



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

LIBYA

PRESENTATION

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

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

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

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

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

Introduction

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.vlwl.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).