



Key challenges in legislation concerning the right to freedom of assembly across the Arab region

The Cairo Institute for Human Rights Studies (CIHRS) draws attention to key challenges in legislation concerning the right to freedom of assembly across the Arab region. Triggered by continuing waves of mass protests, several new draft laws are currently being discussed or have recently been passed. These laws, like previously existing legislation, fail to uphold international standards. The main legal challenges to the exercise of the right to freedom of assembly across the Arab region are identified below.

1. National legislation in the region frequently enacts a system of authorization rather than notification. Even in the rare cases where a system of notification is adopted, notification is defined in violation of international standards and usually involves additional restrictions in practice. A notification system should inform the entirety of an assembly law: it is a system in which the right to assemble is presumed and the ability of the authorities to restrict assemblies sharply limited. In particular, legislation in the region almost uniformly fails to exempt small or spontaneous protests from the requirement of notification. This is particularly grave as many of the recent protests in the Arab world may be considered spontaneous.

Moreover, during the initial submission of information phase, extraneous information is often required or overly restrictive demands imposed, with harsh consequences should the requirements of the law not be met. For instance, article 3 of Bahrain's legislative decree 18 of 1973 on public meetings, processions, and gatherings, as amended, requires that those seeking to hold an assembly be from the place where the assembly is to be held and that they 'enjoy a good reputation'. If those submitting the notification cannot meet such standards or if any other required information is not included, the authorities treat the notification as if it has not been submitted at all, potentially increasing the sanctions imposed on organizers if they go forward with an assembly for which notification has not been acknowledged.

2. Legislation in the Arab world frequently grants the authorities overly broad power to condition or prohibit assemblies. It does so by failing to mention or comply with the principles of necessity and proportionality relative to such impositions and by failing to require that prohibition only be imposed as a measure of last resort. Provisions allowing for the imposition of conditions fail to emphasize the importance of allowing protests within 'sight and sound' of the target of the protest. Legislation also frequently holds up the free flow of traffic or other uses of public space as more important than assemblies, in contrast to international standards, and hence grounds upon which assemblies may be sharply limited or prohibited. Legislation also includes other inappropriate grounds for restrictions. Moreover, the experiences of the region suggest the need to further specify international standards and the right to freedom of assembly in this area – while restrictions based on 'public order' or

'public morals' do not infringe international standards per se, the broad and vague nature of these terms provides an easy basis for rights infringement in practice. Legislation also frequently fails to stipulate that any conditions must be backed up by clear and substantiated legal reasoning and to grant to organizers the right of prompt appeal to an independent and regularly constituted court. For example, articles 4 and 9 of Egypt's law 14 of 1923 on public meetings and gatherings allow the authorities to unconditionally prohibit or alter the place of any assembly that they deem will create a disturbance to public order or security, with the possibility of complaint only to the director of police or the minister of interior.

3. Another frequent challenge to freedom of assembly is the imposition of overly extensive responsibilities on organizers. Legislation on assemblies in the Arab world generally includes a requirement that a bureau be created. This bureau is given security responsibilities and potentially held accountable should public order be infringed, the assembly deviate from the stipulations provided in its notification, or those involved engage in inappropriate speech. For instance, Article 6 of Bahrain's law requires the bureau to maintain public security, public order, and good morals; to prevent any infractions of the law; to prohibit any acts which take the assembly outside the purpose of the notification submitted, such as carrying signs or banners which don't clearly conform to that purpose; to prohibit chants or slogans which insult the state or national leaders or others; to prohibit disruption of any sort; to prohibit behavior which contravenes social norms; to prohibit speech which constitutes incitement to crime or damage to property; to prevent the political participation of non-Bahraini citizens; to prevent the carrying of weapons; to ensure all the conditions provided in the notification are complied with; and to prevent the use of vehicles. The intent of this clause, added to the law by decree 57 of 2011, is clear: to suppress freedom of assembly by exposing organizers to unreasonable obligations which are impossible to fulfill in practice.

While some in the international community have suggested creating bureaus vested with such power and responsibility, experience from the region suggests this would severely violate the right to freedom of assembly. While encouraging informal cooperation between organizers and authorities is positive, legislation should clearly stipulate that it is the responsibility of the state, not of organizers, to ensure public safety. In practice, imposition of excessive responsibility and accountability on organizers allows authorities to punish them based on weak pretexts, exposing those who organize assemblies to uncertain liability and thereby deterring the organization of assemblies and chilling the right in practice.

4. Legislation in the region frequently infringes the right to freedom of expression during assemblies by prohibiting or sanctioning speech on certain protected topics or banning the carrying of certain symbols such as flags or signs. For example, article 9 of Algeria's law 89-28 on public meetings and demonstrations, as amended, forbids opposition to 'national constants' or to the November 1 Revolution. Article 15 of a draft law on the organization of the right to demonstrate in public places mooted in Egypt in January 2013 would similarly infringe freedom of expression in the context of assemblies by banning any banner, statement, or song that might be taken as defamatory, disparaging towards an Abrahamic religion, that might raise sedition, or that is an insult to any organ of the state (a provision which mirrors, incidentally, the violations of freedom of expression included in Egypt's new constitution).

5. Recent years have witnessed the frequent excessive and arbitrary use of force against protestors, with far too little accountability. The problem is one of legislation as well as practice, as laws in the region fail to limit dispersal of assemblies by police forces only as a measure of last resort and to ensure accountability for excessive force. For instance, article 9 of Yemen's presidential decree 29 of 2003 on the organization of demonstrations and marches allows for dispersal based on any of the following: the occurrence of an action considered a crime or considered to obstruct state authorities from carrying out their activities; any departure from the terms of the notification; speech or slogans calling for sedition; or any actions provoking dissention or disturbing the peace. Legislation in the Arab world also generally fails to require the removal of individual violent actors before allowing dispersal of the protest itself, as the Yemeni provision illustrates.
6. Excessive punitive measures are often included in laws governing assemblies in the Arab world. Punishments are generally overly broad both in terms of the situations in which they may be applied, and the extent of the sanction they impose. Several laws impose accountability on some individuals for the actions of others, in clear violation of basic rules of due process. Overly burdensome financial penalties are often levied against assembly organizers and participants based on potentially minor or unintentional infractions of the law. For instance, article 24 of Tunisian law 69-4, regulating public meetings, processions, parades, demonstrations and gatherings, allows punishment of up to 2 years in prison for individuals who hold or make premises available for a meeting prohibited under article 7 (which grants authorities an essentially unlimited degree of discretion to ban assemblies). Article 27 of the same law allows similar punishment for anyone who participates in any demonstration during which incitement to certain acts forbidden by the penal code occurs – regardless of whether the individual concerned committed the incitement. Article 10 of Libya's new assembly law, law 65/2012, also allows for penal sanctions against individuals who participate in an assembly that does not fully comply with the law.

The above comments are based on studies of the laws enacted and/or in draft form in Morocco, Algeria, Tunisia, Libya, Egypt, Yemen, and Bahrain, all of which are in clear and major need of reform. In some cases, such as that of Bahrain, the law exhibits signs of careful drafting – unfortunately, the clear intent behind its provisions is to suppress, rather than support, freedom of assembly. Other countries have no assembly law at all: Sudan, for instance, regulates assemblies primarily through the provisions of its criminal law. Finally, Saudi Arabia's approach is perhaps the simplest, as they have issued an outright ban on all assemblies. In all cases examined, significant reforms are needed.