



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

ALGERIA

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

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

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

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

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

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

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

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

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

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

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

1. General Legal Framework

a. Constitutional protection and international commitments of Algeria

International commitments

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

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

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

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

Constitutional protection

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

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

b. Algerian domestic legislation: Definitions of assemblies

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

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

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

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

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

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

2. Procedures

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

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

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

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

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

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

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

3. Restrictions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Protection

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

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

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

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

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

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

14 JORA no. 22 of 31 May 1983.

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

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

1- announced its presence by a sound or light signal likely to effectively inform the individuals constituting the unlawful assembly;
2- summoned people participating in the mob to disperse, using a loudspeaker or a sound or light signal also informing individuals effectively constituting the mob;
3- proceeded, likewise with a second warning if the first is not heeded to.”

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

5. Sanctions

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

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

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

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

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

6. Gender Equality and Freedom of Assembly

Algeria ratified the **United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** of 18 December 1979 and its Optional Protocol. **Article 3** of the Convention provides that *“States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”*

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

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

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

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

Recommendations

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

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