



"Burrial of opponent Chokri Belaid, Tunis, 8 February 2013."  
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TUNISIA

# 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

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",<sup>1</sup> 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](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 suspended<sup>2</sup> and then completely repealed.<sup>3</sup> Article 8 of this Constitution enshrined freedom of assembly.<sup>4</sup>

A new constitution should replace the 1959 Constitution and will, *a priori*, be adopted by the National Constituent Assembly.<sup>5</sup> The outline of this future Constitution, dated June 1<sup>st</sup>, 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 1<sup>st</sup>, 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> *"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..."*

<sup>5</sup> 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.**<sup>6</sup> 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.”*

<sup>6</sup> 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”*.<sup>7</sup>

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.”*

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

According to international human rights standards and recommendations,<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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, 23<sup>rd</sup> session, A/HRC/23/39, para. 48.

10 1<sup>st</sup> 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.<sup>11</sup>

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,<sup>12</sup> 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 3<sup>rd</sup>, 2013 through to June 3<sup>rd</sup>, 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.<sup>13</sup>

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 force<sup>14</sup> - 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.<sup>15</sup>

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

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.<sup>18</sup>

## 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”*.<sup>19</sup>

<sup>19</sup> 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.