. Turkey* (App no. 42606/05, judgment of 23 July 2013) in relation to the “systemic” nature of Turkey’s failure to investigate the use of force by law enforcement officials during demonstrations.

13 At para.55. See also, UN Human Rights Comm. “*Concluding observations on the seventh periodic report of Ukraine*”, adopted by the Committee at its 108th session (8–26 July 2013), at para.21.

14 Judgment of the Croatian Constitutional Court of 6 July 2011, U-I-295/2006, U-I-4516/2007, available at: <http://www.codices.coe.int> (CRO-2011-2-007). See further under “Restrictions” below.

15 See the *Newsletter* of the Polish Helsinki Foundation for Human Rights (30/2012) 18-25 July 2012.

16 See also, OSCE-ODIHR Report: *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (May 2011-June 2012), at p.45, para.113, available at: <http://www.osce.org/odihr/97055>.

Laws regulating assemblies exist alongside other potentially relevant legal provisions (contained, for example, in Penal Codes and Codes of Administrative Offences, Road Traffic laws, general public order laws, laws enacted to address extremism and/or terrorism, laws relating to the conduct of elections, noise regulations, and laws governing police powers).

Legislation relating specifically to freedom of assembly tends to elaborate (at a minimum):

- **Definitions of different categories of assembly**, primarily for the purposes of determining:
 - what types of event need be notified to, or authorized by, the authorities;
 - what types of event the relevant authorities are empowered to restrict (which may, but need not necessarily, be coextensive with those required to be notified).¹⁷
- **The notification/authorization procedure and related timeframe(s)** (see further “Procedures” below);
- **The grounds for imposing restrictions and/or bans** (see further “Restrictions” below); and,
- **The sanctions that can be imposed for breaches of the law** (see further “Sanctions” below).

It is important for the statutory definitions to distinguish assemblies from other forms of expressive activity and from other non-expressive gatherings. Categorizing a gathering as an “assembly” might subject it to certain requirements (such as prior notification) but also offers enhanced constitutional protection. Not categorizing an event as an “assembly” means that its organizers are not burdened with any responsibilities attached to “assemblies”,¹⁸ but unless the event also somehow engages other human rights (such as freedom of expression) it might not be constitutionally protected.¹⁹ **National legislation should therefore define assemblies so as to draw as clear a boundary as is possible between those gatherings which require no regulation whatsoever (but which yet deserve constitutional protection), and those whose facilitation might be enhanced by subjecting them to some form of minimal regulatory scheme.**

¹⁷ See, for example, *Parades Commission has “no role” in majority of union flag protests*, BBC News, 26 February 2013. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-21581901>

¹⁸ For example, the European Court of Human Rights, in the case of *Tatár and Fáber v. Hungary* (App. nos. 26005/08 and 26160/08, judgment of 12 June 2012), held that the Hungarian government was wrong in its view that two individuals who hung dirty laundry around the outside of the Hungarian Parliament building in a symbolic protest action were taking part in an “assembly” which ought to have been notified. The court reasoned (at para.38) that “*the mere fact that an expression occurs in the public space does not necessarily turn such an event into an assembly*”, and found a violation the applicants’ right to freedom of expression (Article 10 ECHR).

¹⁹ For example, the German Federal Constitutional Court held that the Berlin “Love Parade” was neither an assembly nor expressive activity: freedom of assembly “*does not cover popular celebrations and entertainment events*” or a “*mass public party solely aimed at having fun*”. See, BVerfG, 1 BvQ 28/01 vom 12.7.2001. Summary (in English) available at: http://www.bverfg.de/entscheidungen/qk20010712_1bvq002801en.html.

2. Restrictions

The evidential basis for imposing restrictions on assemblies

The European Court of Human Rights has stressed that the reasons for restricting freedom of assembly must be “*relevant and sufficient*”.²⁰ In this light, “a *hypothetical* risk of public disorder” is not a legitimate basis for restricting peaceful assemblies.²¹ As illustrated below, a number of constitutional courts in Europe have similarly emphasized that purely precautionary – or indeed blanket – restrictions on assemblies cannot be justified unless there is compelling evidence relating to the particular assembly organizer and/or participants.

The grounds for imposing restrictions on an assembly

The grounds for restriction set out in the legislation in EU countries generally mirror the “legitimate aims” contained in Article 11(2) ECHR (national security or public safety, the prevention of disorder or crime, and the protection of health, morals, or the rights and freedoms of others). In some EU countries however, legislation introduces additional grounds for imposing restrictions, or gives undue prominence to certain countervailing interests (such as the free flow of traffic, the undisturbed working of State institutions, or the integrity of electoral processes).

The following examples highlight some of the most typical – and problematic – arguments used to justify restrictions imposed on assemblies:

► **Restrictions to prevent the possible disruption of traffic.** Traffic disruption has often been cited in EU countries as a basis for restricting assemblies. In this regard, for example, the Austrian Constitutional Court emphasized that a spontaneously organized assembly had had a minimal impact on motorists who waited only a short time, and pedestrians were able to cross to the opposite side of the street.²² Similarly, a decision of the Constitutional Court of the Czech Republic held that the authorities, who argued that an assembly would significantly impair the flow of traffic, had failed to substantiate this claim.²³ The Spanish Constitutional Court has emphasized that “in a democratic society urban space is not only a field of movement, but also a space for participation”.²⁴

► **Restrictions to protect the undisturbed operation of Parliament or other State institutions.** Such provisions are notoriously prone to abuse, in part, because the notion of “hindering” is left undefined, but more fundamentally, because parliamentarians or other officials

20 Eg. *Makhmudov v. Russia* (App. no. 35082/04, judgment of 26 July 2007) at para.65.

21 *Disk and Kesk v Turkey* (App. No. 38676/08, judgment of 27 November 2012), concurring opinion of Judge Sajó.

22 See, App. no. 19528, B877/10, 06.10.2011, available at: http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888994_10B00877_00.

23 Constitutional Court of the Czech Republic, 1 As 30/2009 – 70, judgment of 15 April 2009, also emphasizing that the burden of proof lies upon the relevant authority.

24 Spanish Constitutional Court, judgment STC 193/2011, of 12 December, 2011.

will often be the intended audience of an assembly. Assemblies in the vicinity of such buildings *should* therefore ordinarily be facilitated within “sight and sound” of these institutions. The Croatian Constitutional Court, to cite just one example, has issued such a judgment.²⁵

► **Blanket legislative prohibitions on assemblies at particular times and/or places** (such as in the vicinity of the Presidential palace, military bases, hospitals, schools, prisons, transport hubs, memorials or court houses etc).²⁶ While in certain cases there *may* be legitimate reasons to restrict a particular assembly, the blanket prohibition in law precludes any assessment of the individual facts of each case. Courts, however, have sometimes upheld these restrictions where there is a demonstrable public interest (such as national security) at stake.²⁷

► **Restrictions during election periods.** The Spanish Constitutional Court has held that restrictions during election periods, putatively for the purpose of protecting the integrity of the electoral process, can only be justified in relation to assemblies which seek, as their main purpose, to attract votes. The Court noted that to hold otherwise would have resulted in the “*absurd*” conclusion that all demonstrations – indeed the expression of any message that might indirectly or subliminally influence the choice of voters – should be banned during election campaigns.²⁸

► **Restrictions based on the content of an assembly, or public opposition to it.** The Austrian Constitutional Court has noted that “*mere disapproval*” of an assembly or “*complaints and concerns from passersby*” are not, of themselves, a suitable basis for intervening in freedom of assembly since this would harm the interests of pluralism and “*create a gateway for the dictatorship of the majority over the minority*”.²⁹ More recently, see also the Lithuanian Supreme Administrative Court’s overturning of the Vilnius municipality’s prohibition of the Baltic Pride parade in July 2013.³⁰ Interestingly too, the Constitutional Court of the Czech Republic held that just because a person might belong to an “extremist” group, or have manifested “extremist” views in the past, that was not of itself a reason to restrict an

25 See, Judgment of the Croatian Constitutional Court of 6 July 2011, U-I-295/2006, U-I-4516/2007, available at: <http://www.codices.coe.int> (CRO-2011-2-007), and see para.30.1.

26 Eg. Article 5 and Article 7(2) of the Bulgarian Law on Gatherings, Meetings and Manifestations, 1990 (amended 1998); Article 6 of the Slovenian Act on Public Assembly, 2002. See further the UK chapter for discussion of restrictions on assemblies in Parliament Square.

27 Eg. The Croatian Constitutional Court accepted that the enhanced security protection of the presidents or heads of foreign states or governments fell within the aims of “national security” (construed narrowly) and “preventing and combatting terrorism”, thereby justifying this restriction. Judgment of the Croatian Constitutional Court of 6 July 2011, U-I-295/2006, U-I-4516/2007, available at: <http://www.codices.coe.int> (CRO-2011-2-007), see para.31.

28 Judgments of the Spanish Constitutional Court: STC 170/2008, of December 15, 2008 and STC 38/2009, of February 9, 2009.

29 App. no. 19528, B877/10, 06.10.2011 (unofficial translation). Available at: http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888994_10B00877_00.

30 “The Court ruled that restrictions on marches “For equality” are not necessary in a democratic society.” Press statement of the court (25 July 2013) available at: <http://www.lvat.lt/en/news/the-court-ruled-zeya.html>

assembly which he/she had organized.³¹ The Court argued that it “*cannot be a priori excluded that they intend to use their rights within legal limits.*”³²

► Restrictions relating to Occupations, and Assemblies on Privately Owned Property.

Given the increasing privatization of public space in many European cities, and also that many groups seek to protest against the practices of businesses or corporations, the issue of protest on privately owned property has gained increased prominence. Most courts in Europe that have had to address this question have generally held that freedom of peaceful assembly does not protect indefinite occupations of either public or privately-owned property. However, two issues arise – the *duration* of the assembly and the use of *privately owned land*. Four examples serve to give a flavour of how the authorities in Europe have responded to such issues:

The duration of an assembly

It is widely accepted that assemblies are, by definition, “temporary” – thus the right to freedom of peaceful assembly does not protect *permanent* encampments.³³ Permanent encampments aside, courts have strongly suggested that, even if disruptive, efforts should still be made to facilitate peaceful assemblies for a reasonable period of time. To give just one example, the European Court of Justice held that allowing a demonstration which blocked the Brenner Motorway between Germany and Italy for almost 30 hours was *not* a disproportionate restriction on the free movement of goods.³⁴

Assemblies on privately owned property

- In a case involving the Occupy London encampment on land surrounding St. Paul’s Cathedral in London (owned principally by the City of London Corporation), the judge held that “*the defendants have no arguable right to occupy, control or take possession of highway land from the City as highway authority.*” Moreover, “*to impose on the highway a substantial encampment of tents is ... inimical to the statutory scheme.*”³⁵
- In March 2003, a peaceful protest in Frankfurt airport was terminated by the airport authorities. The protesters sought to challenge the airport regulations on demonstrations, but the Federal Constitutional Court emphasized that “freedom of assembly does not ...

31 Constitutional Court of the Czech Republic 8 As 51/2007-67, judgment of 5 November 2007, overturning the ban on an assembly organized by someone with alleged links to far-right organizations.

32 *Ibid.*, citing the decision of the German Constitutional Court on 18 August 2000, 1 BVQ 23/00, www.bverfg.de.

33 See, judgment of the Hungarian Constitutional Court, Decision 75/2008, (V.29.) AB. Available at: <http://www.mkab.hu/>. See also, judgment of the Spanish Constitutional Court (concerning repeated daily demonstrations), STC 284/2005 of 7 November 2005 (LC 6).

34 *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Österreich* (European Court of Justice, Case C-112/00, ECR I-5659, 2003).

35 See, *City of London v Samede & Others* [2012] EWHC 34 (QB) (18 January 2012) at paras.121-123; see also *The Mayor and Burgesses of the London Borough of Islington v Owen Kensley Jones, Arthur Melliush, Persons Unknown* [2012] EWHC 1537 (QB).

provide them with a right of access to any location. In particular, it does not grant citizens a right of access to locations which are not generally accessible to the public or which according to the external circumstances are available to the general public only for specific purposes.”³⁶

- By way of contrast, the Amsterdam District Court in the case of *Shell Netherlands v Greenpeace*³⁷ permitted protests to be held on privately owned property (garage forecourts) even where these disrupted the commercial activity of the company (by blocking access to the petrol pumps). The Court noted that “[a] company such as Shell, which performs or wishes to perform activities that are controversial in society ... can and must expect that action will be taken to try to persuade it to change its views.” The court imposed limitations on the duration of the protest actions and other conditions, and held that Greenpeace would be liable to pay a significant financial penalty should future protest actions breach these conditions.

Preventive interventions including “kettling”, border controls and “emergency laws”

Concerns relating to the evidential basis of restrictions are especially acute when the authorities take preventive measures. Here, the risk of sweeping and speculative interventions is heightened. Preventive actions by the police have been the subject of litigation in many EU countries.³⁸ The following examples are merely illustrative:

- **“Kettling” and containment:** “Kettling” is a term used to describe the containment of protesters (and potentially also others in the vicinity), without arrest, by way of encircling them with a police cordon. In a heavily criticized judgment of the European Court of Human Rights in *Austin v UK* (2012), the police “kettling” of a crowd (and a number of bystanders) was held not to constitute a deprivation of liberty under Article 5 of ECHR³⁹. Nonetheless, such measures could only be permissible where violence is taking place or is reasonably thought to be imminent, and where other less intrusive means had been reasonably assessed as being ineffective. In a subsequent UK case – *Mengesha v Commissioner of the Police of the Metropolis* (2013)⁴⁰ – the UK High Court held that “kettling” is not permitted as a means

36 BVerfG, 1 BvR 699/06 of 22.2.2011, para.39. Available at: http://www.bverfg.de/en/decisions/rs20110222_1bvr069906en.html.

37 Case number: 525686/KG ZA 12-1250. For a summary (in English) see, *Dutch court rejects Shell protest ban* (5 October 2012), available at: <http://www.bbc.co.uk/news/world-europe-19853007>.

38 Eg. *Schwabe & MG v Germany* (App. nos. 8080/08 and 8577/08, judgment of 1 December 2011). The European Court of Human Rights held that detaining protesters in advance of the G8 summit in Heiligendamm in June 2007, violated their right to freedom of assembly. See also the policing strategy to prevent protests against the “Royal wedding” in *Hicks, “M”, Pearce and Middleton v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/1947.rtf>. There have also been examples of “preventive arrests” being used in Belgium and the Netherlands. See, Kees Hudig (Statewatch) *The growing use of preventative arrests*, at p.2. Available at: <http://www.statewatch.org/analyses/no-121-preventative-arrests.pdf>.

39 *Austin and others v. the United Kingdom* (App. nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012)

40 [2013] EWHC 1695 (Admin) at para.12.

of obtaining the identification of those contained. Similar practices have also been reported in France, for example.⁴¹

► **Restrictions imposed at border controls** have sometimes been strengthened specifically in order to prevent protesters from another country attending a demonstration. For example, in advance of a notified demonstration in Bayonne in France (supporting the rights of imprisoned Basque prisoners), the prefect announced the reintroduction of controls at the Franco-Spanish border for 24 hours on 11 March 2000 (relying on Article 2(1) of the 1990 Convention implementing the Schengen Agreement). Thirty-four buses and cars carrying people wishing to travel to the event (which otherwise took place peacefully) were stopped at the border by the police.⁴² Such measures have commonly been relied upon before and during international summit meetings.⁴³

► **Restrictions imposed under emergency laws.** Emergency measures have also been used in the context of international summit meetings. In Genoa, Italy, for example, the Government issued a Special Law No. 149 of 8 June 2000 authorizing (amongst other things) the prefect of Genoa to use armed forces to safeguard public order and security during the G8 summit.⁴⁴ There have also been worrying reports of reliance on draconian exceptional measures to regulate controversial assemblies in other European countries. In the Netherlands for instance, mayors have the right to declare a “local state of emergency” through the General Local Regulation in the case of a threat of a disturbance to the public order. This is often used when far-right organisations plan a demonstration in a town and anti-fascists move to counter it. All demonstrations are then banned in a part of the town.⁴⁵

3. Procedures

As noted above, some forms of assembly can proceed without any form of prior regulation, while others must either be notified to the authorities⁴⁶ or obtain express authorization in advance.⁴⁷ Often, stationary assemblies with less than a specified number of participants are not required to be notified at all,⁴⁸ and assemblies which will not affect traffic in any way may have a shorter

41 See, *Does France respects the right of freedom of peaceful assembly for all citizens in Paris in 2011*, available at: <https://echrnews.wordpress.com/tag/discrimination/>

42 *Gurekin and Others v France* (App. no. 9266/04, decision of 6 June 2006 – inadmissible).

43 See, for example, <http://www.statewatch.org/news/2013/feb/freedom-of-assembly-briefing.pdf> documenting similar measures before and during the G8 summits in Germany (2007) and Italy (2009), during the COP15 Conference in Denmark in 2009, and during the NATO summit in Portugal in November 2010.

44 See, *Bigliuzzi and Others v Italy* (App. No. 29631/06, decision of 16 December 2008 – inadmissible). The creation of red, yellow and white zones in Genoa in July 2001 – with no assemblies permitted in either the red or yellow zones – was found not to be a disproportionate interference with the applicants’ right to assemble, or with their right to freedom of movement under Article 2 of Protocol 4, primarily because the court regarded the authorities’ fear of violence as being well-founded.

45 See, Kees Hudig (Statewatch) *The growing use of preventative arrests*, at p.2. Available at: <http://www.statewatch.org/analyses/no-121-preventative-arrests.pdf>.

46 A notification system presumes that the assembly *can* proceed unless the authorities impose restrictions on specified legitimate grounds.

47 An authorization system presumes that the assembly *cannot* proceed unless express permission is obtained.

48 In Poland, for example, notification is required for all assemblies of 15 or more people (s.7 Law on Assemblies 1990); In Malta, a “demonstration” is defined under s.2 of the Public Meetings Ordinance, 1931 as “any assembly or gathering of more than 20 persons ...”.

notification timeframe. Sometimes a lengthier notice requirement exists for processions and moving assemblies than for stationary gatherings.

Laws in some European countries also exempt particular categories of assembly from the notification (or authorization) process altogether eg. sports competitions, funeral ceremonies, or traditional, cultural or religious events.

The length of notification required varies greatly across the European Union. For example, it is 6 hours for public “meetings” in Finland (and 5 days for public “events”), 48 hours in Bulgaria and in Germany, 3 days in Poland, Hungary and Latvia, and 7 days in Estonia.⁴⁹ Laws should (and many already do) make express provision for spontaneous assemblies – those for which timely notification is not possible because they are in response to an event which could not reasonably have been anticipated.⁵⁰

Some laws also impose requirements relating to the **organisation of assemblies** (such as that there be an organizing committee of three or more persons), but such requirements have been criticized by the UN Special Rapporteur of the rights to Freedom of Peaceful Assembly and Association.⁵¹ Other laws also require a degree of advance co-ordination with the authorities in certain circumstances.⁵² Indeed, despite the fact that Ireland has no notification or authorization requirement for any form of assembly (as mentioned above), the police in practice encourage assembly organizers to liaise with them in advance.⁵³

Any such **liaison mechanism** should never be used as a way to compel the organiser to “agree” to restrictive conditions.⁵⁴ It is noteworthy that there has been a shift within some European police services⁵⁵ towards proactive engagement with protesters (or, in some cases, the strategic negotiation of protest events). Where such initiatives seek to facilitate peaceful assembly, and where engagement with the authorities is entirely voluntary, they can potentially assist in the facilitation of peaceful protest. Nonetheless, such practices may also be problematic if they are used by police as a means of gathering intelligence on protest groups, if the engagement of protesters is not voluntary, or if restrictions are imposed primarily as a result of the refusal of an assembly organiser to engage with the authorities.

49 See, Neil Jarman and Michael Hamilton, “Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly”, 1(2) *Journal of Human Rights Practice* 208-235, at 218 (2009).

50 Eg. Section 6(2)(b) and Section 7(2)(b) of the Public Processions (Northern Ireland) Act 1998; For an alternative (though potentially more restrictive) formulation, see for example, section 14 of the Assembly Act, 1999 in Finland. See further, *Bukta v Hungary* (App. no. 25691/04, judgment of 17 July 2007).

51 UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, 2nd Annual Report (A/HRC/23/39) at paras.51-57. Available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/39.

52 Eg. Article 10(3) of the Lithuanian Law On Meetings, Processions and Pickets, 1997 (as amended)

53 See Irish Council for Civil Liberties, *Know Your Rights: Criminal Justice & Garda Powers* (2010) at p.25. Available at: <http://www.iccl.ie/know-your-rights---criminal-justice.html>.

54 See, OSCE-ODIHR – Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (2nd ed., 2010) at para.103.

55 For example, the Police Liaison officers in England and Wales. See chapter on the United Kingdom.

Often, **simultaneous assemblies** are regulated by way of a “first come, first served” principle,⁵⁶ which should apply *only* if the location in question is not capable of accommodating both events simultaneously. A provision which demands that the organiser of the second notified assembly *automatically* changes the proposed time and/or venue (without first considering the possibility of mutual accommodation) constitutes a disproportionate interference. Where two or more simultaneous assemblies have been notified, often a flexible solution is sought through negotiation.⁵⁷ Indeed, on occasion such negotiation (between an assembly organiser and the authorities) might be ordered to take place by the courts.

Across Europe, **judicial review** is commonly available as a means of challenging administrative and police decisions. However, in order to constitute an “effective remedy” (under Article 13 ECHR), an expedited procedure should be available whereby the review of any ban or restriction can be completed prior to the planned date of the assembly.⁵⁸ Such appeal possibilities should also be available following negotiations between an assembly organiser and the authorities, where any *de facto* restrictions are not actually “agreed” by all parties involved.⁵⁹

4. Protection

Monitoring freedom of peaceful assembly

In many European countries, human rights defenders and national NGOs perform a vital task by monitoring the State’s performance of its obligation to protect the right to freedom of peaceful assembly. So too can Ombudsman offices or National Human Rights Institutions. International NGOs and regional organizations can also play an important role in monitoring and highlighting abuses where these occur. Of particular relevance for this report is an information request, submitted by *Access Info Europe*, to the authorities in 41 countries seeking details of the use of public order equipment (including rubber bullets, batons and water cannons), evaluation reports on the policing of protests, and information regarding police training.⁶⁰

56 Eg. Article 10(1) of the *Assembly Act* in Finland, 1999.

57 See eg., OSCE-ODIHR Report: *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (May 2011-June 2012), at p.45, para.112, available at: <http://www.osce.org/odihr/97055>.

58 Eg. *Baczowski v. Poland* (App.no. 1543/06, Judgment of 3 May 2007). See further, A/HRC/23/29/Add.2, Report of the Special Rapporteur on the right to freedom of peaceful assembly and of association: Observations on communications transmitted to Governments and replies received, at p.45.

59 See, OSCE-ODIHR Report: *Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (May 2011-June 2012), at p.38, para.90, available at: <http://www.osce.org/odihr/97055>.

60 See, <http://www.access-info.org/en/human-rights/378-policing-protests>.

Constitutional review

The law in some countries expressly enshrines the principle that the authorities have a positive obligation to protect and facilitate the right to freedom of peaceful assembly.⁶¹ Nonetheless, as the preceding text clearly demonstrates, it has all too frequently fallen to Constitutional Courts in European countries to clarify the scope of the right and to curb some of the most egregious interferences with it. In doing so, their judgments, informed by the jurisprudence of the European Court of Human Rights, have often emphasized the high level of protection that the respective State must provide to those seeking to enjoy their constitutional freedom. **Independent constitutional review (with a right of individual petition) can thus be of critical importance to the full realization of a constitutional right to freedom of peaceful assembly.**

Regulation of the use of force by law enforcement officers

In some European countries, laws have been enacted to govern the use of firearms and other coercive measures by police. Such laws rarely prescribe in any detail the requirements regarding specific weapons or tactics. Nor do they tend to place any significant constraints on their use beyond established principles of necessity and proportionality.⁶²

In Poland, the Constitutional Tribunal held that the regulation of the use of force by government-issued regulations was unconstitutional, and that such matters must instead be regulated by statute.⁶³ In June 2013, a new law on the use of direct coercive measures and firearms was passed,⁶⁴ however it imposes few constraints on the use of force and allows for a wide range of weapons– including tear gas, chemical incapacitating agents, water cannon, and truncheons to be deployed for the prevention of disorder or public safety.

Similar recommendations were made by a special Commission of Inquiry established in Hungary in the aftermath of violent clashes between police and protesters in 2006.⁶⁵

61 Eg. Section 4 of the Finland Assembly Act, 1999 for example, reads: “*Duty of protection and promotion: The public authorities shall promote the exercise of the freedom of assembly by protecting the right to assemble without hindrance and by providing for the necessities in the arrangement of public meetings.*” Available at: <http://legislationline.org/topics/country/32/topic/15>.

62 Eg. Article 23 of the Lithuanian Law on Police Activities, 2000: Coercive measures may only be used “*after all possible measures of persuasion or other measures have been used with no effect.*” Available at: <http://legislationline.org/topics/country/17/topic/15>.

63 See, 20/3/A/2010, Judgment of 10 March 2010, Ref. No. U 5/07. Available at: http://www.trybunal.gov.pl/eng/summaries/documents/U_05_07_EN.pdf.

64 See, http://emn.gov.pl/porta1/ese/719/10671/New_rules_of_using_coercive_measures_and_firearms_against_foreigners.html.

65 *Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September – October 2006: Summary of Conclusions and Recommendations* (Budapest: 2 February, 2007). Available at: http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf.

5. Sanctions

Any penalties imposed for violations occurring in the context of assemblies must themselves be proportionate. This is perhaps especially important in relation to criminal proceedings. As the Austrian Constitutional Court has highlighted (following the prosecution of protesters taking part in a spontaneous demonstration in Vienna), the severity of criminal law sanctions is not only in the amount of the penalty but also in their negative long-term consequences – including their implications for the careers and professional practice of those convicted.⁶⁶

One particular issue in European countries– the **wearing of masks in public assemblies** – has given rise to the enactment of a wide range of legislatively-backed sanctions, such that it is now relatively common for laws either to prohibit participants in assemblies from concealing their identity,⁶⁷ or to give law enforcement officers powers to order the removal of disguises (whereupon refusal to do so constitutes an offence).⁶⁸ Such provisions, however, often fail to take sufficient account of the potential for masks to be worn for symbolic and expressive purposes. Consequently, any such requirements should be narrowly construed so as only to require the removal of masks if there is clear evidence that a particular individual is likely to engage in imminent violence.

In Poland – following the introduction of a prohibition on demonstration participants from disguising themselves (in the *Assemblies and Road Traffic Amendment Act 2004*) – the Polish Constitutional Tribunal held that *“the limitation of the freedom of assembly consisting in restricting the possibility to participate in assemblies in an anonymous manner is unnecessary, given that the Police Act 1990 provides the police with adequate possibilities to intervene in the course of an assembly where there exists a threat to its peaceful nature, including the possibility to determine the identity of persons participating in the assembly.”*⁶⁹

The same judgment of the Polish Constitutional Tribunal also usefully addressed another “sanctions” related issue – one that has given rise to human rights concerns in several European countries – namely, the **liability of the assembly organiser for the acts of assembly participants**. A provision in the Polish law rendered the organiser liable if they failed to prevent other participants from causing damage during the course of an assembly or “directly following its dissolution.” The Constitutional Tribunal held that such strict liability would only serve to discourage people from organising assemblies by imposing on them duties that are impossible to fulfil. As such, this provision was held to violate the right to freedom of assembly as protected by Article 57 of the Constitution of Poland.

66 Unofficial translation – Austrian Constitutional Court, app. no. 19528, B877/10, 06.10.2011. Available at http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09888994_10B00877_00

67 For example, section 6(3) of the Bulgarian *Law on Gatherings, Meetings and Manifestations*, or section 9 of the *Austrian Assembly Act*, 1953.

68 Art. R. 645-14 of the French Penal Code (available at: <http://www.legifrance.gouv.fr/>).

69 Polish Constitutional Tribunal, judgment of 10th November 2004, Kp 1/04, Summary (in English) available at: http://www.trybunal.gov.pl/eng/summaries/documents/Kp_1_04_GB.pdf.



"National students protest against the reform of education sector,
Barcelona, 6 February, 2013"
by Albert Macias

SPAIN

Introduction

Two years ago, in a context of growing economic crisis since 2008, the movement of the so-called *indignados* (the outraged) occupied the squares of cities across Spain to demand a “real democracy”, pointing at the lack of legitimacy of the current political system and the discredit of the political class. Since then, socio-economic statistics show that what started as an economic crisis triggered by the bursting of a giant housing bubble has over the years turned into a social, political, institutional and territorial crisis: Spain’s unemployment rate rose to a new record of 27% in the first quarter of 2013, coupled with an alarming juvenile unemployment rate of 57%.¹ Besides, since the beginning of the property market crash, more than 350.000 families have been evicted from their homes in Spain.² In this context, social unrest in the country is growing proportionally to the discontent over welfare cuts and a never-ending succession of corruption scandals implicating the main State’s institutions. It is worth noting that austerity-driven social unrest is spreading through Europe as unemployment rates reach unprecedented levels in the EU, echoing demands massively chanted in Southern Europe.

Against this backdrop, only between January and October 2012, 36,232 demonstrations were held throughout the country, which almost doubles the number of protests staged in 2011.³ Whereas this tendency is not expected to reverse any time soon, peaceful protesters and movements such as the members of the Mortgage Victims’ Platform (PAH) face different types of restrictions on their right to freedom of assembly, being the imposition of administrative sanctions the most common. In addition, at the moment of writing the current Minister of Justice is promoting a draft law to reform the Penal Code that encloses harsher sanctions and new crimes intended to be applied to criminalise peaceful actions of protest.⁴ Among the reforms envisaged, the government wants to widen the scope of article 550 of the Penal Code (assault on the authority) to penalize all kinds of actions of disobedience, including any behaviour constituting nonviolent resistance. Another highly worrisome aspect of the reform is a new provision criminalising the dissemination of messages or slogans that may instigate the commission of crimes or disturbances to public order. The Minister of Justice stated that this provision was intended to suppress calls for “violent” demonstrations posted on Internet and social media.

In view of the crucial importance of freedom of assembly in a context of growing social inequality as means to channel the collective expression of demands for respect and promotion of individual and collective rights, the following review, which examines the laws that have a greater impact

1 Figures extracted from the Survey of the employment situation in Spain (Encuesta Población Activa) conducted quarterly by the National Institute of Statistics (INE), available at: http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t22/e308_mnu&file=inebase&L=1

2 See BBC, *European court rules against Spanish eviction laws*, 14 March 2013, available at: <http://www.bbc.co.uk/news/world-europe-21789650>

3 See *Público*, 2012, *El año en que la crisis empujó a los ciudadanos a la calle*, 12 January 2013, available at: <http://www.publico.es/espana/448791/2012-el-ano-en-que-la-crisis-empujo-a-los-ciudadanos-a-la-calle>

4 See pp. 92-96 of the draft law, available in Spanish at: <http://www.juecesdemocracia.es/ActualidadMJU/2012/Anteproyecto%20de%20reforma%20de%20CP%202012.pdf>; for an in-depth analysis of the criminalisation of social protest with the intended reform: <http://ris.hrahead.org/areas-de-trabajo/Seguridad-y-derechos-humanos/analisis-juridicos/sydh-analisisdelanteproyectodereformadelcpilacriminalizaciodelaprotestasocialenelanteproyecto>.

on the exercise of the right to assemble in the light of international human rights standards and good practices acquires major interest and relevance.⁵

1. General Legal Framework

The Spanish constitution was elaborated and approved in 1978 in a moment of democratic transition that came after a long period of drastic restrictions of public freedoms, and in particular freedom of assembly. The 1931 republican Constitution protected freedom of peaceful assembly in its article 38, but it was suspended in 1939 when Francisco Franco fully established its rule over Spain, ending the 4-year civil war. During the 39 years of dictatorship that followed, freedom of assembly was canceled.

The Spanish Constitution of 1978 has not been amended with regards to freedom of assembly since that date. It recognizes the right to peaceful, unarmed assembly, the exercise of which does not require prior authorization (art. 21.1).

Besides, art. 21.2 lays down that “*assemblies in places of public transit*” and “*demonstrations*” will be both subject to prior notice, and will be banned only when there are well-founded reasons of public order with a danger for persons or property.

The Organic Law Nr. 9/1983,⁶ which specifically regulates The Right of Assembly (hereinafter, Assembly Law), defines “assembly” as “*a concerted and temporal gathering of more than 20 people for a particular purpose*” (art. 1.2).⁷

The Assembly Law does not cover meetings of various kinds: meetings held by individuals at their homes, meetings of relatives or friends at private or public premises, meetings held by political parties, trade unions, business organizations, charities and other legal entities at closed places, where participation is constrained to the members and to other individuals invited by name and meetings of professionals with their clients. Those held in military facilities will be regulated by specific laws.

5 In order to carry out the present review, interviews and consultations were conducted in April-May 2013 with: Jaume Asens, lawyer, member of the Observatory of Economic, Social and Cultural Rights (Observatori DESC) and of Barcelona Bar Association's Commission for the Defence of Individual's Rights and of the Free Exercise of the Legal Profession; Gonzalo Boyé Tuset, lawyer; Andrés García Berrio, lawyer, member of the Network for the Prevention and Denounce of Torture (Coordinadora per a la Prevenció i Denúncia de la Tortura) and member of the Observatory on the Penal System and Human Rights (OSPDH); Ana M.G., member of the 15-M Legal Commission (Madrid) and member of the Free Association of Lawyers (ALA) and Benet Salellas Vilar, lawyer and activist.

6 Organic laws are those relative to the exercise of fundamental rights and public liberties, those adopting the Statutes of Autonomy of the Autonomous Communities, the electoral system and other issues provided for in the Constitution (art. 81 Spanish Constitution). Unlike ordinary laws, the approval process is more restrictive since it requires an absolute majority of the Spanish Parliament in a final vote on the entire bill.

7 For more information about the definition and features of freedom of assembly in Spain, see for instance judgment of the Constitutional Court no. 124/2005, 23 May 2005.

Other laws and regulations, primarily the Organic Law 1/1992 on the Protection of Public Safety (Public Safety Law), which regulates police powers and establishes administrative sanctions for behaviours undermining public order and safety, and the Penal Code, include provisions that directly affect the exercise of freedom of assembly.

According to the Organic Law 4/2000 on the Rights and Freedoms of Foreigners and their social integration in Spain, foreigners enjoy the right to assembly in the same conditions as the nationals of Spain (art. 7).⁸

2. Restrictions

Freedom of assembly may be curtailed on public order grounds when danger for persons or property exists. The Assembly Law specifies that if authorities appraise that well-founded reasons exist to believe that disturbances to public order may occur jeopardizing persons or property, they will be allowed to *“ban the assembly or demonstration or, when appropriate, suggest the modification of date, place, length or itinerary”* (art. 10). This wording falls short of the proportionality principle since it does not subordinate the most grievous measure (banning) to the less burdensome (modifying conditions). To this regard, it needs to be noted that the Assembly Law does not explicitly require that restrictive measures are governed by the proportionality principle.⁹ However, the Spanish Constitutional Court, upholding the presumption in favour of holding assemblies and the need for any interference with freedom of assembly to be based on well-founded and compelling reasons, has stated that authorities, before *“taking the extreme decision of prohibiting the exercise of this fundamental right”*, have to propose the adequate modifications in order to accommodate the exercise of the right to assembly with the other rights at stake.¹⁰

In the course of demonstrations, the Assembly Law foresees in article 5 that the authorities can suspend or dissolve assemblies and demonstrations: 1) when they are rendered illegal according to Penal Laws; 2) when disturbances to public order endangering persons or goods occur; 3) when paramilitary uniforms are used by demonstrators.

According to the Assembly Law, will be illegal those assemblies defined as such by the penal laws. This definition is found in article 513 of the Penal Code, which establishes that those assemblies and demonstrations which are held in order to commit an offence and those attended by persons bearing weapons, explosive devices and other blunt or dangerous items will be considered illegal.

⁸ Originally, in the law, as passed by the Parliament, foreigners without residence permit were not recognized the exercise of this freedom, but the Constitutional Court quashed this disposition through judgment no. 236/2007.

⁹ See for instance, judgment no. 301/2006 of the Constitutional Court.

¹⁰ Ibid.

The Constitutional Court has construed that any assembly naturally causes nuisances to bystanders and to road traffic. Therefore, only in those cases where the provision of essential services for the safety of persons and goods, such as medical emergency services, firemen, or police may be disrupted, the aim of guaranteeing public order will be legitimately alleged to interfere with freedom of assembly.¹¹

3. Procedures

Manifestations and meetings in places of public transit are to be notified between the 30th and the 10th calendar day preceding the assembly. A shortened deadline of 24 hours is foreseen if “*extraordinary and serious reasons justify the urgent gathering*” (art. 8 Assembly Law). The 24 hours deadline was thought to enable the celebration of gatherings as a matter of *urgency*. However, the Assembly Law precludes the holding of *spontaneous* assemblies when the requirement of prior notice, including the shortened one, is impracticable.

This prior notice scheme is, thus, not suitable to accommodate the peaceful spontaneous exercise of freedom of assembly pursuant to international human rights standards.¹² To the contrary, any improvised or unpremeditated manifestation of this freedom may encompass the imposition of severe sanctions on organizers and promoters according to what the Public Safety Law foresees for *all* assemblies held without prior notice.

Against this backdrop, activists and lawyers argue that the Assembly Law needs to be amended to effectively guarantee the exercise of freedom of assembly by allowing for the holding of spontaneous assemblies, bearing in mind the increased possibilities for social mobilization and quick reaction granted the extensive use of internet and social media, as well as the features of social movements such as the *15-M* movement (or *indignados*).

Regarding the content of the notice, it must include details on the following aspects: contact information of the organizer(s), time, place, date and itinerary of the assembly. Besides, organizers need to set out security measures foreseen by the organization of the event or those requested to the authorities (art. 9.1. (e) Assembly Law). The latter, that is, listing the measures to guarantee the order and safety of the assembly, without assessing the circumstances case by case, constitutes a troublesome element if the peaceful character of the assembly is to be presumed. Fears grow when noting that if organizers fail to comply with this particular requirement the assembly can be banned or organizers can incur in

¹¹ See judgments no. 90/2006 and 59/1990 of the Constitutional Court.

¹² See European Court of Human Rights, *Bukta and Others v Hungary*, 17 July 2007, para. 36, Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (Special Rapporteur on FPAA), Human Rights Council, 20th session, A/HRC/20/27, para. 29 and OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, section A, Guidelines, para. 4.2.

administrative or even criminal responsibility since, at it will be underlined below, according to the Assembly Law, organizers are responsible for maintaining the “good order” in assemblies and demonstrations.

According to article 10 of the Assembly Law, if the governmental authority considers that there are well-founded reasons to be feared that the assembly is liable to cause disturbances to public order endangering persons or property, it should, first, impose conditions as to the date, place, time, or itinerary of the assembly, as argued above, and, if not possible, ban the assembly.¹³ The authority has to issue its reasoned resolution in 72 hours after the receipt of the notification. If the organizer disagrees with the imposition of conditions or the banning, a complaint can be lodged to the competent administrative court within 48 hours and, at the same time, organizers must transfer a copy of the request duly registered to the governmental authority with the aim that the authority refer the whole file immediately to the court (Art. 11 Assembly Law).

The Constitutional Court has highlighted that the requirement of prior notice does not constitute a petition for authorisation, but just a “*petition of acknowledgment*” or announcement that should enable authorities to adopt measures to facilitate the free exercise of the right to assemble and the protection of others.¹⁴ However, members of social movements and civil society organizations are critical of the current legal framework regulating the requirement of prior notice because, first, they argue that the law should not subordinate an essential freedom such as freedom of assembly to prior notification, since it can happen to display the same functions as an authorization;¹⁵ secondly, they allege that since the law does not clearly recognize a presumption in favour of peaceful assemblies, such framework can be used to impose abusive or disproportionate prior restraints, or to further widen the scope of organizers’ responsibility.

4. Protection

The Assembly Law specifically declares that the governmental authority will protect freedom of assembly against those who try preventing, disrupting or undermining the legitimate exercise of this right.¹⁶ Moreover, pursuant to the case law of the Constitutional Court, advance notification is only required in order for the competent authorities to undertake the adequate measures to facilitate the exercise of freedom of assembly and protect the rights and properties of non-participants.¹⁷

13 The lawyer Jaume Asens notes as well the significant role of limitations on the use of public space foreseen in local ordinances.

14 See judgment of the Constitutional Court no. 59/1990.

15 As pointed out by Andrés García Berrio, “*article 3 of the Assembly Law clearly establishes that no assembly will be subject to prior authorization; therefore, no restrictions should be adopted against spontaneous assemblies and, in any case, the liability of organizers of peaceful assemblies should be narrowly limited*”.

16 Article 3.2 Assembly Law.

17 Judgment of the Constitutional Court no. 42/2000.

However, article 4 of the Assembly Law prescribes that organizers will be responsible for maintaining the good order of demonstrations and that, to fulfil this aim, they will have to adopt the appropriate measures (art. 4.2). Furthermore, they may incur in individual liability for material damages caused by participants to third parties if they did not intend to avoid it by all reasonable means at their disposal (art. 4.3).¹⁸

Assigning organizers the duty to maintain order is likely to blur the limits of the core obligation of the state, pursuant to international human rights law, that is, to protect the peaceful exercise of this freedom by providing adequate policing if any incident occurs, particularly when the organizers of the event could not reasonably foresee it happening. Thus, with the current legal framework, organizers of peaceful assemblies are likely to be imposed a too heavy burden, since they may be held liable if an assembly degenerates into public disorder due to the disruptive behaviour of individual participants or for the action of non-participants or *agents provocateurs* (not always distinguishable) that do not act in accordance with the terms of the event.¹⁹ Activists and lawyers warn on the inhibiting effect for the exercise of freedom to assemble of such provisions in practice.

Use of force by law enforcement officers

Article 5.2 of the Organic Law on the State Security Forces and Corps lays down that, among the basic principles that police officers need to follow in their relations with the community, congruence, opportunity and proportionality when using the means at their disposal are to be observed. Besides, it is foreseen that the use of weapons should be constrained only to situations where a rationally grave danger for the lives and physical integrity of police officers, or the physical integrity of third persons, exist, or in those circumstances that may entail a grave danger for public safety.

It needs first to be stressed that each police force has its own regulations: the National Police Force (Cuerpo Nacional de Policia), the Civil Guard (Guardia Civil), regional police forces such as the Mossos d'Esquadra (in Catalonia), Ertzaintza (in the Basque Country), Policía Foral (in Navarra) and the local police at municipal level. In this setting, rules and regulations on the policing of assemblies, including the use of force and special equipment in the context of crowd management operations, are to be found in the police forces' manuals, protocols and circulars, particularly those regulating the tasks of anti-riots police officers, which are not always accessible to the public. Moreover, rules are not systematically compiled in a single regulation and the thoroughness of regulations on the use of weapons is in doubt, as the European Committee for the Prevention of Torture, referring in that case to the police

18 On the limited responsibility of organizers, see Report of the UN Special Rapporteur on FPAA, Human Rights Council, 23rd session, A/HRC/23/39, paras. 57 and 7; see also OSCE/ODIHR *Guidelines on freedom of peaceful assembly*, 2010, Warsaw, 2nd edition, Section B, Explanatory notes, paras. 185-198.

19 As argued by the European Court of Human Rights in the judgment of the case *Ezelin v France*, 26 April 1991, para. 53, "[i]t is not 'necessary' in a democratic society to restrict those freedoms in any way unless the person in question has committed a reprehensible act when exercising his rights".

force of Catalonia and the alarming use of projectile-firing weapons,²⁰ pointed out in the latest visit to Spain.²¹

In short, the current regulatory framework on the use of force in the context of assemblies and demonstrations is insufficiently clear, accessible and systematic; subsequently, as civil society organizations and political parties have expressed, there is an urgent need for common standards and procedures regulated *by law*. Currently, the framework for policing operations in the context of assemblies would fall short of the principle of legal certainty and, thus, doubts can be casted on the existence of a system with adequate and effective safeguards against arbitrary or abusive practices, namely an excessive use of force causing serious injuries or even death.²²

There are no negotiation mechanisms between law enforcement officials and organizers or participants prescribed by law. As regards the use of prior warnings, article 17 of the Public Safety Law establishes that before breaking up assemblies, police units dispatched will have to warn participants of their intent to disperse. The same article exempts officers from providing prior warning if disturbances to public safety with arms or other violent means occur. Benet Salellas, a well-known human rights lawyer, states that *“there is a need to enact laws setting out the need for law enforcement officers to systematically engage in mediation strategies to de-escalate conflict before employing force; the latter should truly be a last resort and laws should set clear consequences when this rule –exceptional use of force– is infringed”*.

5. Sanctions

As said, organizers account for the maintenance of the good order of assemblies and demonstrations (art. 4.2 Assembly Law). Such clause encompasses several burdensome consequences. Pursuant to article 4.3 of the Assembly Law, natural or legal persons organizing or promoting assemblies or demonstrations are liable, subsidiarily, for damages caused by demonstrators to third parties, unless they had taken all reasonable means at their disposal to avoid such damages. Secondly, organizers that fail to take measures to maintain the order, as well as those that refuse to break up the demonstration and those overlooking the requirement of prior notice, may incur administrative liability according to article 23 (c) and (d) of the Public Safety Law. Such behaviours are qualified as “grave infractions” and the law provides for a sanction ranging from 300.52 Euros to 30,050.61 Euros, as long as the unlawful act is not considered a penal offense, as the law sets out (in that

20 Only in the period 2009-2012, seven people were reported to have lost an eye in Catalonia due to the impact of plastic bullets fired by the police on occasion of assemblies (figures extracted from the 2013 report of the association “Stop bales de goma”, available in Spanish at: http://stopbalesdegoma.org/wp-content/uploads/2013/07/informe-SBG2013_ES.pdf).

21 Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 12 June 2011, Strasbourg, 30 April 2013, CPT/Inf (2013) 6, para. 107, available here: <http://www.cpt.coe.int/documents/esp/2013-06-inf-eng.htm>.

22 See 2013 report of “Stop bales de goma”, *supra* note 13, p. 16.

case, the criminal jurisdiction would take over).²³ In this context, organizers increasingly fear being at the forefront when notifying assemblies –also taking into consideration that usually there is not one single and distinguishable organizer- and, in the end, they prefer to ignore this requirement contending that information on the events is already being disseminated through Internet sites and social media.

Organizers or promoters can be sentenced to three years in prison, according to article 514.1 of the Penal Code, if they led an unlawful assembly aiming to commit an offence or if they did not attempt to prevent others bearing “*weapons, explosive devices, blunt objects or any other dangerous item*” at the assembly, *by all the means available to them*. Besides, those attending an assembly or demonstration bearing weapons or other equally dangerous items themselves can be punished with a sentence of imprisonment from one to two years and a fine from six to twelve months,²⁴ i.e. less than the ones who did not attempt to prevent them in doing so (art. 514.2).

Even more problematic might be that those who commit acts of violence (against the authorities, their agents, persons and public or private property), *on occasion of an assembly or demonstration*, should be punished with the penalty to which the relevant offence is subject, *in its upper half* (art. 514.3).

Finally, the Penal Code threatens organizers or leaders of any assembly or demonstration who again call, hold or attempt to hold any assembly or demonstration that had previously been suspended or prohibited, and always in case they intended to subvert the constitutional order or to seriously alter the public peace, with imprisonment of six months to one year and a fine from six to twelve months, without prejudice to the punishment to which they may be subject as appropriate pursuant to the other paragraphs of article 514.

Facts show that most of the criminal proceedings started against demonstrators do not punish organizers or participants on such grounds, but rather on the basis of ordinary crimes against public order and authorities, most commonly: assault on the authority (550 CP), active resistance or grave disobedience against authorities (556 CP), public disorders (557 CP) and, as misdemeanour, lack of due respect and consideration for the authority or

23 Other infractions extensively used against demonstrators: Article 23 (h) [provocation of reactions that may alter public safety], (n) [serious disturbances in the ways, public spaces or premises or causing serious damages to public property]. Also slight infractions (until 300,51 Euros) are used, article 26 [disobey the mandates of the authorities or agents, alter collective security or cause disorders to the ways, public spaces or premises]. Participants in demonstrations and rallies are increasingly being fined on account of their attendance to non-notified gatherings, to this aim in numerous cases police officers have massively demanded the ID of protesters, when identification is only requested on suspicion of a crime to be committed (Information provided by Andrés García Berrio and Ana M.G). See also *Público*, 10 May 2013, available at: <http://www.publico.es/455122/cifuentes-multo-a-mil-manifestantes-desde-el-comienzo-del-15-m>

24 A fine is a pecuniary penalty, but according to article 50(1) of the Penal Code it is calculated using the “day-fine” system (*sistema dias-multa*). In the case of the fine foreseen in article 514(2), the convicted would be sentenced to pay a daily quota from 2 to 400 euros for a term ranging six to twelve months, depending on the gravity of the offence and the financial situation of the convict (see article 50(3-4) of the Penal Code).

its agents, or slight disobedience (634 CP). As said by Gonzalo Boyé, prominent lawyer, offences, such as the one punishing resistance or grave disobedience (556 CP), are vaguely defined and, subsequently, they leave the door open for an eventual arbitrary use against demonstrators.

This battery of sanctions and penalties is strikingly harsh for organizers and promoters of assemblies that bear wide responsibility for unlawful acts perpetrated by any person attending the event. Particularly worrisome is the provision of the Public Safety Law considering as grave infraction, *without any exception*, the failure to notify in advance the celebration of an assembly. In practice, this provision is used indiscriminately to clamp down on peaceful assemblies, especially in the framework of spontaneous assemblies, as contended by Ana M.G., which argues that *“individuals are being fined only for their participation in assemblies not formally communicated to the authorities”*.²⁵

In sum, there is a wide array of possibilities in the Public Safety Law and in the Penal Code to hold accountable organizers of assemblies and participants, and none of such provisions take into account the particular relevance and circumstances surrounding the freedom at stake nor the presumption in favour of holding assemblies peaceful assemblies;²⁶ to the contrary, aggravating circumstances, such as the one seen in article 514.3, or having faces covered, are foreseen and applied, as lawyers confirm, in the context of assemblies. Therefore, it seems that demonstrators, including students and trade unionists, are being targeted and even labelled as “criminals”²⁷ for peacefully expressing dissent due, partly, to the existence of vague or onerous legal provisions.

The situation is not expected to improve soon with the intended reform of the Penal Code (see Introduction of this chapter). In addition to the modifications already highlighted, the draft law establishes a new offence that provides prison sentences for those who occupy the offices of public or private legal entities, which means that those who hold actions of peaceful protest inside the companies’ buildings might face prison terms ranging from 3 to 6 months. The reform includes also an offence providing penalties to two years imprisonment for those who disrupt public transport services. There is a public outcry against this reform since it would bring about the imposition of disproportionate and, thus, illegal restrictions on freedom of assembly, among other rights affected by the reform.

25 To denounce the massive imposition of sanctions, in Madrid a campaign has just been launched with the slogan “no more sanctions in demonstrations”. More information: [http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20\(1\).pdf](http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20(1).pdf); an example of the harmful effects of the Public Safety Law provisions can be found in the repression of actions undertaken by the Mortgage Victims’ Platform (PAH). The Public Safety Law, among others, has been object of criticism by the Observatory of the Penal System and Human Rights (Observatori del Sistema Penal i els Drets Humans) in the report submitted to the CPT: [http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20\(1\).pdf](http://www.ub.edu/ospdh/pdf/portada/INFORME%20cast_6juny%20(1).pdf).

26 The Special Rapporteur on FPAA in his latest report warns against sanctions exerting a deterrent effect on individuals wishing to exercise their right to freedom of assembly (Report of the UN Special Rapporteur on FPAA, Human Rights Council, 23rd session, A/HRC/23/39, para. 81 (d)).

27 See *El País*, 30 March 2012, available at: http://ccaa.elpais.com/ccaa/2012/03/30/catalunya/1333100176_261470.html; also *El País*, 11 April 2012, available at: http://politica.elpais.com/politica/2012/04/11/actualidad/1334147016_538948.html.

1. Amend the Organic Law Nr. 9/1983 (Assembly Law) with a view to establishing the presumption in favour of holding assemblies and enshrine the proportionality principle in line with the Spanish Constitutional Court case law;
2. Review the Assembly Law in order to modify the current prior notice scheme to
1) shorten the deadline for the notification's submission 2) include an exemption for the celebration of spontaneous assemblies pursuant to international bodies' recommendations 3) require only contact details of the organizer/s and information regarding the date, time, duration and location or itinerary of the assembly;
3. Repeal or amend article 4 paragraphs 2 and 3 of the Assembly Law in order to limit the responsibility of organizers and uphold the State's positive obligations to protect peaceful demonstrators;
4. Review the laws on the policing of assemblies and demonstrations so as to include clear provisions on the use of force and weaponry according to the principles of progressivity, proportionality and necessity, particularly setting out strict limits for the use of "non-lethal weapons" such as plastic bullets including the need to provide adequate prior warning;
5. Review the law as to include that authorities must keep open to dialogue and be contactable at all times on a voluntary basis by people seeking to assemble, as a way to prevent violence from escalating and reduce the use of force by the police; in this sense, security forces should be trained and develop the skills of mediation, negotiation and conflict resolution;
6. Provide for a clear injunction and, if necessary, disciplinary sanctions, to ensure that Police officers wear identification badges *at all times*;
7. Ensure that law enforcement personnel are held accountable for unlawful actions, including the arbitrary or excessive use of force and weapons, in the context of assemblies. To this aim, independent-police complaints or oversight mechanisms should be established to monitor the compliance of law-enforcement officials with human rights standards, notwithstanding judicial investigations opened;
8. Repeal article 23 (c) of the Organic Law 1/1992 on the Protection of Public Safety, in particular the part that qualifies as grave infraction failing to comply with the prior notice requirement;
9. Amend the Penal Code in order to remove provisions including as aggravating circumstances the participation in assemblies or demonstrations, such as article 514 (3).



"Margareth Thatcher's Funeral, London, UK, 17 April 2013."
by Michael Hamilton

THE UNITED KINGDOM

Freedom of assembly in the United Kingdom has been in the spotlight. The recent visit to the country in January 2013 by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, has demonstrated that the UK is perhaps not the bastion of good practice that some believe it to be when it comes to the protection of this fundamental right.¹ There have been many recent protests in the UK. These have included the student protests of March 2011, the Occupy London movement, anti-austerity demonstrations, various marches by the English Defence League, protests against high-profile events such as the Royal Wedding in April 2011, the Olympic Games in July 2012 and Margaret Thatcher's funeral in April 2013.

The issue of demonstrating in Northern Ireland also remains highly sensitive, as there has been a long history of conflict (dating back to the nineteenth century) concerning parades in particular areas of Northern Ireland. Between 1 April 2011 and 31 March 2012, 213 notified processions (out of 4,182) were regarded as contentious and restrictions were imposed on 146². Approximately sixty per cent of these parades are organized on an annual basis by protestant/unionist/loyalist organizations (including the Orange Order). Many catholic/nationalist/republican residents oppose what they consider to be the sectarian nature of some marches, and occasionally so do protestant residents against parades organised by catholic groups. In addition, in June 2013, there were protests against the holding of the G8 summit in Co. Fermanagh in Northern Ireland.

This chapter will examine the general legal framework currently in place in England and Wales, Scotland and Northern Ireland for the protection of freedom of assembly. It is informed, in part, by the report on freedom of assembly in the UK published by the Equality and Human Rights Commission in 2012.³ The chapter also presents a number of recommendations drawing, in part, on those made by the Special Rapporteur in his UK Mission report, published in May 2013.⁴

1. General Legal Framework

The UK ratified the European Convention on Human Rights (ECHR) on 8 March 1951 and the International Covenant on Civil and Political Rights (ICCPR) on 20 May 1976. In contrast

1 For detailed analysis of the law in England and Wales, see: David Mead, *The New Law of Peaceful Protest: Rights and Regulations in the Human Rights Act Era* (Hart Publishing: 2010). See also, Peter Thornton QC, Ruth Brander, Richard Thomas, David Rhodes, Mike Schwarz and Edward Rees QC, *The Law of Public Order and Protest* (Oxford University Press: 2010); Tom Wainright, Anna Morris, Katherine Craig and Owen Greenhall, *The Protest Handbook* (Bloomsbury Professional, 2012).

2 See, *Annual Report and Financial Statements of the Parades Commission for Northern Ireland for the year ended 31 March 2012*. Available at: <http://www.paradescommission.org/fs/doc/publications/pc-2012-annual-report.pdf>, at pp.6-7.

3 Equality and Human Rights Commission, "Article 11: Freedom of Assembly and Association", *Human Rights Review* (2012), 377-421, available at: http://www.equalityhumanrights.com/uploaded_files/humanrights/hrr_article_11.pdf.

4 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Mission to the United Kingdom of Great Britain and Northern Ireland (A/HRC/23/39/Add.1), available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/39/Add.1.

to most other European countries, however, the UK does not have a written constitution or bill of rights. Under the common law in the UK there was no *right* to assemble (let alone protest) on public roads until the Human Rights Act 1998 (HRA) came into force in 2000, whereupon most of the rights contained in the European Convention on Human Rights (ECHR) became directly enforceable in UK courts. Article 11, ECHR (which protects the right to freedom of peaceful assembly) is now effectively part of the law of England and Wales, Northern Ireland and Scotland⁵, and the authorities thus have an obligation to actively protect and facilitate the right to freedom of assembly.

Notwithstanding the positive impact of the HRA, the legislative framework relating to marches and open-air meetings essentially provides for measures that can be used to restrict such gatherings in the interests of public order,⁶ which has been highlighted as a concern.⁷

Furthermore, while the HRA applies throughout the United Kingdom, it is important to recognize that there are **three quite different legal frameworks** governing the regulation of freedom of assembly – in **England and Wales, Scotland, and Northern Ireland** respectively. In England and Wales, the power to impose conditions on public processions or other public assemblies rests with a senior police officer.⁸ The same provisions also apply in Scotland, but Scottish local authorities have additional powers to restrict public processions.⁹

In Northern Ireland, an independent body called the Parades Commission was established in 1997, and is empowered to impose conditions on public processions, or any related protest meeting. These powers were previously held by the police (which retain powers over *static* open-air meetings), but a system was designed to separate the decision-making power (which resides with the Parades Commission) from the enforcement role (which the police retain), as the decisions on processions are politically sensitive. The Parades Commission has published a “Code of Conduct” (for those organising, taking part in, or supporting public processions), a set of “Procedural Rules”, and a “Guidelines” document.¹⁰

⁵ The Human Rights Act requires that any new legislation be accompanied by a statement indicating that it is compatible with Convention rights. Existing legislation must also be *interpreted* in a way that is compatible with the Convention, Section 3, HRA; and all public authorities (including the police, local councils and the courts) must ensure that their actions do not violate Convention rights, Section 6, HRA.

⁶ Equality and Human Rights Commission (“EHRC”) *Human Rights Review 2012*, Chapter on Article 11.

⁷ Second report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association A/HRC/23/39 Add.1: Mission to the United Kingdom of Great Britain and Northern Ireland, para. 17.

⁸ Sections 12 and 14 Public Order Act, 1986.

⁹ Section 63, Civic Government (Scotland) Act 1982 (as amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006), and Section 66, Civic Government (Scotland) Act 1982 which underlines the primacy of any directions given under section 12, Public Order Act 1986 regarding public processions.

¹⁰ Sections, 3, 4 and 5 of the Public Processions (NI) Act 1998, respectively. These documents are available at: <http://www.paradescommission.org/publications/>.

It is worth highlighting that recent years have seen much scrutiny of the regulation of freedom of assembly in the different regions of the UK:

- ▶ in England and Wales, several reports have been published by the parliamentary Joint Committee on Human Rights,¹¹ Her Majesty's Inspectorate of the Constabulary (HMIC),¹² and the Home Affairs Committee;¹³
- ▶ in Scotland, significant changes were made to the legal framework in 2006 following recommendations by the "Review of Marches and Parades in Scotland" by Sir John Orr (2005);¹⁴
- ▶ in Northern Ireland, the establishment of the Parades Commission in 1997 followed from the recommendations of an independent review body.¹⁵ There have since been several reviews of the Commission, each involving widespread consultation.¹⁶ The Northern Ireland Human Rights Commission has also published reports relating to the parading issue,¹⁷ and the legislative framework is due to be reviewed in the latter half of 2013 in an all-party process.

2. Procedures

Prior Notification

England and Wales

There is no advance notice requirement for *static* public assemblies (defined as "an assembly of 20 or more people in a public place wholly or partly open to the air")¹⁸ in England and Wales. However, under the Public Order Act 1986, a person wanting to organise a public *procession* must submit a formal notification to a police station within the police area where the procession will be held, 6 clear days in advance.¹⁹ It is an offence not to comply with

11 Eg. *Facilitating Peaceful Protest*: <http://www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/123/123.pdf>

12 Eg. *A review of national police units which provide intelligence on criminality associated with protest* (February 2012): <http://www.hmic.gov.uk/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf>.

13 Eg. <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/772/11012501.htm> (Minutes of evidence concerning the use of undercover officers during the G20 protests); <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/917/11032902.htm> (Minutes of evidence regarding the policing of the TUC march on 26 March 2011).

14 These were introduced by the *Police, Public Order and Criminal Justice (Scotland) Act 2006*, available at: <http://www.scotland.gov.uk/Resource/Doc/35596/0026948.pdf>. See also the Scottish Executive's "Guidance for Scottish Local Authorities" (December 2006), available at: <http://www.scotland.gov.uk/Resource/Doc/159457/0043394.pdf>.

15 The *Independent Review of Parades and Marches* chaired by Sir Peter North (the "North Report"). The Executive Summary is available at: <http://cain.ulst.ac.uk/issues/parade/north.htm>.

16 Eg. *Report of the Independent Review of the Parades Commission* (the *Quigley Report*); the *Strategic Review of Parading* chaired by Lord Paddy Ashdown, "Interim Consultative Report", (April 2008): <http://cain.ulst.ac.uk/issues/parade/srp/srp290408interim.pdf> and "Views of Key Stakeholders" (June 2007): <http://cain.ulst.ac.uk/issues/parade/srp/srp290408stakeholder.pdf>.

17 See, for example, *Parades and Counter-Protests: Briefing Paper on Human Rights Compliance and Commission Policy*. Available at: <http://www.nihrc.org/documents/advice-to-government/2011/parades-and-counter-protests-consolidation-august-2011.pdf>.

18 Section 16, Public Order Act, 1986 (also applicable in Scotland).

19 Section 11 Public Order Act 1986. Notice can be submitted by recorded post so long as it is received by the police at least 6 days in advance (section 11(5)).

this requirement. Unusually in comparison to other European countries, the legislation defines notifiable processions in terms of their intended purpose – a procession must be notified if it is intended:

- a. To demonstrate support for or opposition to the views or actions of any person or body of persons
- b. To publicize a cause or campaign, or
- c. To mark or commemorate an event.²⁰

The Special Rapporteur has said that he finds 6 days notification to be excessive.²¹ However, the notification requirement does allow an exemption for spontaneous processions – those for which “it is not reasonably practicable to give any advance notice.”²² There is also an exemption for funeral processions, and for processions that are “*commonly or customarily held in the police area (or areas) in which it is proposed to be held*”.²³

Scotland

As in England & Wales and Northern Ireland, there is no notification requirement for static protest meetings in Scotland. A minimum of 28 days’ notice must, however, be given in an advance of a public procession under Scottish law.²⁴ A caveat exists to cover cases where the provision of 28 days’ notice has not been possible.²⁵ This 28 days’ notice is intended to allow for more informed decision making with a clearer and more consistent assessment process. The notification requirement does not apply in relation to processions that may be specified in an order made by Scottish Ministers.²⁶

Northern Ireland

In Northern Ireland, public processions must also be notified 28 days in advance, and any related protest meetings (i.e. counter-demonstrations) must be notified to the police station 14 days in advance. Processions or related protests can still be held if it is not “reasonably practicable” to comply with the 28 or 14 day requirement, but notice must then be given “*as soon as it is reasonably practicable to give such notice*.”²⁷ Other open-air public meetings do not need to be notified.

²⁰ Section 11(1) Public Order Act 1986.

²¹ A/HRC/23/39/Add.1 para. 11.

²² Section 11(1) Public Order Act 1986.

²³ Section 11(2) Public Order Act 1986. See further, *Kay v Metropolitan Police Commissioner* [2008] UKHL 69 (in relation to whether a recurring “Critical Mass” bicycle ride with no fixed route should benefit from the exemption for customary processions).

²⁴ Section 70, Police, Public Order and Criminal Justice (Scotland) Act 2006.

²⁵ Following an application by a person proposing to hold a procession, a local authority *may* make an order dispensing with the 28 day notification requirement (s.62(4)) after consulting with the Chief Constable (s.62(9)), and must publicize such a dispensing order (s.62(11A)).

²⁶ Section 62(11B), Civic Government (Scotland) Act 1982 (inserted by section 70, Police, Public Order and Criminal Justice (Scotland) Act 2006).

²⁷ Section 6(2)(b) (regarding public processions) and section 7(2)(b) (regarding related protest meetings), Public Processions (NI) Act 1998.

These remarkably lengthy notification periods were introduced, against a backdrop of long-running conflict over some parades, to promote negotiation and mediation efforts with a view to resolving contested issues prior to the procession. The Parades Commission has a statutory duty *“to promote and facilitate mediation as a means of resolving disputes concerning public processions.”*²⁸ Nonetheless, the UN Special Rapporteur cautioned that such a notification timeframe must be regarded as *“an exceptional measure ... which should be reviewed regularly to ensure that the conditions warranting it still exist.”*

► The timeframe for imposing restrictions

The law in England and Wales does not indicate any timeframe for the imposition of restrictions, though any such restrictions must be given in writing.²⁹ In Scotland, any restrictions imposed by the Local Council must be delivered at least 2 days before the date scheduled for the procession.³⁰ In Northern Ireland, the Parades Commission aims *“where possible, to make its final decision five working days in advance of the notified date.”*³¹ The Commission’s determinations are published in full on its website.

► Appeals

In Northern Ireland, if fresh evidence becomes available after the Parades Commission has made its decision, the Commission may itself review that decision.³² Furthermore, on the application of the police Chief, the Northern Ireland Secretary of State may review a Commission decision.³³ In England and Wales, and in Northern Ireland, a person directly affected by restrictions may apply for judicial review of those restrictions.³⁴ Under Scotland’s law, appeals against a restriction imposed by a local council must be made to the sheriff (judge) within 14 days of the restrictions being imposed.³⁵

3. Restrictions

It is worth reemphasizing that restrictions can only be imposed if they comply with the necessity and proportionality requirements of Article 11 of ECHR. Most of the relevant provisions relating to restrictions on assemblies in England and Wales are contained in the Public Order Act, 1986. Even though static public assemblies do not require notification in England and Wales, the Public Order Act 1986 empowers a senior police officer to impose whatever conditions on the place, duration, or number of participants of the assembly as appear to be necessary to prevent serious public disorder, serious damage to property

28 Section 2(1)(b) Public Processions (NI) Act, 1998. See also, Parades Commission, *Mediation Services* (2012): <http://www.paradescommission.org/fs/doc/publications/mediation-services-2.pdf>.

29 Sections 12(2) & (3), and 14(2) & (3) *Public Order Act*, 1986.

30 Section 63(3), *Civic Government (Scotland) Act*, 1982 (as amended).

31 Parades Commission, “Procedural Rules”, para. 5.3.

32 See Parades Commission, “Procedural Rules”, para.6 – “Review of Decision or Determination”. Available at: <http://www.paradescommission.org/fs/doc/publications/acf440d.pdf>.

33 Section 9, *Public Processions (NI) Act*, 1998.

34 See further *In an Application by David Tweed for Judicial Review* [2006] UKHL 53.

35 Section 64, *Civic Government (Scotland) Act*, 1982 (as amended).

or serious disruption to the life of the community, or the intentional intimidation of others.³⁶ A senior police officer can also impose conditions on a public procession on the same grounds.³⁷

Scotland

A senior police officer has the power to restrict public assemblies and processions. Local authorities can also prohibit public processions following consultation with the police Chief Constable (though the prohibition power has been used only very occasionally). Apart from consideration of public order, damage to property, or previous breaches of the law by the same organizer and/or some of the same participants, the legislation also requires the local authority to consider *“the extent to which the containment of risks arising from the procession would ...place an excessive burden on the police”*.³⁸

In addition, Scottish Councils may seek to recover costs incurred by the holding of processions. The UN Special Rapporteur was highly critical of this practice, and emphasized that *“financial charges should not be levied for the provision of public services during an assembly.”*

Northern Ireland

There are similar public order-related powers in the Public Order (Northern Ireland) Order 1987 (as amended). Thus, even though “open-air public meetings” are not required to be notified, senior police officers have the power to impose conditions as to their location, duration and number of participants to avoid serious damage to property or serious disruption to the life of the community or aiming at intimidating others.³⁹

The Parades Commission also has the authority to restrict any persons organising, taking part in, or even supporting⁴⁰ public processions and related counter-protests according to the Public Processions (NI) Act 1998.⁴¹ Besides the reasons of disorder or disruption, the 1998 Act introduces consideration for the impact that a procession might have on relationships within the community, and failure to comply with the Parades Commission’s Code of Conduct as new grounds for restriction.

Furthermore, the Secretary of State can impose a ban on a specific public procession or class of public processions in a specific area for a maximum of 28 days.⁴² While this power has not been

36 Section 14(1) Public Order Act, 1986.

37 Section 12(1) *Public Order Act*, 1986. Section 66, Civic Government (Scotland) Act 1982 (as amended) provides that the section 12 powers in the Public Order Act 1986 are also applicable in Scotland.

38 Section 63(8)(b), Civic Government (Scotland) Act, 1982 (as amended).

39 Section 4(2), Public Order (Northern Ireland) Order 1987 (as amended).

40 The Public Processions (Amendment) (Northern Ireland) Order 2005 (S.I. 2005/857 (N.I. 2)), art. 3(1).

41 Public Processions (Northern Ireland) Act 1998, sections 7, 8 and 9A.

42 Section 11, Public Processions (NI) Act, 1998.

used since 1996, its presence on the Northern Irish statute books was a cause of concern to the Special Rapporteur as stated in his recent Report.⁴³

► Blanket bans

In England and Wales, a chief police officer (or the Police Commissioner in London) may apply to the District Council (or in London, the Secretary of State) to prohibit a procession in a specified area for up to 3 months if he or she believes that it is likely to cause “*serious public disorder*”.⁴⁴ Such blanket bans have recently been used in respect of far right groups such as the English Defence League, but because there is no legal power to prohibit single processions, the effect of such a ban is to prohibit all processions in the given area for the specified period. As the Special Rapporteur has pointed out, “[b]lanket bans are intrinsically disproportionate and discriminatory measures affecting all citizens wanting to exercise their right to freedom of peaceful assembly.”⁴⁵

► Restrictions in Parliament Square and Trafalgar Square

An authorization requirement and specific restrictions exists for any assembly in certain areas of London – namely Parliament Square and Trafalgar Square.⁴⁶ Tents or any other structures which facilitate sleeping or staying in a place for any period are prohibited in Parliament Square⁴⁷ as well as any amplified noise equipment.

► Trespassory assemblies and “aggravated trespass”

A “trespassory assembly” – an assembly on land to which the public has no right of access or only a limited right of access – can be prohibited (by a district council or in London by the Police Commissioner with the consent of the Secretary of State) if it is held without permission, and if it may result in either serious disruption, or significant damage to the land, a building or monument.⁴⁸

There is also an offence of “aggravated trespass” (under section 68 of the Criminal Justice and Public Order Act, 1994) which criminalizes trespass on land with the intention of intimidating, obstructing or disrupting other persons engaging in any lawful activity. By way of example, this provision formed the basis of the prosecution of protesters who occupied the “Fortnum and Mason” shop in London in March 2011.⁴⁹

43 A/HRC/23/39/Add.1, at para. 62.

44 Section 13, Public Order Act 1986.

45 A/HRC/23/39/Add.1, at para. 13.

46 Section 5(1)(j) Parliament Square Garden Byelaws, 2012 and Section 5(1)(o), Trafalgar Square Byelaws, 2012, enacted under sections 383 – 384, Greater London Authority Act 1999. Similar byelaws may be made by District Councils in other parts of England and Wales (under section 235 *Local Government Act 1972*).

47 Section 143 Police Reform and Social Responsibility Act, 2011. Sections 143-145 of this Act were held to be compatible with Articles 6, 10 and 11 ECHR in the case of *R (on the application of Gallastegui) v Westminster City Council & Others* [2013] EWCA Civ 28.

48 Section 14(A) Public Order Act, 1986 (inserted by the Criminal Justice and Public Order Act 1994).

49 *Bauer and Others v DPP* [2013] EWHC 634.

► Restrictions on “threatening or abusive” speech

An offence is committed if those exercising their right to freedom of assembly use language that is threatening or abusive.⁵⁰ This can be in relation to speech or signs or other “visible representations”. It is worth noting here that under international human rights law, freedom of expression extends to information or ideas which “*offend, shock or disturb the State or any sector of the population.*”⁵¹ The UN Special Rapporteur has raised concerns that direct action by peaceful protestors could be seen as falling within such a broad definition and that this may curtail freedom of peaceful assembly.⁵²

► Preventive interventions and injunctions

The UK authorities have relied on various common law and statutory provisions to prevent protests from either occurring or continuing. These include:

- The common law power to take measures to prevent a “breach of the peace”;⁵³
- Injunctions issued under the Protection from Harassment Act 1997⁵⁴ – most frequently used against protests by animal rights or environmental activists;⁵⁵
- Injunctions to prevent a nuisance (in tort law).⁵⁶

The UK Joint Committee on Human Rights (JCHR) expressed concern that injunctions are being used so frequently against protesters, and often in private hearings at short notice, with little possibility of challenging them.⁵⁷ As these measures often extend not only to criminal acts, but also to mere presence at particular locations, they significantly erode the right to peaceful protest.

A law currently in drafting, the Anti-Social Behaviour, Crime and Policing Bill 2013-14,⁵⁸ would empower local councils, following consultation with the local policing body, to impose Public Spaces Protection Orders (PSPO) for a period of up to 3 years (extendable), prohibiting, or imposing conditions on activities “*in a public place*” which have had or are likely to have “*a detrimental*

50 Section 5, Public Order Act, 1986. See further, for example, *Munim Abdul v DPP* [2011] EWHC 247 (Admin).

51 *Handyside v United Kingdom* 5493/72 [1976] ECHR 5, at para. 49. See also, for example, Philip Johnston, *Feel Free to Say It*, Civitas (March 2013) <http://www.civitas.org.uk/pdf/FeelFreeToSayIt28Feb13.pdf>.

52 A/HRC/23/39/Add.1, at para.16.

53 See, for example, *Hicks, “M”, Pearce and Middleton v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin) regarding the arrest of protesters in advance of the Royal Wedding, based on what the court found to be the police officers’ reasonable belief of an imminent breach of the peace. Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/1947.rtf>. This judgment is highly deferential to the police view, and fails to give adequate weight to the right to freedom of peaceful assembly under Article 11 ECHR.

54 Section 8 of the 1997 Act applies to Scotland. Similar provisions to the 1997 Act exist in Northern Ireland under the Protection from Harassment (Northern Ireland) Order 1997.

55 See, for example, *Harlan Laboratories UK Ltd & Others v Stop Huntingdon Animal Cruelty (“Shac”)* [2012] EWHC 3408 (QB). In addition, sections 145-49 Serious Organised Crime and Police Act 2005 create specific offences of interfering with contractual relationships [by way of a criminal or tortious act, or threat] so as to harm an animal research organisation; and intimidation of persons connected with an animal research organisation.

56 See, for example, *Olympic Delivery Authority v Persons Unknown* [2012] EWHC 1012 (Ch).

57 See, Joint Committee on Human Rights, *Demonstrating Respect for Rights* (HL Paper 47-I; HC 320-I, published 23 March 2009) at paras. 42, 96-100; See also David Mead, *The New Law of Peaceful Protest*, at pp.264-89 and 394-97.

58 <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0093/14093.pdf>

effect on the quality of life of those in the locality".⁵⁹ If enacted in its current form, there is clear potential for any such provisions to be used against peaceful protesters.

► Stop and search powers, and the wearing of masks

Former stop and search powers (under section 44 of the Terrorism Act 2000) allowed police officers to stop and search individuals without reasonable suspicion. These powers have been repealed⁶⁰, but police can still stop and search an individual in a specified area when a senior police officer reasonably suspects that an act of terrorism will take place.⁶¹ Such powers can potentially be used to inhibit the enjoyment of the right to peaceful assembly.

Under section 50, Police Reform Act 2002, a police officer may require that a person give his name and address if the officer reasonably believes that they have been, or are, acting in an "anti-social manner".⁶² It is a criminal offence not to give one's name and address when requested to do so, and such powers seem to be increasingly used by the police in the context of protest actions.

In addition, a police officer may request⁶³ the removal (or seizure) of items that they believe are being worn mainly to conceal one's identity (and refusal to do so constitutes an offence).⁶⁴ The law permits a person to cover their face if the main purpose is not to conceal their identity. Calls to extend police powers to request the removal of masks at protests were initially rejected but the issue has since been raised again (though no further powers have yet been enacted).

► Undercover Policing, Intelligence databases and the categorization of protesters as "Domestic Extremists"

Perhaps the most recently exposed practice in the policing of protests in England and Wales is the use of undercover police officers to infiltrate mainstream protest groups, sometimes working undercover for many years (and, amongst other things, forming intimate relationships with individual protesters).⁶⁵ Relatedly, there are a number of intelligence databases that are used to record details about campaigners, members of activist groups, organisers of and participants in public protests, even where these individuals have not committed any

⁵⁹ See sections 55-68 of the draft Bill.

⁶⁰ The repeal of these provisions by the Terrorism Act 2000 (Remedial) Order 2011 followed the ECtHR judgment in *Gillian and Quinton v UK* (App.no. 4158/05, judgment of 12 January 2010). See further the 2011 Code of Practice (England, Wales and Scotland) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97941/code-of-practice.pdf.

⁶¹ Section 47A Terrorism Act, 2000 (as amended).

⁶² Anti-social behaviour is defined under the Crime and Disorder Act, 1998 as acting "*in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons ...*".

⁶³ Where an order under Section 60/60AA of the Criminal Justice and Public Order Act 1994 is in place.

⁶⁴ As inserted by section 94, *Anti-Terrorism, Crime and Security Act*, 2001 (section 95 amends Article 23, Public Order (NI) Order 1987 to create similar powers in Northern Ireland). See also: <http://www.legislation.gov.uk/ukpga/2001/24/contents>.

⁶⁵ See, for example, Rob Evans and Paul Lewis, *Undercover: The True Story of Britain's Secret Police* (Faber and Faber, 2013). See further, The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (as amended) S.I. 2010/521.

offence. The continued retention of such data was recently found to have breached the right to private life of two individuals under Article 8 ECHR.⁶⁶

The police intelligence databases on protesters also contain the names of around 9,000 individuals whom the police categorise as “domestic extremists.”⁶⁷ No clear definition of who can be categorized as a “domestic extremist” is available. The Special Rapporteur made clear his dismay when he learned that the “Occupy London” movement was categorized as a terrorist organization.⁶⁸

4. Protection

Mechanisms for the protection of the right to freedom of assembly in the United Kingdom are not always as effective as they could be. There are three human rights institutions – the Equality and Human Rights Commission,⁶⁹ the Scottish Human Rights Commission,⁷⁰ and the Northern Ireland Human Rights Commission.⁷¹ In addition, there are number of bodies established to monitor and review the actions of the police.

One such body in England and Wales is **Her Majesty’s Inspectorate of Constabulary** (HMIC). The HMIC has responsibility for inspection of the police force and is answerable to Parliament. The HMIC seeks to ensure that police powers are not used unlawfully or disproportionately, and stated in its 2009 review, the importance of each individual officer is legally accountable for his or her actions.

The **Independent Police Complaints Commission** (IPCC)⁷² is the body that deals with the gravest complaints against the police. However, its credibility has been called into question following a number of high-profile incidents.

In Northern Ireland, the Policing Board and local District Policing Partnerships afford political and community oversight of policing. The independent **Police Ombudsman**⁷³ has a duty to investigate the discharge of any weapon including baton rounds. The reports of these investigations are published on the Ombudsman’s website.⁷⁴

66 *John Catt & Another v The Association of Chief Police Officers & Others* [2013] EWCA Civ 192.

67 See, <http://m.guardian.co.uk/uk/2013/jun/25/undercover-police-domestic-extremism-unit>.

68 Para. 35 A/HRC/23/39/Add.1.

69 See, <http://www.equalityhumanrights.com/>.

70 See, <http://www.scottishhumanrights.com/>.

71 See, <http://www.nihrc.org/>.

72 See, <http://www.ipcc.gov.uk/en/Pages/default.aspx>.

73 See, <http://www.policeombudsman.org/>.

74 See further, http://www.policeombudsman.org/modules/investigation_reports/index.cfm.

Ostensibly, the newly established role of **police liaison officers** in some police services in England and Wales is to facilitate assemblies by proactively engaging with protesters, and to reduce the likelihood of force being used by the police. However, these officers have already been the subject of criticism as they also gather intelligence on protesters.⁷⁵ The UN Special Rapporteur expressed his dismay when officials from the Home Secretary's office and the City of London Corporation stated that police liaison officers *do* have a mandate to gather intelligence in the interests of maintaining order.⁷⁶

5. Sanctions

It is not possible here to list every offence that exists in the law of England and Wales, Scotland or Northern Ireland, but many such provisions have already been touched upon in the section on "Restrictions" above. This final section seeks merely to highlight some further issues and specific offences.⁷⁷

In general terms, organisers of public processions in England and Wales will commit an offence if they fail to satisfy the 6-day notice requirement (unless it is a spontaneous event) or if the event differs from the time, date or route of the procession as detailed in the notification. It is a defence that the person did not know about the requirements of notification.⁷⁸ Non-compliance with this requirement can lead to a fine on summary conviction of £1000. Those who organise, take part in, or encourage others to take part in a procession which has been banned under section 13 of the Public Order Act commit an offence punishable by imprisonment for up to 3 months or a fine of £2500. Similar penalties apply in Northern Ireland and in Scotland.⁷⁹ A further offence of "obstructive sitting, etc., in public space" may be committed by those taking part in a sit-in if, for example, it is shown that they sought to obstruct traffic or others seeking to exercise their right to freedom of peaceful assembly.⁸⁰

It is worth noting that the Guidance recently issued by the Director of Public Prosecutions in relation to "Public Protests" emphasized that cases must be dealt with proportionately and consistently,⁸¹ in particular taking into account if a public protest was "*essentially peaceful*", and whether "*the suspect took a leading role in and/or encouraged others to commit violent acts*", among others.

⁷⁵ See, The Guardian, 4 September 2012, *Police liaison officers accused of harassing activist*. Available at: <http://www.guardian.co.uk/uk/video/2012/sep/04/police-liaison-officers-uk-uncut-video>.

⁷⁶ At para.51.

⁷⁷ A non-exhaustive list of offences that might be committed during public protests is available at: http://www.cps.gov.uk/legal/assets/uploads/files/public_protests_annex_a_offences.doc.

⁷⁸ Section 11(7)-(9), Public Order Act, 1986.

⁷⁹ Section 6(7) and 7(6) Public Processions (NI) Act 1998 and section 65, Civic Government (Scotland) Act 1982 (as amended).

⁸⁰ Eg. Article 20 Public Order (Northern Ireland) Order 1987.

⁸¹ See, http://www.cps.gov.uk/legal/p_to_r/public_protests/

Recommendations

1. The Human Rights Act 1998 should be amended so as to expressly emphasize the importance of the right to freedom of peaceful assembly - as section 12 of the 1998 Act currently does in relation to freedom of expression;
2. That the definition of “domestic extremism” be clearly and more narrowly defined so as only to include those who have been convicted of a serious criminal offence;
3. That protests be expressly excluded from the potential application of provisions in the Anti-Social Behaviour, Crime and Policing Bill 2013-14 relating to Public Spaces Protection Orders (PSPOs), and that the use of anti-harassment laws, provisions relating to anti-social behaviour, and the powers under s.50 of the Police Reform Act 2002 be monitored on an annual basis with a view to ensuring their exceptional usage in relation to freedom of peaceful assembly;
4. That any blanket prohibition on erecting tents and/or sleeping in certain locations (such as Parliament Square) be repealed;
5. That the prohibition power in section 13, Public Order Act 1986 be amended to enable the prohibition of single public processions where there is a likelihood of serious public disorder (and the section 12 powers are insufficient), rather than requiring that all public processions be prohibited;
6. That courts more closely scrutinize the evidential basis of any public order justification to restrict freedom of peaceful assembly by the police, local councils or authorities, the Parades Commission or the Secretary of State (as applicable);
7. That a public judicial inquiry be established into the historical (and continuing) deployment of undercover police officers and other covert surveillance of protest groups, and that there be prior and constant judicial oversight of any such exceptional measures in the future;
8. That further consideration be given to the role of Police Liaison Officers and that a written policy document concerning their role and deployment be made publicly available. Any intelligence-gathering function should be explicitly excluded from their role, and appropriate safeguards should be put in place to ensure that there can be no slippage between “liaison” and “intelligence gathering” roles;
9. That the forthcoming all-party review (chaired by Dr. Richard Haass) of legislation relating to parades and protests in Northern Ireland seek primarily to ensure that a mutually accepted and commonly understood human rights framework is at the core of any revised regulatory framework.

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 - Annex 1: International Conventions
 - Annex 2: Ratifications
- 

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ALSO SEE THE MEMBER ORGANISATIONS OF THE EMHRN WORKING GROUP ON FREEDOM OF ASSOCIATION, ASSEMBLY AND MOVEMENT

Organisation	Webpage
ACSUR Las Segovias, Association for Co-operation with the South - Spain	http://www.acsur.org/
Recreative and Cultural Italian Association (ARCI) - Italy	http://www.arci.it/
Coalition of families of the disappeared in Algeria	http://www.algerie-disparus.org/
Solicitors International for Human Rights Group (SIHRG) - United Kingdom	https://sites.google.com/a/sihrg.org/solicitors-international-human-rights-group/
Mizan Law Group for Human Rights - Jordan	http://www.mizangroup.jo/index_en.php
Andalus Institute for Tolerance and Non Violence Studies - Egypt	http://andalusitas.net/
Algerian League for the Defence of Human Rights	http://www.la-laddh.org/
Moroccan Association for Human Rights	http://www.amdh.org.ma/fr
World Organisation Against Torture	http://www.omct.org/fr/
Human Rights Association (IHD) - Turkey	http://en.ihd.org.tr/

Organisation	Webpage
European Association for the Defence of Human Rights	http://www.aedh.eu/?lang=en
Al-Mezan Centre for Human Rights - Palestine	http://www.mezan.org/en/
Tunisian Federation for a Two-Shores Citizenship	http://www.citoyensdesdeuxrives.eu/
International Federation of Human Rights Leagues	http://www.fidh.org/
Danish Institute for Human Rights (DIHR)	http://humanrights.dk/
Cairo Institute for Human Rights Studies (CIHRS) - Egypt	http://www.cihrs.org/?lang=en
Human Rights League - France	http://www.ldh-france.org/
Tunisian Human Rights League	http://ltdh-tunisie.org/
Arabic Network for Human Rights Information (ANHRI)	http://www.anhri.net/en/

Annex 1

Right to Freedom of Peaceful Assembly and Association in International and Regional Conventions

Main international treaties and declarations

- ▶ **Universal Declaration of Human Rights:** article 20(1)
- ▶ **International Covenant on Civil and Political Rights:** articles 21 and 22
- ▶ **General Comment 25 (Article 25) of the Human Rights Committee** (participation in public affairs and the right to vote)
- ▶ **International Covenant on Economic, Social and Cultural Rights:** article 8
- ▶ **International Convention on the Elimination of All Forms of Racial Discrimination:** articles 4 and 5(viii)
- ▶ **Convention on the Elimination of All Forms of Discrimination against Women:** article 7(c)
- ▶ **Convention on the Rights of the Child:** article 15
- ▶ **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families:** article 26
- ▶ **International Convention for the Protection of All Persons from Enforced Disappearance:** article 24(7)
- ▶ **Convention on the Rights of Persons with Disabilities:** article 29
- ▶ **International Labour Organization (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organise**
- ▶ **ILO Convention No. 98 on the Right to Organise and Collective Bargaining**
- ▶ **ILO Convention No. 135 on Workers' Representatives**
- ▶ **Declaration on Human Rights Defenders (Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms):** article 5
- ▶ **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

Main regional treaties and declarations

- ▶ **African Charter on Human and Peoples' Rights:** articles 10 and 11
- ▶ **African Charter on the Rights and Welfare of the Child:** article 8
- ▶ **American Declaration of the Rights and Duties of Man:** articles 21 and 22
- ▶ **American Convention on Human Rights:** articles 15 and 16
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- ▶ **OSCE/ Venice Commission: Guidelines on Political Parties Regulation**

RATIFICATION OF INTERNATIONAL AND REGIONAL CONVENTIONS PROTECTING FOA

	ICCPR (political rights)	ICESCR (economic and social rights)	CERD (racial discrimination)	CEDAW (discrimination against women)	CRMWF (migrant workers)	ILO convention Nº 87	AFRICAN CHARTER ON HR
ALGERIA	X	X	X	X	X	X	X
EGYPT	X	X	X	X	X	X	X
ISRAEL	X	X	X	X	NO	X	-
JORDAN	X	X	X	X	NO	NO	-
LEBANON	X	X	X	X	NO	NO	-
LIBYA	X	X	X	X	X	X	X
MOROCCO	X	X	X	X	X	NO	NO
PALESTINE	not a member state	not a member state	not a member state	not a member state	not a member state	not a member state	-
SYRIA	X	X	X	X	X	X	-
TUNISIA	X	X	X	X	NO	X	X
TURKEY	X	X	X	X	X	X	-
SPAIN	X	X	X	X	NO	X	-
UNITED KINGDOM	X	X	X	X	NO	X	-

RESERVATIONS TO THE CEDAW

	Reservations	Declarations
ALGERIA	2 - 9§4 - 15§4 - 16 - 29	
EGYPT	2 - 9 - 16 - 29	
ISRAEL	7 (b) - 16	29§2
JORDAN		9§2 - 15§4 - 16§ (c,d,g)
LEBANON	9§2 - 16§1(cdfg) - 29§1	
LIBYA	2 - 16 (c,d)	
MOROCCO	9§2 - 12 - 29	2 - 15§4
PALESTINE	not a member state	not a member state
SYRIA	2 - 9§2 - 15§4 - 16§1 (c,d,f,g) 16§2 - 29§1	
TUNISIA	9§2 - 16 (c,d,f,g,h) - 29§1	15§4
TURKEY	15§2 - 15§4 - 16§1 (c,d,f,g) - 29§1	9§1
SPAIN		
UNITED KINGDOM	9 - 11 - 15 - 16	

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Regional Study

The Right to Freedom of Assembly in the Euro-Mediterranean Region

Part I: Legislation Review

2013

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