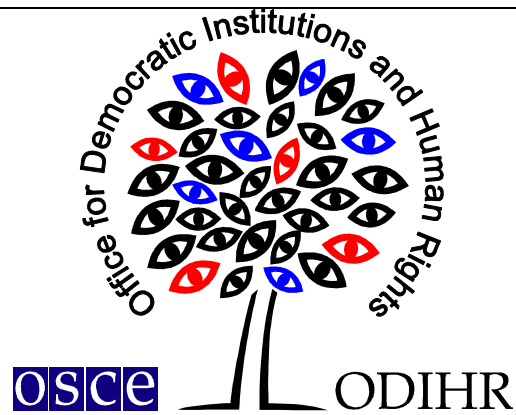


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OPINION
ON THE ACT ON THE REGULATION
OF PUBLIC MEETINGS, MARCHES, RALLIES,
DEMONSTRATIONS AND ASSEMBLIES

Based on an unofficial English translation of the Law

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I. INTRODUCTION

1. *In the first half of 2012, as part of an OSCE/ODIHR project on promoting democratic structures among OSCE/ODIHR's Mediterranean Partners for Co-operation, the OSCE/ODIHR offered to Tunisian authorities to review their existing legislation for compliance with international standards.*
2. *Following an exchange of letters in March and April 2012, and consultations between the OSCE/ODIHR and the Head of the Tunisian Permanent Mission to the United Nations Office and to the International Organizations in Vienna, the OSCE/ODIHR was requested by the latter to review Tunisian legislation pertaining to the human dimension..*
3. *During a needs assessment visit to Tunisia in August 2012, in the course of which the OSCE/ODIHR team also met the Ministry of Internal Affairs, the OSCE/ODIHR was further requested to review the existing legislation pertaining to freedom of peaceful assembly in Tunisia. In particular, OSCE/ODIHR was asked to comment on the conformity of the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies with relevant international standards and good practices, with a view to assisting the Tunisian authorities in their current efforts to elaborate a new law pertaining to freedom of peaceful assembly.*
4. *In a confirmation letter sent to the Head of the Permanent Mission to the United Nations Office and International Organizations on 10 September 2012, the OSCE/ODIHR Director confirmed his Office's willingness to provide support on existing and draft legislation pertaining to, inter alia, assemblies.*
5. *On 5 December 2012, an OSCE/ODIHR delegation met with representatives of the Ministry of Interior and the Ministry of Foreign Affairs to discuss preliminary main findings on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies. This meeting was also attended by a member of the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly, Mr. Serghei Ostaf, a Member of the Venice Commission from Moldova, Mr. Nicolae Esanu, and a representative of the Venice Commission's Secretariat.*
6. *This Opinion was prepared based on the above request and consultations, on the basis of comments by Mr. David Goldberger, Mr. Neil Jarman, Mr. Michael Hamilton and Mr. Serghei Ostaf from the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly. It was approved by the OSCE/ODIHR Panel of Experts on Freedom of Assembly as a collective body and should not be interpreted as endorsing any comments on the Law made by individual Panel members in their personal capacities.*

II. SCOPE OF THE REVIEW

7. The scope of this Opinion covers Act No. 69-4 of 24 January 1969, on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies (hereinafter "the Law"). Thus limited, the Opinion does not constitute a full and comprehensive review of the existing legislation pertaining to freedom of assembly in Tunisia.

8. The Opinion assesses and analyzes the compliance of the existing Law with international instruments ratified by Tunisia and in light of regional standards and practice found in OSCE commitments and European standards, as outlined in the second edition of the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly (hereinafter the “OSCE/ODIHR-Venice Commission Guidelines”).
9. This Opinion is based on an unofficial translation. Errors from translation may result.
10. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to this Law that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

11. Freedom of peaceful assembly is a fundamental human right which rests at the core of any functioning democratic system. It is closely interrelated with other important freedoms, such as freedom of expression and freedom of association. It provides individuals with an opportunity to convey a message to other members of the community, the nation as such, and the outside world, including state authorities, and can help the latter identify pressing needs and challenges within society. The approach of the authorities towards peaceful assemblies also serves as a litmus test of their overall commitment to human rights on a wider scale. Therefore, this right should not be interpreted restrictively.
12. The right to freedom of assembly covers all types of gatherings provided they are peaceful. As a “qualified” right, it may be subject to reasonable restrictions, where these are prescribed by law, proportionate and necessary in a democratic society. An imposed restriction is justified only in case all three preconditions are met simultaneously.
13. Domestic legislation should confer broadly framed protection on freedom of peaceful assembly, and narrowly define those types of assembly for which some degree of regulation may be justified. The purpose of such legislation should never be to inhibit the enjoyment of the right to freedom of peaceful assembly but to facilitate and ensure its protection. It is a positive obligation of the state to guarantee the effective exercise of the freedom of assembly. Although the state is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others, this freedom is fundamental and presents such an essential element of democracy that it cannot be restricted unless the persons exercising it have committed or threaten to commit a reprehensible act related to the conduct of the assembly. Further, respect for the right to freedom of peaceful assembly contributes to addressing and resolving challenges and issues that are important to society.
14. Bearing the above in mind, it should be highlighted that, also bearing in mind the time when it was drafted, most of the provisions contained in the Law appear not to be in congruity with international human rights principles. The Law would, therefore, benefit from wide-reaching and extensive revision to ensure that its

provisions are in conformity with international standards. It is, therefore, recommended as follows:

1. Key Recommendations:

- A. to draft a new law on assemblies (rather than amending the existing law provision by provision) and to consult and involve all interested civil society actors and other relevant stakeholders in the drafting process;
- B. to introduce a section dedicated to definitions in the Law, which shall include a general definition of an assembly, that is clear and in accordance with international standards and does not unduly exclude certain types of assemblies from protection, or unnecessarily regulate certain types of assemblies; [pars 24 and 26]
- C. to substantially revise all provisions in the Law that amount to blanket prohibitions, including the provisions pertaining to time and location of peaceful assembly; [pars 59 and 61]
- D. to clearly spell out the principles underpinning the freedom of peaceful assembly, in particular the presumption in favour of holding assemblies, and the imperative of non-discrimination in any regulation on the freedom to peacefully assemble; [pars 27-28]
- E. to provide for the possibility to hold spontaneous assemblies and exempt these from the prior notification requirement where this is deemed to be impractical; [pars 29 and 46]
- F. to revise the requirement for the notice to be signed by two individuals with full civic rights and the obligation to provide profession and place of residence in the notice; [pars 35-36]
- G. to prescribe in the Law, the right to a timely and effective remedy which would allow to appeal the substance of any restrictions or prohibitions on an assembly to a court; [pars 65 and 67]
- H. to revise Article 5, so as to place the responsibility to maintain public order on the authorities and to ensure that organizers are not held liable for failure to perform their responsibilities, if they made reasonable efforts to do so; [pars 72-73]
- I. to redraft Articles 6 and 14 so that isolated violence or acts of a single individual do not constitute a basis for the termination of the assembly or for it to be deemed unlawful, and stipulate specifically that such termination should be a measure of last resort and should take place only when there is an imminent threat of violence, and all other measures to oppose it have been exhausted; [par 77]
- J. to prescribe civil and criminal liability for law-enforcement officials for the unlawful or excessive use of force; [par 85]
- K. to extensively revise Chapter V on sanctions by replacing the existing provisions with a sanctions mechanism that is based on the principle of ad

personam liability and proportionality of sanctions in general; [pars 87 and 96]

2. Additional Recommendations:

- L. to exempt assemblies on private property from the notification process and from certain other requirements provided for in the Law; [par 32]
- M. to regulate election meetings by virtue of the provisions of the Law; [par 33]
- N. to delete any references to a maximum period of advance notification; [pars 37-38]
- O. to designate similar decision-making authorities in all regions; [par 39]
- P. to amend Article 3 so that only a brief statement of purpose is required in a notification; [par 41]
- Q. to revise Article 10, so that the specification of flags and banners is not required to be included in the notice; [par 42]
- R. to envisage the accountability of regulatory authorities for any unlawful act or other failure to comply with their legal obligations; [pars 54 and 68]
- S. to revise and restrict the grounds for prohibition as contained in Articles 7, 12 and 13; [par 53]
- T. to remove from Article 5 the requirement of a three person governing committee for public meetings, and the requirement to “maintain the structure” of such meetings; [pars 70-71]
- U. to replace light signals in the warning procedure with means which are more appropriate and understandable for those gathered; [par 78] and
- V. to delete or extensively revise the entire Chapter IV on the use of force, bearing in mind international human rights and proportionality standards; [pars 80 and 84]

IV. ANALYSIS OF THE LAW

1. International Freedom of Assembly Standards

15. The right to freedom of peaceful assembly is enshrined in a number of international treaties. This Opinion is based on international instruments, which are legally binding upon Tunisia, in particular, the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”)¹, which entered into force in Tunisia in 1969, and which in its Article 21 guarantees the right to peaceful

¹ The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and ratified by Tunisia on 18 March 1969. Article 21 states that ‘the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others’.

- assembly. According to Article 21, 2nd sentence, this right may only be restricted if this is imposed in conformity with the law, and necessary in a democratic society in the interests of national security, public safety, public order, the protection of health or morals or the protection of rights and freedoms of others.
16. Further, as - stressed in the UN Human Rights Council's Resolution 21/16 (2012), it is the State's obligation "to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law"².
 17. This Opinion is also based on instruments which Tunisia is not a party to but which may be relevant as examples of regional good practice. In particular, the Opinion refers to the European Convention on Human Rights (hereinafter the "ECHR"), which, in its Article 11, guarantees the right to peaceful assembly.³ Moreover, it draws on the extensive jurisprudence of the European Court of Human Rights (hereinafter "the ECtHR"), and OSCE commitments.
 18. As the European Court of Human Rights has reiterated in the *Barankevich v. Russia* judgment, "the right of peaceful assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of thought, conscience and religion, one of the foundations of such a society [...]. The right to freedom of assembly covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individual participants of the assembly and by those organising it [...]. States must refrain from applying arbitrary measures capable of interfering with the right to assemble peacefully."
 19. OSCE commitments pertaining to freedom of peaceful assembly provide that "[e]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards."⁴
 20. Finally, this Opinion is based on non-binding international instruments, including documents of a declarative or recommendatory nature, which have been developed to aid interpretation of relevant international treaties. The Opinion

² UN Human Rights Council resolution 21/16, adopted in October 2012, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/21/16

³The full text of the ECHR is available at <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm>. Article 11 reads: '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State'.

⁴ See the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par 9(2).

bears extensive reference to the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly.⁵

2. Definitions

21. At the outset, it should be stressed that the current Law does not contain a section which would be solely dedicated to definitions. It is of vital importance that freedom of assembly, if regulated at all, shall be governed by provisions which are clear and accessible, so that those involved are fully aware of their rights and duties, and of the consequences of their actions. However, the lack of clear definitions renders certain terms comprised in the Law vague, leaving scope for ambiguity.
22. First and foremost, the Law does not provide for a clear, general definition of an assembly. Instead, through individual provisions, a differentiation between “public meetings” (which are regulated by provisions contained in Chapter I) and “marches, rallies, demonstrations and all other forms of assemblies in public streets” (as regulated by provisions in Chapter II) can be discerned. Nowhere, however, are these different types of gatherings explicitly defined in the Law.
23. At present, Article 1 of the Law only spells out that “public meetings shall be free and may be held without prior authorization”. It is presumed that public meetings shall mean to be such that occur in public or private buildings or other enclosed structures, as opposed to marches, rallies and demonstrations which can take place in public streets.
24. To be consistent with international standards, the Law should provide for a general definition of an assembly, supplementing this, if required, by definitions of individual types of public events only if these require differential regulatory treatment.⁶ However, such additional definitions should only be included if they are salient for interpreting subsequent definitions of the law. In this context, it is noted that Chapter I of the Law that purports to regulate “public meetings” does not provide for a proper definition of public meetings.
25. The OSCE/ODIHR-Venice Commission Guidelines define an assembly (for the purposes of protection) as the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose⁷. As stated therein “a range of different activities are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, “flash mobs”, demonstrations, sit-ins and pickets) and moving assemblies (such as parades, processions, funerals, pilgrimages and convoys). These examples are not

⁵The OSCE/ODIHR Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, prepared by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly and the Council of Europe’s European Commission for Democracy through Law, and adopted by the Venice Commission at its 83rd Plenary Session on 4 June 2010. The full text of the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly is available at www.legislationline.org

⁶ See e.g. CDL-AD(2008)025 Joint OSCE/ODIHR-Venice Commission Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic of 22 October 2008, adopted by the Venice Commission at its 76th Plenary Session, par. 17.

⁷ /ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 1.2

- exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible”.⁸
26. Lengthy, purportedly exhaustive, lists of different types of assembly should, therefore, be avoided. Any definitions of individual types of assemblies or attempts to categorize them separately from a general definition of peaceful assembly risk contravening Article 21 of the ICCPR as certain forms of assemblies may, by error or intentionally, be considered to fall outside of the protective scope and may thus become subject to prohibition.
 27. National legislation governing freedom of assembly should also clearly articulate the main principles upon which the protection of this right should be based. This includes the principle that the right to organize and participate in a peaceful assembly is a fundamental freedom and a cornerstone of the freedom to express political and other viewpoints in a democratic society. These principles also include the presumption in favour of holding assemblies, the state’s positive obligation to protect peaceful assembly, as well as principles of legality, proportionality, non-discrimination (including, but not limited to, the full and equal enjoyment of the right by both men and women, and by different religious groups) and good administration⁹. It would be advisable, therefore, for the Law to include a preamble which would clearly spell out the principles underpinning legislation governing freedom of assembly.
 28. In relation to the non-discrimination principle, it is reiterated that the OSCE/ODIHR and the Venice Commission have previously highlighted that children have legitimate claims and interests which deserve to be safeguarded. Children should, therefore, enjoy the right to assemble peacefully.¹⁰ Furthermore, legally incapable people should never be denied this right altogether, since in many cases the issues that they would wish to raise may not be raised by any other group.¹¹ A new law on assemblies should reflect this aspect of the non-discrimination principle by stating that this right may not be restricted due to a person’s age or legal capacity.
 29. Unfortunately, the Law does not protect, or even envisage certain forms of assemblies such as spontaneous assemblies, simultaneous assemblies and counter-demonstrations. It would be most beneficial for the Law if definitions of these forms of assemblies were introduced. Regarding spontaneous assemblies it is essential to highlight that many assemblies which take place as an immediate response to an event carry a message that would be weakened or rendered

⁸ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 17

⁹ *Ibid.*, pars 2.1-2.6.

¹⁰ OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine, of 19 October 2010, adopted at the Venice Commission’s 84th Plenary Session, par. 28. See also Article 15 of the UN Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, which guarantees children the right to freedom of assembly. This Convention was ratified by the Republic of Tunisia on 30 January 1992.

¹¹ OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine, par. 29

ineffective if the legally established notification period were adhered to¹². Such “spontaneous assemblies” should be protected and facilitated by the authorities as long as they are peaceful in nature¹³.

3. Prior Notification

30. The UN Human Rights Committee has held that a requirement to notify the police of an intended demonstration in a public place before its commencement may be compatible with the permitted limitations laid down in Article 21 of the ICCPR.¹⁴ Nonetheless, international human rights law does not require domestic legislation to foresee advance notification regarding all assemblies. Many types of assembly may not need to be regulated at all. Indeed, prior notification would mainly appear to be required where it is necessary to enable the state to put in place necessary arrangements to facilitate the right to freedom of assembly and protect the rights of others.
31. According to Article 2 of the Law, “public meetings shall be preceded by notices that specify the place, date and time thereof, with the exception of election meetings which shall be subject to laws applicable to elections”. As previously noted, this would appear to include public meetings that occur in public or private buildings or other enclosed structures.
32. The right to freedom of peaceful assembly also covers assemblies on private property¹⁵. However, the use of private property for assemblies raises issues that are different from the use of public property because the owner has broad discretion over the use of his/her property. Assemblies on private property should therefore be exempted from any notification requirement, as well as from all other requirements provided for in the Law, provided the facility is in compliance with applicable health and safety laws. This may, however, not apply in cases where private property is generally accessible to the public.
33. Also, it would not appear necessary to regulate assemblies during an election period in a separate law, unless such law provides more favourable treatment than the law on assemblies. Otherwise, the general law on assemblies should cover

¹² The OSCE/ODIHR – Venice Commission Guidelines stress that the ability to respond peacefully and immediately, that is, spontaneously and without providing formal notification, to some events, news, incidents or other assembly is an essential element of freedom of assembly.

¹³ See OSCE/ODIHR-Venice Commission Guidelines pars 97-98; also see OSCE/ODIHR-Venice Commission Joint Opinion (CDL/AD (2010)016) on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) of 8 June 2010, par. 36

¹⁴ See the Views of the UN Human Rights Committee in the case of *Kivenmaa v. Finland*, Communication No. 412/1990, U.N. Doc. CCPR/C/50/D/412/1990 (1994), par 9.2. Also see the Human Rights Committee’s Concluding Comments on Morocco [1999] UN doc. CCPR/79/Add. 113, par 24: “The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases.” Available at: <http://www.unhcr.org/refworld/country,,HRC,,MAR,456d621e2,3ae6b01218,0.html>.

¹⁵ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 22; see also the ECtHR judgments in the cases of *Djavit An v. Turkey*, application no. 20652/92, judgment of 20 February 2003, par. 56.

- assemblies associated with election campaigns, an integral part of which is the organization of public events. The exercise of the freedom to peacefully assemble may involve extremely intense emotions and reactions in the context of elections when opposing political parties, as well as other groups and organizations, wish to publicize their views.¹⁶ However, regardless of the context, such assemblies are assemblies like any others, and it is thus recommended not to regulate election meetings separately.
34. Article 2 of the Law further requires that notices should be signed “by a minimum of two individuals who are entitled to the full enjoyment of full civil rights and the domicile thereof lies in the vicinity of the meeting place.” The two signatories shall include personal identification, professions and their addresses.
 35. It should be said that any notification process should not be onerous or bureaucratic, as this would undermine the freedom to assemble by discouraging those who might wish to hold an assembly¹⁷. The requirement of two signatures accompanied by details of profession and residence would appear to be overly bureaucratic, as there does not appear to be any reason why two, rather than one organizer, should be required to submit a notification. The disclosure of the organizers’ professions can likewise not be justified, as this would appear to have no bearing on the holding of an assembly.
 36. Additionally, limiting the entitlement to submit a notice only to those who enjoy full civic rights and live in the vicinity of the meeting place is unduly restrictive and could be potentially in breach of the non-discrimination principle. This principle requires that the freedom to organize and participate in public assemblies must be guaranteed to all individuals (both women and men), groups, unregistered associations, legal entities and corporate bodies; to members of minority ethnic, national, gender and religious groups; to nationals and non-nationals, including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.¹⁸ Moreover, public assemblies are held to convey a message to a particular target person, group or organization and it is essential to facilitate their holding within “sight and sound” of their target audience to the extent possible in order to effectively communicated to those to whom it is directed.¹⁹ Limiting the circle of people who can submit a notice by the proximity of their residence place to the location of a planned assembly is equal to limiting the right to assemble.
 37. Article 2 further requires that notices should be submitted within a maximum period of fifteen days prior to holding the meeting. The OSCE/ODIHR-Venice Commission Guidelines state that laws may legitimately specify a minimum period of advance notification for an assembly. However, any maximum period

¹⁶ OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2009)034) on the Draft Law on Assemblies of the Kyrgyz Republic, par. 20

¹⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 4.1

¹⁸ *Ibid.*, par. 2.5. See also Article 26 of the ICCPR which reads that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

¹⁹ *Ibid.*, par. 101.

- for notification should not preclude advance planning for assemblies. When a certain time limit is set out in the law, it should only be indicative²⁰. Setting the maximum period for notification at 15 days appears to be unnecessary and might preclude adequate advance planning, especially for large assemblies. In some cases, longer periods of time may be required to plan and organize large assemblies attended, for instance, by participants from different districts or regions. Such assemblies require not only adequate logistical preparations, but also certain financial contributions and the organisers have the right to know that the venue will be available well in advance.
38. The timeframe set out in Article 2 does not allow for appropriate arrangements by the state bodies to facilitate such assemblies which would require significant logistical endeavours. Determination of a maximum period can be only justified by the wish to prevent efforts to unfairly monopolize or block a venue by filing advance notices. Overall, while minimum periods of advanced notification for assemblies are usual, it would be advisable to delete any references to maximum periods in any new legislation on assemblies.
 39. Moreover, it should be stressed that it is of utmost importance to designate a properly mandated decision-making authority which would be responsible for taking decisions in respect of freedom of assembly regulation. Article 2 of the Law, however, vests different authorities with the capacity for decision-making pertaining to assemblies. In most regions, notifications should be submitted to municipalities. In the capital city, however, it is the Department of Homeland Security that shall be notified. There seems to be no justification for such a differentiated approach, which can also undermine the principle of good administration. It would thus be advisable to establish, in all regions, the same properly mandated authority vested with the power to make decisions regarding assemblies. Ideally, this should be the municipality or similar body, which appears to be well-equipped to resolve all issues pertaining to the preparation and holding of assemblies.
 40. In addition, Article 3 requires that notices shall specify the theme and purpose of the meetings. The necessity to specify such details could also be considered as content regulation and consequently, pre-censorship. In this context, it is noted that Article 10 further states that prior notices shall, in compliance with the provisions of Article 2 of the Law, be submitted specifying, *inter alia*, flags or banners which will be held during the assembly.
 41. As stated in the OSCE/ODIHR-Venice Commission Guidelines, the regulation of public assemblies should not be based upon the content of the message they seek to communicate, or allow the authorities' own view on the merits of an assembly to play a role. Therefore, the requirement to provide for the theme and purpose of the meeting should be revised so that only a brief statement of the purpose of the assembly is required.
 42. Further, any restrictions on the visual or audible content of any message displayed or voiced should face heightened scrutiny and only be imposed if there is an

²⁰ *Ibid.*, par. 116

- imminent threat of violence.²¹ Even where the flags, signs or banners to be displayed during an assembly invoke memories of an excruciating historical past, this should not, of itself, be reason to interfere with the right to freedom of peaceful assembly.²² As the requirement to specify flags and banners in the notice, as stated in Article 10, could also be regarded as tantamount to preemptive regulation of visual content, it is urged that this specific requirement be deleted.
43. Generally, it should be underscored that any legal provisions concerning advance notification should require the organizers to submit a notice of intent to hold an assembly but not a request for permission. The notification process should not empower the executive authorities to refuse to accept a notification or to prohibit a public event. It is of vital importance that the notification process does not constitute a *de facto* authorization process.
44. Aside from the nature of the notification, it should also be highlighted, that in a healthy democracy, exceptions from the notification processes should exist. In particular, laws regulating freedom of assembly should explicitly provide for exemption from prior-notification requirements in cases involving spontaneous assemblies, where giving timely advance notice is impracticable. The ECtHR stated that “such is the nature of democratic debate that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such meetings”.²³ Such exceptions are of paramount importance, especially given the current development of social media technologies which facilitate the ability to hold a spontaneous assembly. The authorities should, therefore, always protect and facilitate any spontaneous assembly, so long as it is peaceful in nature.
45. As stated in the OSCE/ODIHR-Venice Commission Guidelines, “the ability to respond peacefully and immediately to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous assemblies by definition are not notified in advance since they generally arise in response to some event which could not have been reasonably anticipated”. As the ECtHR has clarified, such derogation from the general notification rule may be justified if a delay would have rendered an immediate response to a current event in the form of a demonstration obsolete²⁴.
46. The current Law, however, does not allow for spontaneous assemblies to take place. On the contrary, by virtue of Article 25, it envisages imprisonment for a period of up to six months for “any direct call for holding a meeting in a public street”. While Article 31 stipulates that “an imprisonment penalty for a minimum term of one month and a maximum term of one year shall be imposed on individuals who incite, in direct manner, [...] unarmed unlawful assemblies, whether through public speeches, leaflets or posters”. It is strongly encouraged to

²¹ *Ibid.*, par. 94

²² *Ibid.*, par. 97. See also, *mutatis mutandis*, the ECtHR judgment in the case of *Vajnai v. Hungary*, application no. 33629/06, of 8 July 2008, par 49.

²³ See the ECtHR judgment in the case of *Bączkowski and Others v. Poland*, application no. 1543/06, of 3 May 2007, par 82.

²⁴ See the ECtHR judgment in the case of *Bukta and Others v. Hungary*, application no. 25691/04, of 17 July 2007, par 35.

include in any new law, a provision which would safeguard the possibility of holding spontaneous assemblies, and expressly exempt organizers from the prior notification requirement in cases of such events where the provision of timely notification is not possible.²⁵

4. Prior Restraints

47. While international and regional human rights instruments affirm and protect the right to freedom of peaceful assembly, they also allow states to impose certain limitations on that freedom. Restrictions on peaceful assemblies are only permitted in case they are prescribed by law, proportionate and necessary in a democratic society. While restrictions may be imposed based on legitimate grounds, as demarcated by international standards, these should never be supplemented by additional grounds in domestic legislation nor should they be loosely interpreted by the authorities.²⁶
48. With respect to meetings, Article 7 spells out that “the competent authorities may refuse to authorise meetings that are capable of undermining security or disturbing public order, and in such cases organisers shall, by the security staff, be notified of the prohibition”.
49. Moreover, Article 12 gives the competent authorities the right to “prohibit any public assembly that is capable of endangering public security or disturbing public order, and in such cases organizers shall, by the security staff, be notified of the prohibition”. At the same time, Article 13 states that “unarmed assemblies that are capable of disturbing public order” may “not be held in public streets or public squares”.
50. All of the above provisions (Articles 7, 12, 13) are construed much too broadly and provide authorities with a wide array of possibilities to impose restrictions on the right to freedom of assembly. Generally, it should be underscored that the regulatory authority must not impose restrictions simply to pre-empt possible disorder.
51. The inherent imprecision of such terms as public security and public order can easily be exploited to justify the prohibition of peaceful assemblies. It should be stressed that according to the OSCE/ODIHR-Venice Commission Guidelines “neither a hypothetical risk of public disorder nor the presence of a hostile audience are legitimate grounds for prohibiting a peaceful assembly”.
52. Therefore, an assembly that the organizers intend to be peaceful may legitimately be restricted on public-order grounds only when there is evidence that participants will themselves use or incite imminent, lawless and disorderly action and that such action is likely to occur. Compelling and demonstrable evidence is required

²⁵ In this context, it should be noted that the ECtHR has likewise stated, in its 2007 judgment of *Bukta and Others v. Hungary* that “a decision to disband such assemblies solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly” (par 36).

²⁶ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 69; see also ECHR case-law, *Hyde Park and Others v. Moldova*, application no. 33482/06, judgment of 31 March 2009, par.30.

- demonstrating that those organizing or participating in the particular event will themselves use violence or engage in other similar disruptions of public order. In the event that there is evidence of potential violence, the organizer must be given a full and fair opportunity for refutation by submitting evidence that the assembly will be peaceful.²⁷
53. Prohibition of an assembly is a measure of last resort, only to be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant interests. It is, therefore, recommended that any new law contain more narrowly framed grounds for prohibition than those contained in Articles 7, 12 and 13. The current wording permitting a prohibition of assemblies “that are capable of undermining security or disturbing public order” is so broad that it could also allow for the prohibition of peaceful assemblies merely because they are too noisy or are liable to temporarily inhibit the flow of traffic in a busy thoroughfare. Such extensive limitation of the right to assemble would appear to undermine the purpose of this right.
 54. Furthermore, the law also does not prescribe legal responsibility where a state body has unlawfully prohibited an assembly. It should be stressed that authorities should be held accountable for any unlawful action and it is recommended to include such a provision in the Law.
 55. Moreover, the Law imposes a number of potentially oppressive blanket restrictions with regard to locations and time. Article 8 stipulates that meetings “may not be held in public streets”, which is exactly where assemblies routinely occur. Article 13 which bans armed assemblies and unarmed assemblies that are “capable of disturbing public order” states that such assemblies may not take place in public streets or public squares, which are again places where assemblies habitually occur.
 56. It should be underscored that location is one of the key aspects of freedom of assembly. The privilege of the organiser to decide which location fits best for the purpose of the assembly is part of the very essence of freedom of assembly. According to the OSCE/ODIHR-Venice Commission Guidelines, assemblies can be held in public places that everyone has an equal right to use. Such places include, but are not limited to, public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths. Participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as more routine purposes of use of public spaces, such as commercial activity or pedestrian and vehicular traffic.²⁸
 57. As noted by the ECtHR, “any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public

²⁷ *Ibid.*, pars 72, 73

²⁸ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars. 19, 20

- authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly [...] is not to be deprived of all substance”.²⁹
58. Moreover, the OSCE/ODIHR-Venice Commission Guidelines state that blanket legislative provisions, which ban assemblies in particular locations or during certain times require much greater justification than restrictions on individual assemblies. Given the impossibility of taking account of the specific circumstances of each particular case, the incorporation of such blanket provisions in legislation, as well as their application, may be disproportionate unless a pressing social need can be demonstrated.³⁰ As the ECHR states, “[s]weeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it”.³¹
 59. Consequently, the restrictions contained in Articles 8 and 13, effectively banning all meetings from taking place in streets and public squares, are tantamount to blanket prohibitions of the right to assemble *per se*. If assemblies are prohibited in these locations, then it will, in most cases, be impossible to hold them within “sight and sound” of their intended audience. Both provisions (Article 8 and Article 13) should thus be extensively revised, and supplemented with provisions clarifying that assemblies may be held in all public places that everyone has an equal right to access and use.
 60. It is noted that Article 4 of the Law stipulates that public meetings “may not extend past midnight, except in districts where public places remain open to the public ahead of such time, and in such districts meetings may run until the designated closing hour thereof”.
 61. Also this formulation, which bans assemblies during a certain time, is most likely to amount to a blanket and, therefore, over-restrictive prohibition. As noted in the OSCE/ODIHR-Venice Commission Guidelines, the regulation of assemblies at night time should be handled on a case-by-case basis rather than being prohibited in general. It is strongly advised to revise this provision accordingly.
 62. In this context, it should be noted that the state also has the positive obligation to facilitate simultaneous assemblies, i.e. two or more unrelated assemblies held at the same place and time. Each assembly should be facilitated to the extent possible in order to comply with the principle of non-discrimination³². Further, it is the state’s duty to prevent disruption of the assembly where counter-

²⁹ See the ECtHR judgment in the case of *Balcik and Others v. Turkey*, application no. 25/02, of 29 November 2007, par 52.

³⁰ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars. 24 and 43. See, also, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006-03-0106 (23 November 2006), para.29.1 (English translation): “Inelastic restrictions, which are determined in legal norms as absolute prohibitions, are very rarely regarded as the most considerate measures.”

³¹ See, for example, ECHR case-law, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, application nos 29221/95 and 29225/95, judgment of 2 October 2001, par. 97.

³² *Ibid.*, par. 4.3, 122

demonstrations are organized – which may be defined by the Law as assemblies convened to express disagreement with views expressed at the main event, and taking place at almost the same time and place as the one that it disagrees with³³.

5. Effective Remedy

63. The OSCE/ODIHR-Venice Commission Guidelines clearly state that the organizers of an assembly should have recourse to an effective remedy through a combination of administrative and judicial review. Administrative review procedures must be sufficiently prompt to enable judicial review to take place once administrative remedies have been exhausted, prior to the date of the assembly provided in the notification³⁴. Any restrictions placed on an assembly should be communicated in writing to organizers of the event, with a brief explanation of the reasons for each restriction.
64. Ultimately, the organizers of an assembly should have the right to appeal the decision of the regulatory authority to an independent court or tribunal. Any such review must also be prompt, so that the case is heard and the court ruling published before the date for the planned assembly. The burden of proof and justification should remain on the regulatory authorities.³⁵
65. With regard to meetings, Article 7 gives the “organizers of unauthorized meetings” the option to appeal to the “Secretary General of the Interior Ministry whose decision thereon shall be deemed final”; the Law does not expressly provide for such appeal for other types of assemblies. This provision does not provide organizers with the possibility of appealing such a ban in court, where evidence can be presented to an impartial decision-maker. Nor does it provide a relevant time-frame within which the appellate body must issue such decisions.
66. As noted by the ECtHR, “it is important for the effective enjoyment of the freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act”.³⁶
67. It is advisable, therefore, to prescribe in any future law, the right to a timely and effective remedy which would allow the appeal of the substance of any restrictions or prohibitions on an assembly, regardless of its nature.
68. Moreover, it should also be noted that the Law does not envisage the accountability of regulatory authorities for their failure to comply with their legal obligations, be it procedural or substantive. It is recommended to include in a new law provisions which would ensure effective mechanisms for holding the authorities accountable for the failure to comply with their legal obligations.

³³ *Ibid.*, par 4.4, see also pars 33, 45 and 101 in the Explanatory Notes.

³⁴ *Ibid.*, pars. 66, 137

³⁵ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars. 138, 139

³⁶ *Bączkowski and Others v. Poland* (2007), par 83.

6. Responsibilities of the Organizer

69. Article 5 stipulates that “each public meeting shall form a governing committee comprising a minimum of three persons, to maintain public order, prevent violations of the law, maintain the structure of the meeting as indicated in the submitted notice, and prohibit speeches that are capable of disturbing public security or good morals or incite the audience thereof to commit unlawful actions that are categorized as felonies or misdemeanors”.
70. It should be underscored that this provision confers excessively burdensome and broad duties upon the leaders and /or organizers of the assembly. It is not clear how, for instance, a picket, organized by two people can form “a governing committee comprising a minimum of three persons”. One organizer would appear to be sufficient in all cases. The government should not attempt to influence (through such an article in the Law) how the internal planning or decision-making processes of the organisers and participants should proceed.
71. Further, at present, this Article contains requirements which are not prescribed by law. For example, the members of the committee should “maintain the structure of the meeting as indicated in the submitted notice”. However, Article 2 does not require for any such structure to be included in the submitted notice, unless the structure is understood to mean the “purpose and theme” as stated in Article 3.
72. With respect to maintaining public order, preventing violations of the law and prohibiting speeches that are capable of disturbing public security, it should be highlighted that it is the duty of the law-enforcement agencies to bear overall responsibility for public order. Although under certain circumstances, it may be legitimate to impose on organizers the condition that they arrange a certain level of stewarding for their assembly, such requirement should by no means be a diversion from the positive obligation of the State to provide sufficiently resourced policing arrangements. Likewise, it should be imposed only as the result of a specific assessment and never by default, otherwise, this would likely violate the proportionality principle.³⁷ Stewards should not be replacing law-enforcement personnel in their duties. In particular, obliging them to prohibit speeches and other expressive activities, “that are capable or disturbing public security [or] good morals” are overly broad and not in keeping with international principles of freedom of speech and association.
73. Generally, organizers and stewards are only required to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful; if such efforts were made, they should not be held liable for the non-compliance with legal requirements, or assemblies that turn violent. The organizers should further not be liable for the actions of other individuals if they exercised due diligence in the organization of an assembly, as this would essentially punish them for actions that lie outside their scope of liability. In effect, it would entail that organizers are responsible for acts of others, even possibly *agents*

³⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 195; see, also, for example, Republic of Latvia Constitutional Court, Judgment in the matter No. 2006- 03-0106 (23 November 2006), par.34.4 (English translation): “...The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person.”

provocateurs. It is, therefore, advised to revise Article 5, so as to shift back the responsibility to maintain public order to the authorities, and ensure that liability imposed on organizers is strictly proportionate.

7. Assembly Termination and Dispersal

74. The possibility to terminate a peaceful assembly should only be a measure of last resort. As long as assemblies remain peaceful, they should be facilitated by the authorities. Furthermore, as the Venice Commission and the OSCE/ODIHR have stated in other contexts, dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and to protect the assembly from harm and unless there is an imminent threat of violence.³⁸ Dispersal should be governed by prospective rules informed by international standards. These rules need not be elaborated in legislation but should be expressed in domestic law-enforcement guidelines and legislation should require that such guidelines be developed.³⁹
75. Contrary to the above stated principles, the Law comprises certain provisions governing the dispersal of assemblies which give the “security staff” the right to terminate assemblies, while setting a relatively low threshold for being able to do so. More specifically, Article 6 spells out that “security authorities shall have the right to terminate any meeting in case where a quarrel or violent assault erupts therein”. Further, Article 14 stipulates that for an assembly to be deemed armed, and therefore unlawful, it is sufficient for one of the assembled individuals to hold a weapon in a visible manner. In this context, it would be worthwhile to point out that these provisions also do not provide for a definition of security authorities and it is not obvious whether these authorities are distinguishable from the police.
76. It should be stressed that according to the OSCE/ODIHR-Venice Commission Guidelines, isolated incidents of unlawful conduct, sporadic violence or violent acts by some participants in the course of a demonstration are not sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly⁴⁰. Law-enforcement officials should not treat a crowd as homogenous when detaining participants or (as a last resort) forcefully dispersing an assembly⁴¹. Any individual wrongdoings should lead to personal liability through criminal proceedings. Isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution. As the ECtHR has noted “the freedom to

³⁸ OSCE/ODIHR-Venice Commission (CDL-AD(2010)031) Joint Opinion on the on the Public Assembly Act of the Republic of Serbia, of 18 October 2010, adopted by the Venice Commission at its 84th Plenary Session, par. 13

³⁹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 165

⁴⁰ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 159; see also recent ECtHR case law on this, e.g. *Faber v. Hungary*, application no. 40721/08, judgment of 24 July 2012, par 47. See also *Ezelin v. France*, application no. 11800/85, judgment of 26 April 1989, par. 53.

⁴¹ See ECtHR case law, *Solomou and Others v. Turkey*, application no. 36832/97, judgment of 24 June 2008, where a violation of Article 2 of the ECHR was found in relation to the shooting of an unarmed demonstrator. The Turkish government argued that the use of force by the Turkish-Cypriot police was justified under Article 2 par 2 of the ECHR. In rejecting this argument, however, the Court regarded it to be of critical importance that, despite the fact that some demonstrators were armed with iron bars, Mr. Solomou himself was not armed and was peaceful (par 78).

take part in a peaceful assembly is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself commit any reprehensible act on such an occasion”.⁴²

77. It is recommended to revise the provisions governing the termination and dispersal of assemblies, by stipulating that dispersal should be a measure of last resort and should take place only when there is an imminent threat of violence, and all other measures to meet this threat have been exhausted. Articles 6 and 14 should also be redrafted so that sporadic violence or acts of a single individual do not constitute a basis for the termination of the assembly or for it to be deemed unlawful.
78. Furthermore, Article 15 gives security forces the right to disperse the assembly by force, provided that those assembled are notified by virtue of sound and light signals and dispersal orders. According to the OSCE/ODIHR-Venice Commission Guidelines, the assembly organizers and participants should be clearly and audibly informed prior to any intervention by law-enforcement personnel. Participants should also be given reasonable time to disperse voluntarily⁴³. Although the prior warning procedure, as stipulated in Article 15, is welcomed, it should be highlighted that the use of light signals could potentially create a sense of confusion among the participants. It is recommended to replace such signals with means which are more appropriate and understandable for those gathered.

8. Use of Force

79. The inappropriate, excessive or unlawful use of force by law-enforcement authorities can violate fundamental rights and freedoms, destabilize police-community relationships and cause pervasive tension and unrest. According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, “law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.⁴⁴
80. It should be stressed that Chapter IV of the Law, which regulates the use of firearms, is, in its entirety, not in congruity with international standards. Generally, it should be mentioned in this context that provisions on the use of firearms are not usually part of legislation on assemblies, but rather part of general legislation (including by-laws) on law enforcement bodies and the exercise of their duties. The provisions contained therein are of particularly grave concern and it would be of utmost importance to delete or re-draft them entirely.

⁴² ECtHR caselaw, *Faber v. Hungary*, par 47, and *Ezelin v. France*, par 53.

⁴³ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 168.

⁴⁴ 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

81. Article 20 gives security staff the right to use firearms for the purpose of “defending places, buildings, positions and individuals under protection thereof” or when “facing resistance” that cannot, except by the use of firearms, be overcome. Security staff may also use firearms to “prevent a suspect from escaping after refusal thereof to obey repeated clearly audible orders to stop” and to force “a vehicle, ship, or any other means of transportation to stop after the drivers thereof refuse to respond to signals demanding such”.
82. As already stated, firearms shall not be used except when there is an imminent threat of death or serious injury. Protecting property, preventing escape or stopping a vehicle are not, in themselves, sufficient grounds for such use.
83. In cases where security forces are faced with assembled individuals that refuse to disperse, Article 21 instructs them how to react. In such cases the following procedures shall, in a progressive manner, be followed to disperse such assembly: 1. pouring water or chasing with riot batons; 2. spraying tear gas; 3. shooting up in the air to frighten the assembled individuals; 4. shooting above the head level; 5. shooting at the legs. According to Article 22, “in cases where the assembled individuals attempt, by the use of force, to reach the intended goals thereof after all methods of dispersal referred to in article 21 have been used, the security staff shall shoot directly thereat”.
84. In this context, it should be stressed that the use of firearms should in no way and under no circumstances be used as a dispersal technique, but rather as a means of self-defence of the respective security officer. Unless he/she, or a third individual are faced with a direct and imminent threat of death or serious injury, any use of firearms, regardless of whether it is shooting into the air, over people’s heads, or at persons’ legs, must be regarded as highly disproportionate reactions to an assembly. In particular, shooting at persons directly merely based on their refusal to disperse, is completely at odds with any international standards on freedom of assembly, and with the obligation of each State to protect the lives of individuals, stipulated, e.g., in Article 6 of the ICCPR. Should the authorities act according to the procedure stipulated in these provisions, there is a great risk of fatalities occurring during the process of dispersal. For this reason, it is strongly recommended to delete or extensively revise the entire Chapter IV, bearing in mind international human rights and proportionality standards.
85. The Law also does not prescribe any sanctions for the use of excessive force by the authorities. It should be noted that if such force used is not authorized by law, or more force was used than necessary, law-enforcement personnel should face civil and/or criminal liability, as well as disciplinary action. Law enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force. Where it is alleged that a person is physically injured by law-enforcement personnel or is deprived of his or her life, an effective, independent and prompt investigation must be conducted.⁴⁵

⁴⁵ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 182

9. Sanctions

86. While dealing with freedom of assembly, the issue of liability will inevitably be raised: the local executive authority, the police, the organizers of assemblies and participants of such assemblies may all face varying forms of liability. When it comes to liability arising after the event, the principle of proportionality should be adhered to. Any penalties specified in the law should allow for the imposition of minor sanctions where the offence concerned is of a minor nature since the way in which this Law is “applied in practice by the competent authorities might act as a deterrent for the population’s readiness to avail itself of the right to freedom of peaceful assembly”.⁴⁶
87. However, the sanctions contained in Chapter V are particularly excessive, unnecessarily punitive and clearly in breach of the proportionality principle. These provisions prescribe, *inter alia*, criminal liability for offences that an individual has not personally committed and prescribe lengthy imprisonment sentences for minor mistakes of an administrative nature. For instance, the organizers of assemblies or members of the governing body are not exempted from liability for failing to perform their responsibilities in cases where they have exhausted all reasonable efforts to do so, or for unlawful actions or misbehavior of concrete participants or third persons.
88. On the contrary, Chapter V does not differentiate between peaceful and violent demonstrators. Authorities are likewise not bound to distinguish between those who remain peaceful and those who actually engage in violence. As a result, organizers may be prosecuted for offenses committed by others without strong reliable evidence that they themselves were engaged in these violations. This type of liability is excessive and not in keeping with the internationally guaranteed right to freedom of assembly, or the principle of proportionality.⁴⁷
89. Article 23 envisages imprisonment for a term of up to three months for simply breaching the notification procedure, while Article 26 states that those who submit incomplete or inaccurate notices are subject to imprisonment for up to one year. These are particularly punitive measures for minor administrative oversights, which would clearly not meet the requirement of proportionality of sanctions.
90. Article 23 prescribes liability for members of the governing committee of the meeting, signatories of the notification, or organizers of an assembly for any violations committed during assemblies, punishable by 16 days to 3 months of imprisonment. This is a manifestly disproportionate response, since it implies that organizers are imputed to bear responsibility for acts committed by other individuals. This same Article also prescribes the same sanctions for those “who refuse to disperse after termination of the meeting”, which essentially allows the imprisonment of individuals merely for refusing to leave a certain location. While provisional arrest in such situations may be permissible for a period not exceeding 24 hours, imprisonment of up to 3 months is decidedly excessive for such cases.

⁴⁶ OSCE/ODIHR-Venice Commission Joint Opinion on the Law on Peaceful Assemblies of Ukraine, par. 47

⁴⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 111; see ECtHR case-law, *Faber v. Hungary*, par 47, and *Ezeline v. France*, par 53.

91. Article 24 states that those who hold a meeting which was prohibited (as it was deemed to be capable to undermine security or disturb public order by the authorities) under Article 7 or those who provide a venue for such a meeting without verifying the notice are subject to imprisonment for up to two years. Furthermore, Article 26 envisages imprisonment for up to one year for those who “participate in a demonstration for which no notice has been submitted or a demonstration which has been prohibited”. These measures are also grossly disproportionate. As highlighted previously, meetings in buildings should not generally require notification. Also, the ECtHR has made it clear that even assemblies for which notification was not provided should enjoy protection, as long as they are peaceful in nature.⁴⁸ Participation in an assembly which was not notified should not constitute a basis for criminal liability. Further, participants in unlawful assemblies should be exempted from liability when they had no prior knowledge that the assembly had not been authorized. Individual participants who did not commit any violent or otherwise illegal act cannot be prosecuted solely on the ground of participation in an illegal gathering.
92. Article 25 further penalizes “any direct call for holding a meeting in a public street” or making an “actual contribution to the holding of a meeting in public streets”. It is reiterated at this point that public streets are appropriate, and indeed the usual locations for peaceful assemblies. Thus, penalties should not be imposed for holding a properly notified assembly in such locations. Moreover, both of the above formulations are particularly vague and overbroad, giving the authorities an excessively wide scope for imposing sanctions.
93. Additionally, it is noted that Article 26 punishes the advertisement of an assembly before a notice has been submitted. This would appear to unduly restrict the freedom of speech. Furthermore, there does not seem to be a reason why organizers may not inform about an assembly that they are planning to hold. Also here, the presumption of the right to assemble freely should prevail; it is assumed that participants will also be informed of changes to the venue or other circumstances of the assembly.
94. Moreover, Article 29 calls for imprisonment, as well as the forfeiture of certain rights for the refusal to withdraw from an unlawful assembly. The forfeiture of rights for not having adhered to dispersal orders, or to any other provision of this or other legislation would certainly never constitute a proportionate response to wrongdoing. Likewise, imprisonment for refusing to withdraw from an unlawful assembly would also appear to be a quite harsh response, not in keeping with the gravity (or lack thereof) of the offence (in this context, see par 91 *supra*).
95. Article 31 imposes the penalty of imprisonment of up to one year for those who “incite, in direct manner, [...] unarmed unlawful assemblies, whether through public speeches, leaflets or posters”. This provision - read in conjunction with Article 13 which states that any “unarmed assembly that is capable of disturbing public order” is unlawful – in effect criminalizes the exercise of the right to freedom of expression, similarly to Article 26 (see par 93 *supra*). Dissemination of materials which encourage the participation in an assembly should not be

⁴⁸ See the ECtHR judgment of *Balcik v. Turkey* (2007), par 52.

unlawful. Only individuals who use hate speech or incite to the use of violence should be held accountable and measures should be taken only against them and not against the whole assembly.

96. Overall, the entire Chapter V provides for many inherently repressive, disproportionate and punitive sanctions which grossly inhibit the enjoyment of the legitimate exercise of the right to freedom of peaceful assembly. Taken together, they fundamentally suppress the enjoyment of this fundamental right. It is strongly advised to ensure that any new law contains completely redrafted provisions on sanctions, that will be compatible with human rights standards and full respect the principle of proportionality. Additionally, such provisions should envisage *in personam* liability.

[END OF TEXT]

Annex 1:

**Act No. 69-4 of January 24th 1969, on the Regulation of Public Meetings, Marches, Rallies,
Demonstrations and Assemblages**

In the Name of the People,

After approval of the Council of Representatives, We, Habib Bourguiba, President of the Republic of Tunisia Have hereby promulgated the following Act:

Chapter I

Public Meetings

Article I - Public meetings shall be made free and may be held without prior authorization, in compliance with the provisions of the present Act.

Article 2 - Public meetings shall be preceded by notices that specify the place, date and time thereof, with the exception of election meetings which shall be subject to laws applicable to elections.

Notices shall be signed by a minimum of two individuals who are entitled to the full enjoyment of full civil rights and the domicile thereof lies in the vicinity of the meeting place. The two signatories shall include personal identification, professions and place of residence thereof.

Notices with acknowledgment of receipt shall, to the governorate or municipality, be submitted within a minimum period of three days and a maximum period of fifteen days prior to holding the meeting, indicating the date and time of reception thereof.

As for the capital city, notices with the aforementioned acknowledgment of receipt shall, to the Department of Homeland Security, be submitted within the time limits stated hereinabove.

Article 3 - Notices shall specify the theme and purpose of the meetings.

Article 4 - Public meetings may not extend past midnight, except in districts where public places remain open to the public ahead of such time, and in such districts meetings may run until the designated closing hour thereof.

Article 5 – Each public meeting shall form a governing committee therefor, comprising a minimum of three persons, to maintain public order, prevent violations of the law, maintain the structure of the meeting as indicated in the submitted notice, and prohibit speeches that are capable of disturbing public security or good morals or incite the audience thereof to commit unlawful actions that are categorized as felonies or misdemeanors.

In cases where signatories of the notice have not appointed a governing committee before the meeting or cases where the appointed members do not appear at the meeting time, such committee shall be elected by the individuals attending the meeting.

Article 6 - Security authorities shall appoint representatives to attend public meetings and such representatives shall have the right to terminate any meeting in cases where:

1. the governing committee requests that the meeting be terminated;

2. a quarrel or violent assault erupts therein;

Upon termination of a meeting, the assembled individuals shall, at the first request made to them, disperse.

Article 7 - the competent authorities may refuse to authorise meetings that are capable of undermining security or disturbing public order, and in such cases organisers shall, by the security staff, be notified of the prohibition.

Organisers of unauthorised meetings may appeal to the Secretary General of the Interior Ministry whose decision thereon shall be deemed final.

Article 8 - Meetings may not be held in public streets.

Chapter II

Marches, Rallies and Demonstrations in Public streets

Article 9 - Marches, rallies, demonstrations and all other forms of assemblage in public streets shall be subject to prior notices.

Article 10 – Prior notices shall, in compliance with the provisions of Article 2 of the present Law, be submitted specifying the gathering points and marching routes for the intended activity, and flags or banners which will be held, if applicable.

Article 11 - Armed marches, rallies, and demonstrations are hereby prohibited and participants therein shall be subject to the provisions of the present Law on unlawful assemblage.

Article 12 - Competent authorities may prohibit any public assemblage that is capable of endangering public security or disturbing public order, and in such cases organizers shall, by the security staff, be notified of the prohibition.

Chapter III

Unlawful Assemblage in Public Streets

Article 13 – The following forms of assemblage may not be held in public streets or public squares:

1. armed assemblage; and
2. unarmed assemblage that are capable of disturbing public order.

Article 14 – An assemblage shall be deemed armed in the following cases:

1. one of the assembled individuals holds a weapon in a visible manner,
2. some of the assembled individuals hold, in an visible or concealed manner, weapons or other tools that have been used as weapons or intended to be used as such.

Article 15 – the assembled individuals shall, by the security staff, be dispersed by force, provided that a representative from the competent authority, acting in the capacity of Judicial Police Officer and wearing the prescribed uniform or the prescribed service insignia, follows the procedures hereinafter stated prior to the use of force:

1. notify the assembled individuals of the presence thereof using sound or light signals that are capable of ensuring effective notification;
2. give dispersal orders to the assembled individuals using a megaphone, or sound or light signals that are capable of ensuring effective notification;
3. repeat the dispersal order for a second time using the same means of notification.

Article 16 - Representative of the competent authority, referred to in article 15 of the present Act shall notify the assembled individuals of the presence thereof using the following procedures:

1. utter the following phrases through a megaphone : “comply with the law - disperse”.
1. flash a red light torch at the assembled individuals or move such in a circular motion.

Article 17 - The judicial police officer shall give the first dispersal order using either of the following sound or light signals:

2. utter the following phrases through megaphone : “first warning - disperse otherwise the assemblage will be dispersed by force”.
3. flash a red light torch at the assembled individuals or move such in a circular motion.

Article 18 -The second and last dispersal order shall be given using either of the following sound or light signals:

1. utter the following phrases through megaphone : “last warning - disperse otherwise the assemblage will be dispersed by force”.
4. flash a red light torch at the assembled individuals or move such in a circular motion.

Article 19 - In cases where the forceful dispersal of the assembled individuals requires the use of arms, the second order shall be repeated twice using either of the aforementioned sound or light signals.

Chapter IV

Use of Arms

Article 20 – Without prejudice to the provisions for self-defence specified in Articles 39, 40 and 42 of the Criminal Code, fire arms may not be used except in such cases where:

1. the security staff will not, without the use of fire arms, be capable of defending places, buildings, positions and individuals under protection thereof, or facing resistance that cannot, except by the use of such, be overcome.
2. the security staff will not, without the use of fire arms, be capable of preventing a suspect from escaping after refusal thereof to obey repeated clearly audible orders to stop;
3. the security staff will not, without the use of fire arms, be capable of forcing a vehicle, ship, or any other means of transportation to stop after the drivers thereof refuses to respond to signals demanding such;

Article 21 – in cases where the security staff deal with assembled individuals that refuse to disperse after having received the aforesaid warnings, the following procedures shall, in a progressive manner, be followed to disperse such assemblage:

1. pouring water or chasing with riot batons;
2. spraying tear gas;
3. shooting up in the air to frighten the assembled individuals;
4. shooting above the head level;
5. shooting at the legs.

Article 22 – In cases where the assembled individuals attempt, by the use of force, to reach the intended goals thereof after all methods of dispersal referred to in article 21 have been used, the security staff shall shoot directly thereat.

Chapter V

Punitive Measures

Article 23 - Violations of the provisions of Articles 2 and 5 of the present Act shall be punished by imprisonment for a term of sixteen days to three months, without prejudice to criminal prosecutions for felonies or misdemeanors that can be committed in the course of the assemblage.

Member of the governing committee of the meeting shall be held accountable for violations committed in connection therewith, and in cases where such a committee has not been constituted, signatories of the notice shall be held accountable, and in cases where such a notice has not been issued, the individuals attending the meeting shall be held accountable.

The same penalties shall apply to individuals who refuse to disperse after termination of the meeting.

Article 24 - A pecuniary penalty of TND 10 at minimum and a TND 200 at maximum and imprisonment for minimum term of one month and a maximum term of two years shall be imposed on individuals who hold a meeting prohibited under Article 7 of the present Act, and the same shall be imposed on individuals who provide a venue for such a meeting without verifying that the required notice has been submitted as per the present Act.

In cases where the aforementioned violations are repeated, penalties shall be doubled, and a prohibition of residence may be imposed for a minimum period of five years and a maximum period of ten years.

Article 25 – Individuals who makes actual contribution to the holding of a meeting in public streets shall be punished with imprisonment for a minimum term of fifteen days and a maximum term of six months and a pecuniary penalty of TND 10 at minimum and TND 300 at maximum , or by either of the two penalties.

Any direct call for holding a meeting in a public street shall be punishable by the same penalties, whether or not positive responses thereto have been received.

Article 26 – A pecuniary penalty of TND 12 at minimum and TND 120 at maximum and imprisonment for a minimum term of three months and a maximum term of a year shall be imposed on individuals who:

1. submit incomplete or inaccurate notices that provide misleading information about circumstances under which the meeting or the demonstration will be held, or individuals who call for participation in a meeting either before the notice thereabout has been submitted or after the meeting has been prohibited.
2. participate in a demonstration for which no notice has been submitted or a demonstration which has been prohibited. In cases where such violations are repeated, the provisions of Paragraph 2 of Article 24 shall apply.

Article 27 – Individuals who participate in a hostile demonstration in public streets or in public places shall be punished with imprisonment for a minimum term of six months and a maximum term of two years and a pecuniary penalty of TND 24 at minimum and TND 240 at a maximum , or by either of the two penalties. Hostile demonstrations shall be deemed to mean all demonstrations that involve shouting, chanting, and the use of slogans, banners, posters or leaflets for the purpose of inciting into actions punishable under Articles 60 to 80 of the Criminal Code.

Article 28 – Without excluding stricter penalties that may be deemed necessary, imprisonment for a minimum term of six months and a maximum term of two years and a pecuniary penalty of TND 24 at minimum and TND 240 at maximum shall be imposed on individuals who carry a visible or invisible weapons or tools that are capable of endangering public security during a demonstration or a march or an assemblage or a meeting in a public street or on the occasion thereof.

In cases where the aforementioned violations are repeated, the provisions of Paragraph 2 of Article 24 shall apply.

Article 29 – Imprisonment penalty for a minimum term of one month and a maximum term of one year shall be imposed on unarmed individuals who refuse to withdraw from an unlawful assemblage, whether armed or not, after the first warning has been made, and imprisonment for a minimum term of six months and a maximum term of three years shall be imposed on unarmed individuals who continue to participate in an unarmed unlawful assemblage until dispersal thereof has taken place by force.

Individuals punished under the provisions of the present Article may be punished by forfeiture, for a minimum period of one year and a maximum period of five years, of some or all of the rights established by Paragraph 6 of Article 5 of the Criminal Code.

Article 30 - Without excluding stricter penalties that may be deemed necessary, imprisonment penalty for a minimum term of six months and a maximum term of five years shall be imposed on individuals who carry, during a public assemblage, a visible or concealed weapon, and individuals who carry, as a weapon, visible or concealed tools of any kind, and imprisonment for a minimum term of one year and a maximum term of ten years shall be imposed on individuals who continue to participate in an unarmed unlawful assemblage until dispersal thereof has taken place by force.

Individuals punished in accordance with the provisions of the present Article may be subject to prohibition of residence and forfeiture of the rights specified in Paragraph 6 of Article 5 of the Criminal Code, for a minimum term of five years and a maximum term of ten years.

Article 31 - An imprisonment penalty for a minimum term of one month and a maximum term of one year shall be imposed on individuals who incite, in direct manner, into unarmed unlawful assemblage, whether through public speeches, leaflets or posters, in cases where an action results from such incitement, otherwise the penalty shall be imprisonment for a minimum term of one month and a maximum term of three months. Direct incitement into armed unlawful assemblage by the same methods shall be punishable by imprisonment for a term of six months to two years in cases where it results in an action, otherwise, the penalty shall be imprisonment for a minimum term of one month a maximum term of six months.

Article 32 – Initiating prosecution for misdemeanors relating to public gatherings shall not preclude prosecution for misdemeanors committed individually in the course thereof.

Individuals who continue to participate in an unlawful assemblage, after receiving the second warning from the representative of the competent authority, shall be liable for reparation for the damage caused by such assemblage.

Article 33 – The provisions of Article 53 of the Criminal Code shall not apply to violations specified in the present Act.

Article 34 - All preceding provisions that are deemed inconsistent with the present Act shall be hereby repealed, in particular the provisions of Order of April 5th, 1905 on gatherings in public streets, Order of May 26th 1936 on the regulation of marches, demonstrations and assemblage in public streets and Order of August 6th, 1936 on public meetings.

The present Act shall be published in the Official Gazette of the Republic of Tunisia and shall enter into force on the date of publication.

Issued on January 24th, 1969

Carthage Palace

President of the Republic of Tunisia

Habib Bourguiba