



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

PALESTINE

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

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.