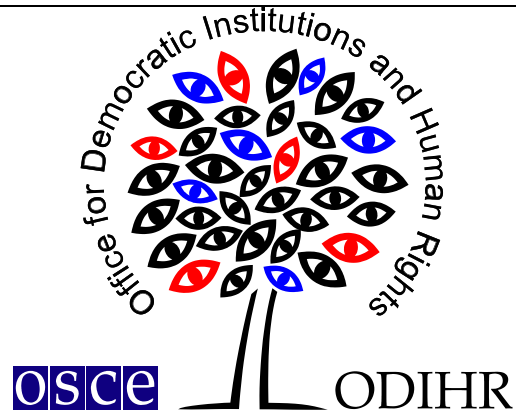


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OPINION
ON THE DRAFT ORGANIC LAW ON THE RIGHT TO
PEACEFUL ASSEMBLY OF TUNISIA

Based on an unofficial English translation of the Law

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I. INTRODUCTION

1. *As part of an OSCE/ODIHR project on consolidating and promoting democratic structures in Tunisia and among OSCE Mediterranean Partners for Co-operation, the OSCE/ODIHR offered to Tunisian authorities to review their existing legislation for compliance with international standards. This project is part of a longer-term OSCE/ODIHR effort to support OSCE Mediterranean Partners for Co-operation.*
2. *In 2012, the OSCE/ODIHR had reviewed the 1969 Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies for its compliance with international freedom of assembly standards.*
3. *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 representatives of the European Commission for Democracy through Law (hereinafter “the Venice Commission”). At this meeting, a representative from the Ministry of Interior provided the OSCE/ODIHR delegation with the draft Organic Law on the Right to Peaceful Assembly (hereinafter “the draft Law”), and the draft Decree on the Rules of Enforcement of the Law on the Right to Peaceful Assembly, and asked the OSCE/ODIHR to review the draft Law.*
4. *On 19 February 2013, the Director of the OSCE/ODIHR sent a letter to the Director of Multilateral Relations of the Ministry of Interior of Tunisia, informing the latter that the OSCE/ODIHR would proceed to review the draft Law as part of its new project in support of OSCE Mediterranean Partners for Cooperation, initiated in 2013.*
5. *The current Opinion was prepared based on the above request for review, on the basis of comments by Mr. David Goldberger, Mr. Neil Jarman, 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. This Opinion has also been consulted with individual experts from the Venice Commission.*

II. SCOPE OF THE REVIEW

6. The scope of this Opinion covers the draft Organic Law on the Right to Peaceful Assembly (hereinafter “the draft Law”). Thus limited, the Opinion does not constitute a full and comprehensive review of all existing legislation pertaining to freedom of assembly in Tunisia.
7. The Opinion assesses and analyzes the compliance of the draft Law with international instruments ratified by Tunisia and in light of regional standards and practice found in OSCE commitments, 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”). It

also bears extensive reference to OSCE/ODIHR's Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies of 21 December 2012 (hereinafter "ODIHR's 2012 Opinion").

8. This Opinion is based on an unofficial translation of the draft Law and relevant supplementary laws and documents. Errors from translation may result.
9. 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

10. As previously noted in ODIHR's 2012 Opinion, freedom of peaceful assembly is a fundamental human right which rests at the core of any functioning democratic system. The right to freedom of peaceful assembly covers all types of gatherings provided they are peaceful, including spontaneous assemblies, and simultaneous and counterdemonstrations. This right may be restricted, but such restrictions must be prescribed by law, proportionate and necessary in a democratic society to protect other vested interests, such as, e.g., national security, the public order or safety, or the rights and freedoms of others. The above principles only apply to peaceful assemblies.
11. Generally, domestic legislation should offer broad protection to all assemblies that are conducted peacefully, and should reflect a presumption in favour of the holding of such assemblies. States are under the positive obligation to guarantee the effective exercise of the freedom of assembly. Thus, even spontaneous assemblies should be permitted, if they are peaceful in nature. Isolated incidents of violence that occur during an assembly shall, as far as possible, be dealt with on an individual basis, and shall ideally not influence the continuation of an assembly. Termination and dispersal of an assembly shall only be a manner of last resort, and shall only take place if absolutely necessary to protect other rights and interests. In this context, the application of the proportionality principle is key. Given the importance of the right to assemble within "sight and sound" of the intended audience, the ban, termination and/or dispersal of an assembly will usually not be justified merely due to its vicinity to a public institution, the temporary interruption of traffic or commercial trade, or loud noises. If assemblies are peaceful in nature, they may be held even without prior notification, unless other important protected interests stand against this.
12. Bearing the above in mind, it should be highlighted that the draft Law in many ways attempts to adhere to international principles, which is regarded favourably. At the same time, a number of issues raised in ODIHR's 2012 Opinion are also present in this draft Law, which, in these respects, would benefit from some revision. To ensure conformity with relevant international standards on the freedom of peaceful assembly, it is, therefore, recommended as follows:

1. Key Recommendations:

- A. to assess the need and usefulness of separate definitions for different types of assemblies in Articles 3 and 25 of the draft Law, and consider replacing them with a general, wider definition of assemblies covering all types of public meetings or gatherings, in line with international freedom of assembly standards; [pars 26-27, 29-30, 33-35 and 69]
- B. to reconsider list of public meetings omitted from the scope of the law under Articles 4 and 5 of the draft Law, and adopt a more differentiated approach to which types of public meetings or assemblies shall be covered by the draft Law; [pars 36-37]
- C. to explicitly introduce the notions of spontaneous, simultaneous and counter-assemblies to the draft Law and exempt these from the prior notification requirement; [pars 38, 55-57, and 82]
- D. to remove from Articles 6 and 14 of the draft Law the requirement for a notification of an assembly or demonstration to be signed by three individuals or an organizing committee, and the obligation to provide their profession and identity card number in the notice, and clarify the term “chosen domicile in the place of the assembly in Article 6; [pars 44-45, 47 and 48]
- E. to substantially revise all provisions in the draft Law that amount to blanket prohibitions, including those extensively restricting the dates, times and locations of peaceful assemblies and demonstrations; [pars 49, 54, 57, 61, 67-69, and 74-80]
- F. to reassess the need to include “motives and objectives” and the texts of slogans to be used in the notification of a demonstration in Articles 14 and 15 of the draft Law; [pars 50 and 53]
- G. to reconsider the need and usefulness of three-person organizing committees for assemblies under Article 11 of the draft Law, and ideally delete this requirement; [pars 62, 63 and 87]
- H. to redraft provisions on the termination and dispersal of assemblies and demonstrations to ensure that this will only happen as a measure of last resort, where necessary to protect the rights of others and prevent a further deterioration of public order, but not for failure to adhere to the notification procedure, or due to the type of assembly (provided it is peaceful in nature); [pars 94, 95 and 108]
- I. to outline in greater detail the situations where the use of force will be considered justified under Articles 22, 27 and 29, in line with relevant international standards; [pars 98-99 and 103]
- J. to specify in Articles 28 and 29 that firearms shall never be used to disperse crowds, and shall only be used in case of immediate threat to life, and ensure that there are clear police protocols for the use of all forms of weapons, in particular potentially lethal ones; [pars 101, 103 and 106]

- K. to state clearly in the draft Decree that the means of confrontation described therein shall not be used against peaceful crowds, and that shock devices shall never be used to disperse crowds; [par 106]
- L. to prescribe in the draft Law, the right to a timely and effective administrative and, in particular, judicial remedy which would allow individuals to appeal against the substance of any restrictions or prohibitions of any assembly; [pars 114-115]
- M. to prescribe legal responsibility for all public officials, including law-enforcement officials, for the unlawful prohibition or dissolution of an assembly, or the unlawful and excessive use of force; [pars 70, 96, and 109-110]
- N. to extensively revise Chapter Five on sanctions by replacing the existing provisions with a sanctions mechanism that is based on the principle of legality and proportionality; [pars 117-124]

2. Additional Recommendations:

- O. to clearly spell out the key principles underpinning the freedom of peaceful assembly as a key human right in a preamble or separate provision in the draft Law, in particular the presumption in favour of holding assemblies, and the imperative of non-discrimination; [par 18];
- P. to specify in the draft Law that assemblies are also permitted in private locations that are not open to the public; [par 28]
- Q. to ensure that all definitions of key terms used in the draft Law are situated in Chapter 1 on general provisions; [par 31]
- R. to include changes to the notification process for assemblies on private property and to certain other requirements provided for in the draft Law; [par 43]
- S. to allow notifications to be submitted by mail and electronic mail, and clarify the need for organizers to provide receipt of the notification to security officers upon request under Article 15 of the draft Law; [par 46]
- T. to delete the 10-day maximum notification periods from Articles 7 and 15 of the draft Law, or state that they are merely indicative; [pars 51-52]
- U. to adopt a narrow interpretation of impermissible weapon-like objects during assemblies under Article 12 of the draft Law, focusing more on the violent use of objects than on the types of objects themselves; [par 64]
- V. to clarify and revise the reasons for and modalities by which state officials may postpone the starting time of demonstrations under Article 17 of the draft Law; [par 81]
- W. to reassess the need for explicit state authorization to use vehicles during demonstrations; [par 83]

- X. to explicitly state in the draft Law that organizers shall not be held liable for crimes committed by others during assemblies; [par 88]
- Y. to ensure in Article 20 and other relevant provisions that the responsibility of law enforcement officials applies to all types of assemblies; [par 89]
- Z. to reconsider the use of light signals as a means of dispersal under Article 28 of the draft Law; [par 102] and
- AA. to specify the principles surrounding the use of force in the draft Law, while laying down administrative and logistical details in a by-law, which shall be published, and accessible to the public. [par 105]

IV. ANALYSIS OF THE LAW

1. International Freedom of Assembly Standards

13. The right to freedom of peaceful assembly is enshrined in a number of international treaties. This Opinion is based on international human rights instruments, such as the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”)¹, which in its Article 21 guarantees the right to peaceful assembly. According to Article 21, 2nd sentence, this right may only be restricted in conformity with the law, and if 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.
14. This Opinion furthermore refers to 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.² Moreover, it draws on the extensive jurisprudence of the European Court of Human Rights (hereinafter “the ECtHR”), and OSCE commitments related to freedom of peaceful assembly and demonstration³.

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’.

²The 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’.

³ See the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par 9(2).

15. In addition to the above, the 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, e.g. the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly.⁴

2. Purpose of the Draft Law

16. In ODIHR's 2012 Opinion⁵, it was stressed that national legislation governing freedom of peaceful assembly should clearly articulate the main principles upon which the protection of this right should be based.
17. Article 1 of the draft Law sets out the procedures for the exercise of the right to hold peaceful assemblies in line with the rules and principles spelled out in international instruments pertaining to civil and political human rights. Furthermore, Article 2 of the draft Law states that peaceful assemblies are free and held without prior authorization.
18. The reference to human rights is welcome, as is the statement that assemblies shall be free, and do not require prior authorization. Additionally, it would be preferable if the draft Law would include a preamble or separate provision outlining key principles surrounding the right to peaceful assembly. More specifically, the draft Law should state clearly that the right to organize and participate in a peaceful assembly is a fundamental right. Other principles which should also be included comprise the presumption in favour of holding assemblies, the state's positive obligation to protect peaceful assembly, as well as the more general principles of legality, proportionality, non-discrimination (including, but not limited to, the full and equal enjoyment of the right by both men and women, by different religious groups, also by children⁶ and legally incapacitated persons⁷) and good administration⁸.
19. In relation to the non-discrimination principle, it is also once more reiterated that children have legitimate claims and interests which deserve to be safeguarded,

⁴The 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

⁵ See the 2012 OSCE/ODIHR Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, par 27

⁶ 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 assembly. This Convention was ratified by the Republic of Tunisia on 30 January 1992.

⁷ OSCE/ODIHR-Venice Commission Joint Opinion (CDL-AD(2010)033) on the Law on Peaceful Assemblies of Ukraine, par. 29

⁸ See the 2012 OSCE/ODIHR Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, par 27

including, specifically, the right to assemble peacefully.⁹ 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.

3. Definitions

20. ODIHR's 2012 Opinion¹⁰ underscored that a law pertaining to freedom of peaceful assembly should comprise a clear, general definition of an assembly. To be consistent with international standards, such definition should be supplemented by definitions of individual types of public events, but only if these require differential regulatory treatment.¹¹
21. 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 purpose¹².
22. In this context, as previously noted in ODIHR's 2012 Opinion, lengthy, purportedly exhaustive, lists of different types of assembly should be avoided. Any definitions of individual types of assemblies or attempts to categorize them separately from a general definition of peaceful assembly could 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.
23. The draft Law introduces two new definitions of "peaceful public assemblies" and "peaceful demonstrations" respectively by virtue of Article 3. The inclusion of definitions *per se* marks an improvement to the current Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies (hereinafter "the Act on Public Meetings"), which does not contain a specific provision with relevant definitions. At the same time, these definitions raise a number of issues that bear further reflection.
24. According to Article 3 par 1, "peaceful public assemblies" are peaceful gatherings of persons that take place "in an organized and agreed-on manner" and that do not constitute a threat to public security. They shall be limited in time, may invite the public to join, and are held in public places, or in private places open to the public. Peaceful public assemblies shall address issues from a pre-set agenda.
25. Par 2 of Article 3, on the other hand, regulates "peaceful demonstrations" as constituting any use of public streets or squares by a group of persons to assemble in a specific place, or to march peacefully, for a limited period of time, based on

⁹ See 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 to children the right to freedom of assembly. The Convention was ratified by the Republic of Tunisia on 30 January 1992.

¹⁰ See the 2012 OSCE/ODIHR Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, pars 21-22

¹¹ 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.

¹² OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 1.2

- an agreement within the group. According to this provision, peaceful demonstrations have the purpose of expressing, collectively and publicly, “a commonly shared will or opinion”, either through mere presence, or through “raising and crying out slogans”.
26. At the outset, it should be noted that the differentiation between peaceful public assemblies and peaceful demonstrations is unclear (though this may also be due to unclear translation). Both terms seem to indicate the peaceful meeting or gathering of individuals in a public place, with the difference that peaceful public assemblies are held in an “organized and pre-agreed on manner”, but may invite the public to join. Peaceful demonstrations, on the other hand, have the purpose of expressing “a commonly shared will or opinion”. It is not clear why it would be necessary to differentiate between assemblies and demonstrations in this manner (see pars 34-35 *infra*).
 27. It is further not apparent what type of prior agreement Article 3 par 1 refers to, in particular whether this relates to an agreement between organizers of the assembly, or between the organizers and public authorities. In case it is the latter, then this could well lead to an undue influence by public authorities on the topic and modalities of an assembly. As for the nature of such assemblies, it is not clear how the lack of a threat to public security will be established; generally, if organizers of assemblies profess their peaceful intentions, assemblies should always be considered legitimate. The ability to invite the public to join the assembly may imply that the public is only permitted to take part upon such invitation; should Article 3 par 1 merely intend that assemblies are generally open to the public, then this should be stated clearly.
 28. Additionally, it is noted that while under Article 3 par 1, peaceful public assemblies may be held in private places open to the public, this provision does not explicitly permit assemblies in private places not open to the public (unless this presumption is due to erroneous translation). If owners of such locations permit, or even organize assemblies, then it should also be permissible to hold them in closed private spaces.¹³ The draft Law should be enhanced accordingly.
 29. Furthermore, this provision also states that assemblies shall address issues included in a pre-set agenda; such requirement would appear to limit the contents of an assembly to a pre-stated subject, and could, if applied strictly, preclude other topics from being addressed at such events. This would be in direct contravention to the essence of the right to freedom of peaceful assembly, which embodies the right to state opinions publicly, and is as thus closely linked to the freedom of expression. Both of the above aspects of Article 3 par 1 of the draft Law should thus be revised, to ensure full compliance with Article 21 of the ICCPR.
 30. Under Article 3 par 2, peaceful demonstrations aim to express a common purpose or opinion; at the same time, the ability to invite the public to join demonstrations is not expressly mentioned, nor is it apparently possible to hold such

¹³ The right to freedom of assembly has also been held to cover private property. This point was reiterated in last year’s ECtHR judgment in the case of *Kakabadze and Others v. Georgia*, application no. 1484/07, of 2 October 2012, par 84.

- demonstrations in private places open to the public. The reason for this difference to the definition of assemblies under Article 3 par 1 is not clear and should be revisited.
31. While Chapter 2 deals with peaceful public assemblies, and Chapter 3 deals with peaceful demonstrations, Chapter 4 concerns “gatherings”, which are essentially public assemblies that “may lead to disruption of public security”. It is noted that the definition of gatherings is laid down in Chapter 4, and not in Chapter 1 under “general provisions”, which would appear to be structurally inconsistent; ideally, definitions of different types of assemblies should be contained in the same provision, or at least under the same chapter of the draft Law.
 32. Defining certain forms of assemblies based on whether or not they may lead to the disruption of public security would appear to be difficult in practice, as it is not always possible to assess this prior to an event. Such differentiation is, however, highly relevant in the context of the draft Law, since Article 25 contains a blanket prohibition of all gatherings. Additionally, it should be noted that the formulation “disrupting public security” is quite vague and, given that the draft Law does not explicitly define it, open to wide, possibly arbitrary application. This could lead to quite restrictive practices, whereby numerous assemblies are prohibited based on the assumption that they may “disrupt public security”.
 33. Should this term merely refer to potentially violent assemblies, then the separate definition of “gathering” would not appear to be necessary. Rather, a provision could be introduced indicating clearly that the draft Law expressly protects and covers only peaceful assemblies.
 34. The separate regulation of different forms of gatherings/assemblies in the draft Law could well lead to confusion as to what type of event shall, in practice, constitute a gathering, public assembly, or demonstration. This differentiation will not always be possible - initially static assemblies may turn into a moving march, or “demonstration”, while assemblies that appear completely peaceful at the outset may well turn into assemblies that threaten public safety. The unclear distinction in Article 3 of the draft Law between assemblies and demonstrations may serve to enhance such confusion.
 35. Furthermore, the need for such differentiation is also not apparent, especially as many provisions of the draft Law concerning the notification of assemblies/demonstration or their dissolution are quite similar. It would thus be simpler, and clearer, to adopt a wide definition of assemblies, which shall cover any intentional and temporary presence of a number of individuals in a public place for a common expressive purpose (this aspect should be interpreted quite broadly), static or moving, regardless of the level of prior organization, details of the purpose, or possible effects on public security. Any such assembly that is peaceful in nature should be protected by the draft Law, and by public authorities as part of their obligations under Article 21 of the ICCPR. This principle is also reflected in the OSCE/ODIHR-Venice Commission Guidelines, which state that “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

- exhaustive, and domestic legislation should frame the types of assembly to be protected as broadly as possible”.¹⁴
36. In this context, it is noted that Article 4 of the draft Law excludes meetings convened by administrative authorities, non-electoral meetings of political parties, meetings of organizations or associations with their members, and general assemblies of commercial businesses. Article 5 of the draft Law, on the other hand, omits processions, parades and other events organized as part of the practice of local customs and traditions and “legitimate sit-ins” from the protective scope of the draft Law. While regular indoor sessions of political parties, organizations and other associations will usually not constitute assemblies, the public holding of such meetings could very well turn into a public assembly, and should then be treated as such. Further, the difference between election and “non-election” meetings of political parties is not clear.
37. At the same time, processions, parades and other events organized as part of the practice of local customs and traditions may well also have a common expressive purpose. They should thus not be automatically excluded from the scope of the draft Law, especially since such events may also require the same type of policing and organization as others currently covered by the scope of the draft Law. As for sit-ins, these usually have a common expressive purpose, and should, especially if they take place in publicly accessible areas, not be omitted from the scope of the draft Law.
38. Moreover, as pointed out in ODIHR’s 2012 Opinion, the draft Law does not protect, or even envisage certain forms of assemblies such as spontaneous assemblies, simultaneous assemblies and counter-demonstrations. As also these types of assemblies fall under the protection of peaceful assembly stipulated in Article 21 of the ICCPR, it would be most beneficial for the draft Law if such forms of assemblies were explicitly introduced therein, complete with definitions.
39. With regard to 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 ineffective if the legally established notification period were adhered to¹⁵. Such “spontaneous assemblies” should be protected and facilitated by the authorities as long as they are peaceful in nature¹⁶ (see pars 56-58 *infra*).

4. Prior Notification

40. 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

¹⁴ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, par 17.

¹⁵ *Ibid.*, par 126. See also the ECtHR judgment in the case of *Bukta and Others v. Hungary*, application no. 25691/04, of 17 July 2007, par 35.

¹⁶ See OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, par 131; 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

- compatible with the permitted limitations laid down in Article 21 of the ICCPR.¹⁷ Nonetheless, international human rights law does not require domestic legislation to foresee advance notification regarding all assemblies. Many types of assemblies may not need to be regulated at all, in particular if due to their size or location, they are unlikely to impact on the public or the rights and freedoms of others. Indeed, prior notification would mainly appear to be required where it is essential to enable the state to put in place necessary arrangements to facilitate the right to freedom of assembly and protect the rights of others.
41. 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 to request for permission.¹⁸ It is of vital importance that the notification process does not constitute a *de facto* authorization process.
 42. This principle is reflected in Article 2 of the draft Law, which states that public assemblies and peaceful demonstrations are held without prior authorization. The requirement of submitting a written notification is laid down in Article 6 of the draft Law, which states that such notification shall include information on the place, subject, date and time of an assembly.
 43. According to Article 3 par 1 of the draft Law, public assemblies may also occur in private places open to the public. The private ownership of such locations may require variations to the usual notification process (e.g., the owner would perhaps need to be consulted). This should be reflected in Article 6 of the draft Law.
 44. Article 6 of the draft Law requires that a written notification should be submitted “by at least three of its organizers”. The notification shall specify the place, subject, date and time of the assembly, along with the full names, professions, titles, nationality, identity card number and date, and their chosen domicile in the place of the assembly. 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 assembly¹⁹. In ODIHR’s 2012 Opinion²⁰, it was pointed out that the requirement of two signatures contained in the Act on Public Meetings appeared to be overly bureaucratic, and that the signature of one of the organizers should suffice. This applies to an even greater extent to the requirement of at least three signatures set out in Article 6 of the draft Law. Furthermore, the disclosure of the organizers’ professions and identity card

¹⁷ 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>.

¹⁸ See the ECtHR judgment in the case of *Balçık and Others v. Turkey*, application no. 25/02, of 29 November 2007, par 49. See also OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, par. 118

¹⁹ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 4.1, and Explanatory Notes, par 116.

²⁰ See the 2012 OSCE/ODIHR Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, pars 34-36

numbers would appear to have no bearing on the holding of an assembly, and should thus not be necessary.

45. Additionally, it is not clear what is meant by indications of the organizers' "chosen domicile in the place of the assembly". Should this imply that only persons living in the vicinity of a certain assembly location may submit such notification, as stated in Article 2 of the Act on Public Meetings, then this would constitute a grave interference with every person's right to organize and participate in an assembly, as laid down in Article 21 of the ICCPR, and with the general non-discrimination principle laid down in Article 26 of the ICCPR.²¹ If, on the other hand, this implies the establishment of temporary "organizers' headquarters" in a certain location at an assembly, then it is questionable whether such fixed location is really necessary, or even feasible and useful, given the need for organizers to oversee assemblies properly, and the possibilities of using modern mobile telephony.
46. It is noted that Article 7 appears to preclude submitting notifications by mail or electronic mail (as the receipt shall be "handed" to the notifiers) – this would greatly facilitate procedures for organizers of assemblies, and should be included in the draft Law. Furthermore, it is not clear why organizers should provide the receipt presented to them by the competent authority or notary upon request by security officials during the course of assemblies. Given the presumption in favour of holding peaceful assemblies, the failure to produce such a receipt should under no conditions lead to the termination and/or dispersal of a peaceful assembly.
47. Overall, the above modalities in the draft Law for submitting a notification for a public peaceful assembly still appear to be quite bureaucratic, and raise concerns with regard to pertinent human rights standards. It is recommended to re-discuss the need for such restrictions, and amend the draft Law accordingly.
48. Most of the above-mentioned issues also apply in relation to Articles 14 and 15 specifying the notification procedure for "peaceful demonstrations", which also requires a written notification specifying the location, start and end times, and itinerary, signed by the members of an "organizing committee", who shall also indicate the same personal details as set out in Article 6 in the case of notifications pertaining to public assemblies. The nature of the organizing committee is not clear, unless it is the same type of three-person committee that Article 11 of the draft Law requires organizers to set up in the case of public peaceful assemblies.
49. It is noted that under Article 14 of the draft Law, the itinerary of a demonstration may not go beyond the concerned Governate, which would appear to constitute an unnecessary blanket restriction to the route of a moving assembly.
50. Furthermore, the requirement of also including the "motives and objectives" of a planned demonstration in the notification would appear to go beyond the mere mention of the subject, as required in the case of an assembly. It is questionable

²¹ See the 2012 OSCE/ODIHR Opinion on the Act on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, par 36.

whether the above requirements are really necessary; a re-assessment of these aspects of the notification process may be advisable.

51. Under Articles 7 and 15 of the draft Law, notifications shall be submitted to the competent administrative authority (délégation or Governate) at least 3, and at the most 10 days before an assembly or demonstration. While the minimum period of 3 days would appear to be appropriate, the usefulness of imposing a maximum limitation on advance notification was already questioned in ODIHR's 2012 Opinion. It should be reiterated here that the OSCE/ODIHR-Venice Commission Guidelines state that any maximum period for notification should not preclude advance planning for assemblies. When a certain time limit is set out in law, it should only be indicative²².
52. If mentioned at all in the draft Law, it should be specified that the maximum period of 10 days for notification is merely indicative; notifications prior to this period should also be accepted. 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 necessitate, among others, adequate logistical preparations, and the organizers should ideally be informed well in advance about the availability of the desired venue. It is therefore reiterated that any references to maximum notification periods should be deleted from the draft Law, or should be reformulated to imply that they are merely indicative in nature.
53. In addition, it is noted that Article 15 requires that notices for demonstrations shall specify the "texts of slogans that will be raised". The necessity to specify the planned contents of an assembly in such detail is doubtful, and such requirement could even be interpreted as an attempt of pre-censorship. 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 text of slogans under Article 15 should be revised, so that only a brief statement of the purpose of the assembly is required. At the same time, even in this case, it should be clear that such statement is provided only for informational purposes; restricting a peaceful assembly, or sanctioning an organizer or participant in such assembly should not be based on the mere fact that the stated purpose and the actual theme of the assembly were different.
54. Furthermore, according to Articles 8 and 16 of the draft Law, assemblies and demonstrations may not be held outside the date specified in the notification. This would imply that any changes to such dates could not be accommodated under the provisions of the draft Law and would require a new notification. To ensure that the notification process is not too burdensome, an accommodation of reasonable change of time or place of the assembly/demonstration should be envisaged in the draft Law. Articles 8 and 16 should thus be revised accordingly.
55. Even when regulating the modalities of notification procedures, laws regulating assemblies should also include exceptions from the notification process. In

²² *Ibid.*, par. 116

particular, they should explicitly provide for the exemption from prior notification requirements in cases involving spontaneous assemblies, where it will not be possible to provide timely advance notice. 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 anticipated²³. Furthermore, 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”.²⁴ 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 obsolete²⁵.

56. The inclusion of an exception for spontaneous assemblies is thus of paramount importance, especially given the current development of social media technologies, which facilitate the ability to hold assemblies in response to urgent matters. Public authorities should, therefore, always protect and facilitate any spontaneous assembly, so long as it is peaceful in nature.
57. The draft Law does not mention the possibility of holding assemblies that have not been notified in advance; indeed, provisions such as Articles 8, 16, and 22 imply that assemblies that deviate from prior notification may be banned and dissolved, while Article 35 even permits sanctions (fines) to be imposed on any individual who calls for a public assembly without submitting a prior notification. Such blanket bans of spontaneous assemblies are not in compliance with international standards, and should be removed from the draft Law.²⁶ Instead, the draft Law should explicitly introduce exceptions to the notification rule for spontaneous assemblies, and should define them in a separate provision.

5. Prior Restraints

58. 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

²³ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 126.

²⁴ See the ECtHR judgment in the case of *Bączkowski and Others v. Poland*, application no. 1543/06, of 3 May 2007, par 82.

²⁵ See the ECtHR judgment in the case of *Bukta and Others v. Hungary*, application no. 25691/04, of 17 July 2007, par 35.

²⁶ In this context, it should be noted that the ECtHR has likewise stated, in its 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).

supplemented by additional grounds in domestic legislation nor should they be loosely interpreted by the authorities.²⁷

5.1 Restrictions Based on Content and Organization of an Assembly or Demonstration

59. With respect to assemblies, Article 10 of the draft Law spells out that the territorially competent governor shall “ban holding of a public assembly whose subject and organization are, according to the notification, in violation of the laws and regulations in force”. Moreover, Article 11 states that assemblies shall only take place once a committee of at least three persons has been set up.
60. With respect to demonstrations, Article 18 of the draft Law stipulates that the competent governor shall “ban any demonstration that aims at undermining the country’s safety, territorial unity, or constitution and laws, or that is expected to disrupt public order”. Under Articles 24 and 25, all gatherings, namely assemblies of individuals on public streets and squares, which might lead to a “disruption of public security”, are forbidden, whether armed or not armed.
61. All of the above provisions are construed quite broadly and provide authorities with wide discretion to impose restrictions on the right to freedom of assembly. Namely, Article 10 banning assemblies whose subject and organization are “in violation of the laws and regulations in force” does not specify in which cases such violations will be sufficiently grave to justify the banning of an assembly. This could render it difficult for organizers of assemblies to know, in practice, which types of assemblies will be permissible and which not, and could lead to a potentially excessively wide ban of certain assemblies. In this context, it is once more reiterated that banning assemblies due to their “subjects” would again raise concerns in terms of content-based restrictions of assemblies. Such restrictions may only occur in exceptional cases where assemblies will propagate excessive forms of hate speech, lead to imminent cases of violence, or create a clear and present danger of significant law violations.²⁸ However, to avoid arbitrary application of the law, and ensure legality and foreseeability of legislation, such exceptions must be clearly stated in the law.
62. Requiring a committee of at least three persons to be set up for every assembly (Article 11 of the draft Law) would, same as the requirement of numerous signatures in a notification, appear to be a quite bureaucratic obstacle to the exercise of individuals’ freedom of peaceful assembly, especially since the absence of such committee would effectively ban the assembly from taking place. Additionally, this would prevent the conduct of any type of spontaneous assembly as well.

²⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, par 69; see also ECHR case-law, *Hyde Park and Others v. Moldova*, application no. 33482/06, judgment of 31 March 2009, par.30.

²⁸ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, par 96

63. Generally, it would not appear to be necessary to have every assembly, regardless of its size and modalities, run by such committee – organizers of assemblies should be free to plan their event at will. It would appear sufficient to require organizers to make all reasonable efforts to ensure that an assembly remains peaceful and is conducted smoothly, and to maintain contact, as needed, with law enforcement officials. This requirement under Article 11 should thus be re-evaluated, and ideally deleted.
64. Under Article 12, individuals bearing hidden or visible weapons shall not be allowed to enter a place where an assembly is held. This provision is much welcomed, as it guarantees the peaceful conduct of assemblies. However, it is recommended to not interpret the types of weapons listed under Article 12 par 2 too broadly, as “sticks” or “solid” devices could potentially also include sign-posts used to hold up slogans or similar messages, or other necessary devices that are not necessarily destined for use as weapons. Generally, in such cases, individuals should be banned from assemblies not due to the objects that they are carrying, but due to the violent use that they make, or threaten to make of such objects.
65. As for the blanket prohibitions of certain demonstrations and of gatherings in Articles 18, 24 and 25 of the draft Law, it is noted that 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”.²⁹
66. Overall, assemblies that are intended as peaceful events 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. In such cases, compelling and demonstrable evidence is required 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.³⁰
67. 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. This principle is laid down in Article 18 of the draft Law, which is welcome. However, banning all assemblies that aim to “undermine” territorial unity or the constitution and laws would appear to be too broad; changes to the constitution and to territorial unity proposed during an assembly in a peaceful manner should be permissible, as also such statements would fall under the freedom of expression, if they do not propagate hate speech, incite violence, or otherwise create a clear and present danger of

²⁹ *Ibid.*, par 71. See also the ECtHR judgment in the case of *Makhmudov v. Russia*, application no. 35082/04, of 26 July 2007, pars 70-72.

³⁰ *Ibid.*, pars 72, 73

- significant law violations.³¹ The wording of Article 18 should thus be amended so that only such assemblies are banned that aim to undermine territorial unity, or the constitution and laws by violent means.
68. Further, Article 18 bans assemblies that are “expected to disrupt the public order”. In this context, it is noted that not all expected disruptions of the public order would appear to be serious enough to warrant a ban on assemblies, given that such ban greatly interferes with the exercise of an important human right. Thus, prohibiting assemblies because they are too noisy or are liable to temporarily inhibit the flow of traffic in a busy thoroughfare would appear to be excessive, and would undermine the very purpose of the right to freedom of peaceful assembly. Additionally, rather than prohibiting assemblies outright, adequate policing should be put in place to reduce the risk of extensive disorder. It is recommended to clarify Article 18 accordingly, so that assemblies will only then be prohibited if this is absolutely necessary for the reasons set out in Article 21 par 2 of the ICCPR.
69. As for the ban on “gatherings” under Articles 24 and 25, the extent of the term “public security” is not clear. In particular, it is not apparent in which cases peaceful assemblies would create such a danger for “public security” that they would need to be banned outright. If Articles 24 and 25 intend cases where there are clear indications that peaceful assemblies may turn violent, then this could be covered by more general provisions on the prohibition of such assemblies. In any case, non-peaceful assemblies would not be protected by the draft Law, or by international freedom of assembly standards. The need for the separate category of “gatherings” and for an absolute ban on such types of assemblies should be re-discussed.
70. It is reiterated that, as already recommended in ODIHR’s 2012 Opinion³², legislation regulating assemblies should prescribe legal responsibility where a state body has unlawfully prohibited an assembly. Such provision should also be included in the draft Law, to ensure full accountability of public authorities.

5.2 Restrictions Based on Location and Time of an Assembly or Demonstration

71. The draft Law contains numerous provisions restricting the location of assemblies or demonstrations. Namely, Article 9 of the draft Law forbids the holding of assemblies in public streets or public squares, or in places of worship or educational institutions. Moreover, Article 14 states that demonstrations must not go beyond the concerned Governorate (see par 49 *supra*) and Article 16 bars demonstrations in front of military or security establishments, health or educational institutions, or places of worship.
72. In this context, it should be underscored that location is one of the key aspects of freedom of assembly. The right of the organizer to decide which location fits best for the purpose of the assembly is part of the very essence of freedom of assembly. As far as possible, assemblies should be able to take place within sight

³¹ *Ibid.*, par 96.

³² *Ibid.*, par 59

- and sound of the intended audience. According to the OSCE/ODIHR-Venice Commission Guidelines, assemblies may 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.³³
73. Moreover, 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.³⁴
74. In light of the above, unless misconstrued due to unclear translation, the ban on assemblies in public streets or squares under Article 9 would appear to be a disproportionate interference with the right to freedom of peaceful assembly, in particular as these locations are precisely where assemblies routinely occur. It is also difficult to detect a pressing social need for such a blanket prohibition. As stated above in par 72 *supra*, assemblies should be regarded as a legitimate use of public space. Such an extensive ban would also appear to contradict the wording of Article 3, which states that assemblies shall take place in public places, and that public streets or squares are used to assemble for the purpose of demonstrations. It is recommended to clarify the meaning of this part of Article 9; should it really propagate a blanket ban on assemblies in public streets and squares, then it should be deleted.
75. As for the ban on assemblies and demonstrations in places of worship (Articles 9 and 16), it is noted that while it is important to maintain the peace and serenity of such locations, it is questionable whether the draft Law should really contain such a blanket ban and whether this may not unnecessarily restrict the ability of certain religious groups to select such locations for their assemblies. It would be preferable to introduce more flexibility into the draft Law in this respect, rather than generally forbid assemblies and demonstrations in such locations.
76. As already stated above in par 49 *supra*, it is not understandable why under Article 14 a demonstration should be confined to one Governorate only. It should be permissible for a demonstration to march through two or more Governorates, by virtue of submitting a notification to all of the respective Governorates in question.

³³ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, pars. 19, 20

³⁴ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, 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.”

77. The ban on demonstrations in front of military or security establishments, health or educational institutions (Article 16) would also appear to be quite extensive. First of all, it is noted that this ban only applies to demonstrations, and not to assemblies. Second, it is not clear how far the term “in front of” would extend, and whether this would also prohibit moving assemblies from taking place at other locations close to and in view of such establishments (e.g. across the street or on a square facing the establishment). Generally, it is essential that, as far as possible, all types of assemblies, including moving assemblies, be permitted to take place within sight and sound of their target audience. For this reason, peaceful assemblies should be permitted in all public places, except where their restriction is necessary to, e.g., protect national security and the rights and freedoms of others. This necessity should be assessed on a case by case basis, depending on the location and all other pertinent circumstances; it is thus recommended to replace the blanket restriction in Article 16 with a provision that reflects these principles. Ideally, prohibitions for all types of assemblies should be similar under the draft Law, unless there are good reasons to differentiate.
78. It is also noted that under Article 16, itineraries shall be limited to one side of a street, to prevent traffic from being blocked. Given the size of certain demonstrations or marches, this requirement may prove impossible to realize. At the same time, given the importance of the freedom of assembly, demonstrations that block or threaten to block traffic should never be banned or dissolved for this reason alone. As stated under par 72 *supra*, assemblies, including moving assemblies, are also legitimate uses of public streets, and should thus not be unduly restricted. Temporary disruptions of traffic will at times need to be accepted in order to enable individuals to express themselves publicly at a demonstration or assembly.
79. With respect to the question of when an assembly shall be held, it is noted that Article 9 of the draft Law stipulates that assemblies “cannot be held before 9 a.m. and cannot continue after midnight”, unless this is authorized by the competent authority. Article 16 likewise forbids demonstrations to take place at night.
80. As noted in ODIHR’s 2012 Opinion, such blanket bans would appear to be overly restrictive prohibitions of certain assemblies. Generally, the regulation of assemblies at night time should also be handled on a case-by-case basis rather than being prohibited in general. Overall, it would be disproportionate if an assembly which remains peaceful would be banned solely because of the expiration of the time indicated in the notification. The requirement of obtaining the authorization of the competent authority prior to holding or continuing an assembly after midnight or the time set in the notification would appear to contradict Article 2 of the draft Law, which states that public assemblies are held without prior authorization. It would also effectively ban spontaneous assemblies held in case of a strong pressing social need. For the above reasons, it is advised to revise these aspects of Articles 9 and 16 accordingly.
81. According to Article 17 of the draft Law, the governor may, upon suggestion of the concerned security authority, decide to postpone the starting time of a demonstration by up to 24 hours, or adjust its itinerary, if this is necessary for “pure security reasons”. This appears to be a rather one-sided interference with

- the organizers' right to freedom of assembly, which does not seem to take into account the wishes of the organizers. Also, the term "pure security reasons" is not clear; it is doubtful if every security reason can serve as basis for limiting such an important right. In order to ensure, as much as possible, the exercise of the right to freedom of peaceful assembly, it is recommended to change the wording of this provision by clarifying the term "pure security reasons", and including in it the obligation for security authorities to discuss this matter with the organizers. This would enhance transparency of the draft Law, and would allow the organizers to take an informed decision on whether, following such delay, or change of itinerary, they still want to proceed with the demonstration.
82. Finally, 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-discrimination³⁵. Further, it is the state's duty to prevent disruption of the assembly where counter-demonstrations are organized – this relates to 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 with³⁶. Both types of assemblies, and the permissible reactions to them should be included in the draft Law, based on relevant international freedom of assembly standards.
83. Under Article 21, vehicles may not be used during demonstrations, unless specially authorized to do so. While it is understandable that law enforcement personnel should be informed about vehicles taking part in an assembly, it may be overly restrictive to require explicit state authorization to include them. This provision should be reassessed.

6. Responsibilities of the Organizers

84. The organizer is the person (or persons) with primary responsibility for the assembly, namely the person in whose name the notification was submitted. At the same time, it should be noted that certain assemblies, in particular spontaneous assemblies, may also not have identifiable organizers.
85. Generally, organizers of assemblies should cooperate with law enforcement agencies to ensure that participants in assemblies comply with the law and terms of a notification. Ideally, it should be clear who precisely is involved in the organization of an assembly. Where possible, it is helpful for organizers and the police to agree on security and public safety measures on the ground; in this context, it is paramount that such discussions take place on an equal footing.
86. In the case of large assemblies, the smooth conduct of the assembly can be facilitated by stewards appointed by the organizer. In this context, it should be borne in mind that stewards assist the organizers in managing an event, and should aim to obtain the cooperation of assembly participants by means of persuasion; they shall also orient the public and provide information on an

³⁵ *Ibid.*, par. 4.3, 122

³⁶ *Ibid.*, par 4.4, see also pars 33, 45 and 101 in the Explanatory Notes.

assembly. By contrast, stewards are not law enforcement officials, and cannot use force. While they serve as liaison to law enforcement officials, they are not a substitute for the adequate presence of law enforcement personnel. Law enforcement agencies still bear overall responsibility for the public order, and are, as representatives of the state, positively obliged to protect assemblies, their organizers and participants, and the general public.

87. Next to the requirement to set up an organizing committee for each assembly and demonstration under Articles 11 and 19 respectively, the requirement of which is still seen as disproportionate (see par 62 *supra*), both provisions also impose obligations on organizers during the conduct of assemblies and demonstrations. Article 11 par 2 states that during assemblies, the organizing committee shall do its utmost to preserve order, prevent any violations of the laws and regulations in force, and maintain the nature of the assembly described in the notification. Article 19 likewise requires organizers to do their utmost to prevent any deviation from the peaceful character of a demonstration, and set up a committee to preserve order during the demonstration, in cooperation and coordination with the security authorities.
88. Overall, 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 latter principle appears to be reflected in Articles 11 and 19, which both speak of individual liability for violations of the law, and the disruption of public order. This principle could perhaps be strengthened by explicitly stating that organizers shall not be held liable for the crimes of others taking place during an assembly.
89. Presuming that the obligation for organizers “to do their utmost” has the same connotation as the above-mentioned “reasonable efforts” to maintain order and the peaceful nature of assemblies/demonstrations, the above provisions are welcome. Especially the references to cooperation and coordination with security authorities appears to distinguish well between the tasks of the organizers/committee and law enforcement officials. This impression is supported by Article 20 of the draft Law, which explicitly holds law enforcement authorities responsible for protecting demonstrations and public and private property, preserving law and order, facilitating medical assistance and rescue, and the work of the media. In this context, it is pointed out that this provision should apply to all assemblies, not only to demonstrations.

7. Assembly Termination and Dispersal

90. As with the banning of assemblies, the termination of a peaceful assembly should only be a measure of last resort. As long as assemblies remain peaceful, or where their peaceful character can be maintained despite individual violent incidents, 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.³⁷ 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; legislation should require that such guidelines be developed.³⁸
91. The draft Law comprises certain provisions permitting security authorities to dissolve peaceful assemblies and demonstrations, while setting a relatively low threshold for their being able to do so. Article 13 spells out that the security authority can declare an assembly dissolved “if assaults take place during the assembly” or if the assembly was organized without prior notification. Under Article 22, demonstrations may be dissolved in cases of deviation from the times and itinerary set out in the notification, a failure to notify a demonstration, the organization of a demonstration despite a ban under Article 18 of the draft Law, or non-compliance with a decision to postpone a demonstration or adjust its itinerary.
 92. 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 assembly³⁹. Law-enforcement officials should not treat a crowd as homogenous when detaining participants or (as a last resort) forcefully dispersing an assembly⁴⁰. Isolated outbreak of violence should be dealt with by way of subsequent arrest and prosecution. Any individual wrongdoings should lead to personal liability through criminal proceedings after the assembly. As the ECtHR has noted “the freedom to 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”.⁴¹
 93. Thus, if the assaults mentioned in Article 13 relate to isolated incidents of violence, then this should not *per se* constitute sufficient grounds to terminate an assembly. Instead, those committing the respective crimes should be identified and arrested, and, as far as possible, the assembly should be allowed to continue. The termination of an assembly should only take place in cases where there is more widespread disorder affecting the entire assembly and the latter thus needs to be stopped in order to protect the rights of others, property damage, and a

³⁷ 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

³⁸ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 165

³⁹ 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.

⁴⁰ 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).

⁴¹ ECtHR case law, *Faber v. Hungary*, par 47, and *Ezelin v. France*, par 53.

- general deterioration of the public order. This part of Article 13 should thus be revised.
94. Under the same provision, assemblies may also be dissolved if organized in the absence of prior notification. In this context, it is noted that the notification of an assembly, while necessary to ensure that public authorities take adequate measures to protect the assembly and public order, should not be the main requirement for the holding of an assembly. Assemblies should not be terminated unless this is absolutely necessary to protect, e.g., national security, public order or the rights and freedoms of others. The failure to submit advance notification in itself would not appear to pose a threat to these legally protected interests; rather, as stated by the ECtHR, “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”. Additionally, this would also effectively prevent spontaneous assemblies, which are explicitly protected by the right to freedom of peaceful assembly. It is thus recommended to amend Article 13 accordingly, so that assemblies are only dissolved if there is an imminent threat for of disorder or violence, but not merely because of the failure to notify about them in advance. The same should apply to Article 22, which likewise permits the termination of demonstrations that were not notified prior to the event.
95. In the cases of other reasons for dissolving a demonstration under Article 22 (deviation from a notified time or itinerary, and non-compliance with bans or changes to times/itineraries), dissolving such an event based only on these reasons would again appear to be disproportionate based on the standards cited above. Generally, even if they do not correspond to or follow prior arrangements, assemblies should only be dissolved if they constitute a real and immediate threat to interests protected by Article 21 par 2 of the ICCPR. Bearing this in mind, Article 22 should be amended accordingly.
96. To ensure accountability for violations of the law by competent authorities or law enforcement officials unjustifiably terminating and dissolving assemblies, it is recommended to also include in the draft Law liability for such state officials, as already advised in par 70 *supra* in relation to the ban on assemblies. In addition to this, relevant by-laws should indicate that law enforcement officials shall be clearly identifiable as such, to enhance accountability.

8. Use of Force

97. Generally, as already emphasized in ODIHR’s 2012 Opinion, the use of force by law enforcement authorities underlies strict criteria. In particular, the use of firearms is not permitted against persons except in very specific circumstances, and only when strictly necessary to protect oneself, or others from death or serious injury, prevent serious crimes involving threat to life, including by arresting a possible perpetrator or preventing him/her from absconding.⁴² When

⁴² UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- policing assemblies, the use of force to disperse illegal but peaceful assemblies shall be avoided and where this is not possible, applied only to the minimum amount necessary. Even when dispersing violent assemblies, firearms may only be used when less dangerous means are not practicable, and only to the minimum extent necessary.⁴³
98. In the draft Law, the use of force is permitted under Article 22 to dissolve a demonstration, “in case of need”. In order to ensure a clear understanding of when this would be considered necessary, while bearing in mind the principle of proportionality, it is recommended to state specifically in Article 22 that the use of force as a means of dispersing a demonstration shall only be applied in cases of imminent violence, or where there is an imminent threat for the safety of individuals, or for other relevant protected interests.
 99. The use of force is likewise mentioned in relation to the dispersal of gatherings under Chapter 4, which are essentially assemblies that may lead to the disruption of public security. According to Article 27, competent public authorities shall be present on the spot to negotiate with crowd participants and convince them to disperse peacefully. If all “legal warnings” are given in vain, then, in case of need, they may order the use of force to disperse a crowd. Also in this provision, the cases where there is a need for applying the use of force should be made more explicit.
 100. The procedures for dispersing a crowd by force are laid down in Article 28, which requires several warnings to be issued by megaphone prior to the use of force; shall the use of megaphones prove impossible or inefficient, a red luminous signal shall be used instead. Article 28 par 1 states that participants shall be given reasonable time to execute the warning. In exceptional circumstances stated in Article 29, these procedures may be disregarded.
 101. This procedure generally corresponds to international standards, which state that assembly organizers and participants should be clearly and audibly informed prior to any intervention by law-enforcement personnel, and shall be given reasonable time to disperse voluntarily⁴⁴. However, it is noted that firearms, which are permitted under Article 28 par 2 to disperse a crowd, should never be used as a means of dispersing a peaceful crowd, given the inherent dangers in this form of weapon. Even in violent crowds, the permission to use firearms shall only be given in cases where there is an immediate threat to one’s own, or a third person’s life. This should be reflected in Article 28.
 102. Moreover, in relation to the light signals mentioned in Article 28, it is still doubtful whether this could not potentially create a sense of confusion among the participants. This aspect of Article 28 should be re-discussed.
 103. As for the exceptions to the procedures for warning of the use of force outlined in Article 29, it is reiterated that also in the cases outlined in this provision, the strict rules for the use of force, and the use of firearms should not be disregarded. This

⁴³ *Ibid.*

⁴⁴ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, Explanatory Notes, par. 168.

provision should be adapted to the rules set out in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁴⁵

104. Articles 30 – 33 of the draft Law outline the use of force in more detail. As stated in ODIHR’s 2012 Opinion, such matters are usually not part of legislation on peaceful assemblies, and could divert attention away from the police’s general obligation to protect and facilitate assemblies. Furthermore, having such explicit provisions as part of a law on peaceful assemblies could have a chilling effect on organizers of assemblies, given that in the case of peaceful assemblies, the use of force should only be permissible in exceptional cases.
105. It is thus recommended to specify in the draft Law the circumstances when the use of force may be permitted, and that it should at all times be proportionate. The details concerning the use of force may then be specified in a relevant by-law, such as the draft Decree, which currently specifies the administrative details concerning the use of force outlined in Articles 30-32 of the draft Law. Ideally, such draft Decree should also be published and accessible to the public.
106. While it is welcome that this draft Decree outlines the need for proportionality in the use of force, it is noted that Article 2 of the draft Decree outlines means of confrontation such as water cannons, megaphones and generators with high vibrations, rubber bullets and truncheons, as well as means of crowd dispersal such as electric shock devices, police horses, dogs and armoured vehicles. Should crowds remain peaceful, then there would not appear to be a reason to use any of the above-mentioned devices. It is noted, in this context, that certain devices, such as shock devices, should never be used as means of crowd dispersal. Generally, any use of force at an assembly should always be proportionate and be kept to the minimum level necessary to address the disorder. The police should have clear protocols outlining the procedure for use of each form of weapon, particularly in the case of potentially lethal weapons.
107. Article 33 deals with “sit-ins”, which shall be unlawful if they take place in violation of Article 5, item 2 (legitimate workers’ sit-in for a specified time period to peacefully defend their economic and social interests, without impeding the freedom of work, and in accordance with the provisions of the Labour Code). In cases where such sit-ins impede the freedom of work, prevent or hinder the work of a public or private institution or establishment, or of a public facility, or where they destroy means of production, cause damage to, or lay hold of, buildings, movables or commodities, or block traffic on public roads, railways, marine routes or air installations, they shall be treated in the same way as gatherings.
108. While it is understandable that the destruction of means of production, buildings, movables or commodities should be prevented by law enforcement officials, if need be with the proportionate use of force, it would appear excessive to declare as illegal the other situations mentioned in Article 33. For example, where sit-ins prevent or hinder the work of institutions, establishments or facilities, it would appear disproportionate to immediately disperse them, especially if the interruption of work is relatively minor, or temporary. Furthermore, any public

⁴⁵ *Op cit* footnote 42.

- sit-in may lead to the blockage of public roads – also in these cases, a temporary interruption of traffic may be acceptable, and should not lead to immediate dispersal. It is recommended to adopt a more diversified approach in this provision, and to specify that dispersal shall only take place as a means of last resort, and only if strictly necessary. Generally, sit-ins would appear to be peaceful in nature – thus, any more excessive uses of force, such as the use of weapons or fire-arms, should be prohibited in such cases.
109. Furthermore, Article 34 states that “law enforcement officials tasked with crowd dispersal shall bear no criminal responsibility for the legitimate use of force”. This would appear to imply that in cases of illegitimate, or excessive use of force, law enforcement officials shall bear criminal responsibility. It is recommended to include in the draft Law a provision explicitly stating this, to enhance accountability of law enforcement officials (see par 96 *supra*). Law enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force.
110. Generally, where it is alleged that a person is physically injured by law-enforcement personnel or is deprived of his or her life by law enforcement personnel, this should always lead to an effective, independent and prompt investigation resulting in full accountability for such acts.⁴⁶

9. Effective Remedies

111. The OSCE/ODIHR-Venice Commission Guidelines clearly state that 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 notification⁴⁷.
112. To enable efficient remedies, 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. For restrictions imposed prior to assemblies and demonstrations, this requirement is adequately reflected in Articles 10 par 2 and 18 par 2 of the draft Law, both of which also oblige the respective authorities to inform the organizers of their decisions to ban assemblies or demonstrations.
113. It is noted that while the Act on Public Meetings indicates, in its Article 7, that the organizers of unauthorized meetings may appeal to the “Secretary General of the Interior Ministry”, the draft Law does not provide the possibility of appealing against restrictions imposed prior to or during assemblies.
114. It is thus recommended to include in the draft Law relevant provisions allowing organizers to appeal against decisions to restrict or ban assemblies/demonstrations, or against decisions to dissolve such events. Such appeals proceedings may involve administrative review proceedings, but should still, as stated above, also allow for judicial review once administrative remedies

⁴⁶ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par. 182

⁴⁷ *Ibid.*, pars. 66, 137

- have been exhausted. Generally, the burden of proof and justification should remain on the regulatory authorities.⁴⁸
115. The draft Law should specify the time limits for lodging appeals, as well as the competent appeals authorities (administrative and judicial). 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”.⁴⁹ The draft Law should thus also outline the time limit within which the appeals authority should decide on the appeal; the proceedings should allow for prompt and full administrative and judicial review, so that the remedies lodged will be effective prior to the holding of the event.

10. Sanctions

116. While dealing with freedom of assembly, the issue of liability will inevitably be raised: the organizers of assemblies and participants of such assemblies, but also the local executive authority and the police, may, depending on the circumstances, all face varying forms of liability. Generally, when talking about liability, the principle of proportionality should be adhered to. Any penalties specified in the law should also allow for the imposition of minor sanctions where the offence concerned is of a minor nature, since the way in which the 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”.⁵⁰
117. In the draft Law, sanctions for violations of the law prior to or during assemblies or demonstrations are regulated in Chapter 5. In this chapter, Article 35 of the draft Law envisages a fine of 1000 dinars for anyone who calls for a public assembly without submitting a prior written notification, and without good reason. As noted earlier, this would essentially prevent spontaneous assemblies, which are explicitly covered by the freedom of peaceful assembly. Liability for this action should be reconsidered.
118. Given that the necessity and proportionality of having to establish a committee for each assembly or demonstration appear to be in doubt, it would also seem to be disproportionate to fine individuals for failing to set up such committees under Article 35. The requirement to set up such committees, as well as the liability for not doing so, should be re-evaluated.
119. Also under Article 35, the organization and participation in assemblies that take place in violation of Articles 9, 16 and 21 of the draft Law is fined. This liability provision should likewise be re-assessed, in light of the recommendations made to amend the above Articles under pars 74-75, 77-80 and 83 *supra*.
120. Article 36 prescribes fines, but also a penalty of six months for anybody who deliberately disobeys the order to disperse. This essentially allows the

⁴⁸ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars. 138, 139

⁴⁹ *Bączkowski and Others v. Poland* (2007), par 83.

⁵⁰ OSCE/ODIHR-Venice Commission Joint Opinion on the Law on Peaceful Assemblies of Ukraine, par. 47

- 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 6 months, with no possibility of judges to impose lower prison penalties, is quite extreme for such minor cases of civil disobedience, and would not appear to meet the proportionality principle. Article 36 should be revised accordingly.
121. The same argumentation applies to Article 40, which likewise foresees fines and a penalty of six months' imprisonment for cases where participants in a gathering refuse to disperse despite a warning to do so. The rationale for doubling this penalty (essentially meaning that individuals may be imprisoned for 1 year) if individuals deliberately hide their faces, or keep their identity secret is unclear and imposing such high fines merely for the failure to disperse and reveal one's identity would appear to be disproportionate.
 122. Article 37 envisages imprisonment of one year for individuals participating in "a public assembly or demonstration in violation of a decision to ban the assembly or demonstration". Generally, it would appear difficult to sanction the participation in banned assemblies or demonstrations, as participants may not always be aware of such ban when joining assemblies. Moreover, as long as the assembly remains peaceful in nature, and the respective individuals do not engage in violent or otherwise obviously illegal behavior, the main fact of participating in an assembly would not appear to warrant a prison sentence, let alone such a high one. It is advised to re-discuss, and ideally delete this provision.
 123. Article 39 imposes the penalty of imprisonment of one year on those persons who are directly involved in the incitement, either orally, through posters or any other medium for dissemination, distribution, or presentation through writing, to non-armed gatherings. As already stated earlier under par 32 *supra*, it will often be difficult to assess prior to an assembly whether such event may lead to the disruption of public security or not. It will thus be impossible for individuals to know when invitations or calls for participation in assemblies will be permitted, and when they will not. The vague nature of impermissible gatherings, as opposed to permissible assemblies and demonstrations, and the ensuing high penalty for inciting to such events, leads to a situation where individuals may be sanctioned extensively for actions that may have not appeared to be illegal at the time. Generally, the dissemination of materials which encourage the participation in an assembly or similar event should not be unlawful. Only individuals who use hate speech or incite to the use of violence should be held accountable under relevant criminal provisions.
 124. Under Article 42, sanctions for inciting to non-armed gatherings (Article 39), and participating in gatherings despite warnings to disperse, be they non-armed (Article 40) or armed (Article 41) shall be doubled if gatherings take place at night, or if they involve the use of children. Such aggravated sanctions do not exist in the cases penalizing participation in illegal assemblies or demonstrations, which again raises the issue of whether in practice, assemblies/demonstrations, and non-armed gatherings can really be distinguished, and whether it is then proportionate to impose higher sanctions on individuals for participating in non-armed gatherings, rather than assemblies or demonstrations. Further, while it is

admittedly more difficult to disperse gatherings taking place at night, it is questionable whether this fact in itself should enhance the liability for doing so. Finally, in the case of non-armed gatherings, it is also doubtful whether the “use of children” (presumably this implies that children are present) should lead to enhanced sanctions, especially since, as stated above, such gatherings may be difficult to distinguish from assemblies or demonstrations. Bearing this in mind, the above sanctions should be reconsidered. The same applies to the temporary or permanent ban that may be imposed on foreigners for taking part in the incitement to a non-armed gathering under Article 44.

[END OF TEXT]

Annex 1:

Draft Organic Law on the Right to Peaceful Assembly

Chapter One : General Provisions

Article 1 :

The purpose of the present law is to organize the exercise of the right to hold peaceful public assemblies and peaceful demonstrations, by setting out the necessary procedures for the exercise of this right, in line with the rules and principles spelled out in international instruments pertaining to civil and political human rights.

Article 2 :

Public assemblies and peaceful demonstrations are free, and are held without prior authorization and in accordance with the provisions of the present law.

Article 3 :

Within the meaning of the present law, a ‘peaceful public assembly’ is any peaceful gathering of persons in an organized and agreed-on manner that does not pose a threat to public security. It is limited in time. It is open to the public who may be invited to join it. It is held either in a public place or in a private place open to the public. It addresses issues that are included in a pre-set agenda.

A ‘peaceful demonstration’ is any use of the public streets or public squares by a group of persons to assemble in a specific place or to march peacefully, for a limited period of time, based on an agreement among them, for the purpose of expressing, collectively and publicly, a commonly shared will or opinion, either through mere presence or through raising and crying out slogans.

Article 4 :

The meetings convened by administrative authorities, the non-electoral meetings of political parties, the meetings of organizations or associations with their members, and the general assemblies of commercial businesses,

are not considered as 'public assemblies', and are not, therefore, covered by the provisions of the present law.

Article 5 :

The following events are not considered as 'demonstrations', and are not, therefore, covered by the provisions of the present law :

- Processions, parades and other events organized as part of the practice of local customs and traditions, or organized by administrative authorities, along with folkloric events, traditional '*Kharja*' (festivals), and commemorative ceremonies;
- The legitimate sit-in of workers in their workplace for a specified period of time, with the aim of peacefully defending their economic and social interests, without impeding freedom of work, and in accordance with the provisions of the Labor Code.

Chapter Two : Peaceful Public Assemblies

Article 6 :

Every public assembly must be preceded by a written notification submitted by at least three of its organizers. The notification shall specify the place, subject, date and time of the assembly, along with the full names, professions, titles, nationality, Identity Card number and date of the notifiers, and their chosen domicile in the place of the assembly. The notification shall be signed by the notifiers.

Article 7 :

The notification shall be submitted to the *délégation* (administrative division in a Governorate) or the Governorate under whose territorial competence the place of the assembly falls, three days at least and ten days at most before the date of the assembly, accompanied by copies of the notifiers' Identity Card, against a receipt bearing the date and time of submitting the notification, signed by the person having received the notification, and bearing the seal of the competent authority.

The receipt shall immediately be handed to the notifiers who shall sign the receipt-slip. The notifiers may also submit the notification by means of a notary.

The organizers of the assembly shall present the receipt handed to them by the competent authority, or the receipt given against the notification submitted through a notary, whenever requested by security officials.

The competent authority having received the notification shall immediately submit a copy of it by any means that leaves a written record to the territorially competent national security or national guard authority.

Article 8 :

The public assembly may not be held outside the date set in the notification provided for in articles 6 and 7 of the present law.

Article 9 :

It is forbidden to hold public assemblies in public streets or public squares, or in places of worship or educational institutions. Public assemblies cannot be held before 9 a.m. and cannot continue until after midnight, or after the time set in the notification, if it is before midnight, except with a special authorization by the competent authority having received the notification. Yet, in the premises which are open to the public and which close after midnight, it is possible for public assemblies to continue till the closing of these premises.

Article 10 :

The territorially competent governor shall issue a warranted decision to ban the holding of a public assembly whose subject and organization are, according to the notification, in violation of the laws and regulations in force.

The signers of the notification shall immediately be informed, in their chosen domiciles and through administrative means, of the decision to ban the assembly, pursuant to a report in which it should be expressly mentioned their refusal or their inability to sign, if need be. If it is not possible to inform the organizers through administrative means, the decision to ban the assembly can be made known via all available media.

Article 11 :

No assembly shall take place only after setting up a committee of three persons at least, headed by one of the notifiers of the assembly. In case the head of the committee is absent, he shall be replaced by one of the

other members. A report shall be drafted concerning the creation of the committee, mentioning the members' identities and titles.

During the holding of the assembly, the organizing committee shall make utmost efforts to preserve order, prevent any violation of the laws and regulations in force, and maintain the nature of the assembly as described in the notification. The perpetrators of the crimes provided for in the present article shall be held directly liable for these crimes.

Article 12 :

Any person bearing a hidden or visible weapon shall not be allowed to enter the place where the assembly is held.

Within the meaning of the present law, a weapon can be firearms, ammunitions, knives and any devices or materials that pose a danger to public safety. These include sticks, solid, sharp or piercing devices, incendiary materials, or flammable, explosive, radioactive or poisonous materials.

Article 13 :

The territorially competent security authority may assign one of its officials, in writing, to attend the assembly in official uniform. He shall present a copy of the assignment document to the head of the committee. He may declare the assembly dissolved if this is requested by the head of the committee, or if assaults take place during the assembly. The security authority may also dissolve any public assembly organized without having submitted the notification provided for in articles 6 and 7 of the present law, or in violation of the relevant provisions.

Chapter Three : Peaceful Demonstrations

Article 14 :

Every demonstration shall be preceded by a written notification specifying the assembling place, the starting time, the itinerary which must not go beyond the concerned Governorate if it involves a march, the ending time, and the motives and objectives.

The notification shall be signed by the organizing committee, and shall specify the full names, professions, titles, nationality, Identity Card number and date of the members of the committee, and their chosen domicile in

the place of the demonstration. The notification shall be signed by the notifiers.

If the demonstration is organized by a political party, an organization or an association, the notification shall be signed by the legal representative of the organizing party and shall bear its seal.

Article 15 :

The notification shall be submitted to the *délégation* (administrative division in a Governorate) or to the Governorate under whose territorial competence the place of the demonstration falls, three days at least and ten days at most before the date of the demonstration, accompanied by copies of the notifiers' Identity Card and the text of the slogans that will be raised during the demonstration, against a receipt bearing the date and time of submitting the notification, signed by the officer having received it, and sealed by the competent authority.

The receipt shall immediately be handed to the notifiers who shall sign the receipt-slip. The notifiers may submit the notification by means of a notary.

The organizers of the demonstration shall present the receipt handed to them by the competent authority, or the receipt given against the notification submitted through a notary, whenever requested by security officials.

The authority having received the notification shall immediately submit a copy of it by any means that leaves a written record to the territorially competent public security or national guard authority.

Article 16 :

A demonstration may not take place outside the date set in the notification provided for in articles 14 and 15 of the present law, and may not take place at night. Demonstrators may not assemble in front of military or security establishments, health or educational institutions, or places of worship. The demonstration's itinerary shall be limited to one side of the street, so that traffic will not be blocked.

The demonstration may not deviate from the initial itinerary described in the notification unless specifically authorized by the competent authority.

Article 17 :

The governor may, upon the suggestion of the concerned security authority, decide to postpone the starting time of the demonstration by no more than 24 hours, or to adjust its itinerary, if this is necessary for pure security reasons.

Article 18 :

The territorially competent governor shall issue a warranted decision to ban any demonstration that aims at undermining the country's safety, territorial unity, or constitution and laws, or that is expected to disrupt public order, if there is no other efficient means to prevent this disruption.

The signers of the notification shall be informed of the decision to ban the demonstration in accordance with the provisions of paragraph 2 of article 10 of the present law.

Article 19 :

The organizers of the demonstration, provided for in article 14 of the present law, shall make utmost efforts to prevent any deviation from the peaceful character of the demonstration, and shall set up a committee in charge of preserving order during the demonstration in cooperation and coordination with the security authorities to prevent any disruption of public order.

Anyone who causes any disruption of public security during the demonstration shall directly be held liable for such an act.

Article 20 :

The security authority shall protect the peaceful demonstration from assaults by others, preserve order and security, protect public and private properties, facilitate succor and rescue if need be, and facilitate the work of media representatives.

Article 21 :

No vehicles of any type may be used during demonstrations unless specifically authorized, in writing, by the authority having received the notification. Participants in the demonstration are prohibited from bearing the weapons mentioned in article 12 of the present law.

Article 22 :

Security authorities are empowered to intervene to dissolve a peaceful demonstration in the following cases :

- Non-compliance with the information provided in the notification concerning the assembling place and the starting and ending time of the demonstration, specified in articles 14 and 15 of the present law, or non-submission of the prior notification, or organization of the demonstration despite the existence of a decision to ban it, in violation of the provisions of article 18 of the present law.
- The deviation of the demonstration from the initial itinerary described in the notification without authorization from the competent authority, in violation of paragraph 2 of article 16 of the present law.
- Non-compliance with the decision issued by the competent authority to postpone the demonstration or to adjust its itinerary, in violation of the provisions of article 17 of the present law.

Law enforcement officials tasked with dispersing a demonstration shall resort to the use of force only in case of need, and force shall be kept to the minimum necessary, so as to avoid causing any unwarranted harm to the participants in the demonstration.

Article 23 :

A demonstration shall be treated in the same way as a gathering, pursuant to the provisions of articles 24 through 32 of the present law, in the following cases :

- Non-compliance with the order to disperse after dissolving the demonstration in accordance with the provisions of article 22 of the present law;
- Failure to maintain the peaceful character of the demonstration in a way that threatens public security, if the organizing committee does not succeed in avoiding this disruption;
- Bearing weapons during the demonstration, in violation of the provisions of article 21 of the present law.

Chapter Four : Gathering

Article 24 :

Within the meaning of the present law, a 'gathering' is any assembly of individuals on public streets and squares, which might lead to a disruption of public security.

Article 25 :

As defined in article 24 of the present law, 'gathering' is forbidden, whether it is armed or unarmed.

Article 26 :

A gathering is considered armed :

- 1 - If one of the participants is bearing a visible or hidden weapon;
- 2 - If some of the participants are bearing objects to be used as weapons for murdering, injuring, beating or threatening.

Article 27 :

The territorially competent governor, or one of his "*délégués*" (chief of administrative district in a governorate), the territorially competent chief of the national security authority or chief of the national guard authority, or both of them if need be, or the chief of the regional national security authority or the chief of the regional national guard authority, or both of them if need be, along with a senior officer of the judicial police, must be present on the spot to negotiate with the crowd participants and to convince them to disperse peacefully, or, in case of need, or to order the use of force to disperse the crowd after giving all the legal warnings in vain.

Article 28 :

The gathering is dispersed by force by national security officials or national guard officials, or both of them, in accordance with the following procedures:

- 1 - The Officer of the Judicial Police, referred to in article 27 of the present law, wearing his official uniform, shall :

- Announce his presence using a megaphone, and call on the crowd participants to comply with the law and to disperse. He shall say : “Obey the law; Disperse !”
- Give a first warning to the crowd participants using a megaphone. He shall say : “First Warning – We will use force !”
- Give a second warning to the crowd participants using a megaphone. He shall say : “Second and final warning – We will use force !”

Crowd participants shall be given reasonable time to execute each warning. Their dispersal shall be facilitated.

2 – In case it is necessary to disperse the crowd using firearms, a third warning shall be given, clearly stating that firearms will be used in case of non-dispersal. He shall say : “We will use firearms.”

3 – If the use of megaphones is impossible or inefficient, a red luminous signal shall be used instead.

Article 29 :

Without prejudice to the provisions of article 39 of the Penal Code, law enforcement officials tasked with crowd dispersal may resort directly to the use of force, by virtue of the order provided for in article 27 of the present law, without going through the warning procedures, if following these procedures exposes them or other persons to the risk of death or serious harm or unwarranted danger, or if they are exposed to acts of violence or assaults by the crowd participants, or if they have no other way of protecting the place they are in.

Article 30 :

Pursuant to the order mentioned in article 27 of the present law, force shall be used to disperse the crowd if the participants refuse to disperse, despite all legal warnings, in order to safeguard public security.

In this case, the means of force used shall be incapacitating and non-lethal, and shall be employed in a gradual manner that corresponds to the gravity of the disruption of public order, on the one hand, and to the legitimate aim to be achieved from the use of force, on the other hand. Unnecessary harms and injuries shall be avoided as much as possible. The use of force shall be limited to what is strictly necessary to face the crowd participants, without prejudice to respect for human rights. The use

of force shall obligatorily be ceased as soon as there is no more reason to use force.

The means of force referred to in the present article shall not be used in a way that causes serious injuries to the crowd participants.

Article 31 :

If the incapacitating, non-lethal means of force used to disperse the crowd, referred to in article 30 of the present law, did not achieve the sought result, and the participants proceeded to use firearms or other deadly weapons against the law enforcement officials tasked with crowd dispersal, or are about to kill or seriously injure officials or other persons in a way that exposes their life or physical integrity to danger, law enforcement officials shall respond using firearms, by virtue of the order provided for in article 27 of the present law, which, in this case, shall be explicit and be issued by any means that leaves a written record. It is not the death of the attacking participant, but rather his incapacitation and neutralization, that shall be the purpose of this action.

Article 32 :

Law enforcement officials tasked with the use of force for crowd dispersal shall act in a coordinated way and avoid individual action, under the leadership of commanders who control the use of force by the officials and limit it to what is strictly necessary and appropriate to achieve the purpose of dispersing the crowd participants with the minimum harm, while respecting and preserving their lives and facilitating succor in case of injuries.

Article 33 :

A sit-in is considered as unlawful and is treated in the same way as a gathering, in accordance with the provisions of the present law except for articles 39, 40, 42, 43 and 44 thereof, if it takes place in violation of Dash 2 of Article 5 of the present law, and if it involves impeding freedom of work, preventing or hindering the work of a public or private institution or establishment, or the work of a public facility in any way, destroying means of production, causing damage to, or laying hold of, buildings, movables or commodities, or blocking traffic on public roads, railways, marine routes or air installations.

Article 34 :

Law enforcement officials tasked with crowd dispersal shall bear no criminal responsibility for the legitimate use of force. The same applies to the competent authority having ordered the use of force in accordance with article 42 of the Penal Code, if force is used within the limits set by the present law and its enforcement texts.

The rules for the enforcement of articles 30, 31 and 32 of the present law shall be set by decree.

Chapter Five : Penal Provisions

Article 35 :

A fine of 1000 dinars shall be imposed on anyone who calls for a public assembly or organizes a demonstration without submitting the prior written notification provided for in articles 6, 7, 14 and 15 of the present law, or anyone who deliberately submits an incomplete or inaccurate notification in a way that misleads the authorities regarding the conditions of holding the assembly or the demonstration.

The same penalty shall be imposed on anyone who holds a public assembly or organizes a demonstration without setting up the committee responsible for preserving order during the assembly or the demonstration provided for in articles 11 and 19 of the present law.

The same penalty shall be imposed on anyone who holds or participates in a public assembly without complying with the provisions of article 9 of the present law, or anyone who organizes or participates in a demonstration without complying with the provisions of article 16 of the present law, or a demonstration involving the use of any type of vehicles without the authorization of the competent authorities, in violations of the provisions of article 21 of the present law.

Article 36 :

A penalty of six-month imprisonment and a fine of 500 dinars, or one of them, shall be imposed on anyone who deliberately disobeys the order to disperse after dissolving the assembly or the demonstration according to the provisions of articles 13 and 22 of the present law.

Article 37 :

A penalty of one-year imprisonment and a fine of 1000 dinars, or one of them, shall be imposed on anyone who organizes or participates in a public assembly or demonstration, in violation of a decision to ban the assembly or the demonstration, pursuant to the provisions of articles 10 and 18 of the present law.

Article 38 :

A penalty of two-year imprisonment and a fine of 2000 dinars, or one of them, shall be imposed on anyone who enters the place where the assembly is held or participates in a demonstration while bearing an weapon, in violation of the provisions of articles 12 and 21 of the present law.

Article 39 :

A penalty of one-year imprisonment and a fine of 1000 dinars, or one of them, shall be imposed on anyone who organizes a non-armed gathering or who is deliberately and directly involved in incitement to it, either through crying out or through public speeches, or by means of posters, tracts or any other medium for dissemination, distribution, or presentation through writing, words or images, whatever the support used.

The penalty shall be increased to two-year imprisonment and a fine of 2000 dinars in case the gathering is armed.

Article 40 :

A penalty of six-month imprisonment and a fine of 500 dinars, or one of them, shall be imposed on anyone who deliberately continues to participate in a non-armed gathering despite all the legal dispersal warnings.

The penalty shall be doubled if the perpetrator of the crime deliberately hides his face partially or completely to keep his identity secret.

Article 41 :

A penalty of two-year imprisonment and a fine of 2000 dinars, or one of them, shall be imposed on anyone who participates in an armed gathering.

The penalty is increased to three-year imprisonment and a fine of 3000 dinars if the bearer of the weapon deliberately continues to participate in the gathering despite all the legal dispersal warnings, or if he deliberately hides his face partially or completely to keep his identity secret.

Article 42 :

The penalties provided for in articles 39, 40 and 41 of the present law shall be doubled if the gathering takes place at night or involves the use of children.

The penalty shall vary from three-year to ten-year imprisonment and the fine from 3000 to 10000 dinars if the aforementioned crimes are committed at night and involve the use of children.

Article 43 :

In the cases provided for in articles 39 and 41 of the present law, the court can impose the complementary penalties provided for in article 5 of the Penal Code.

Article 44 :

Any foreigner having been sentenced for any of the crimes stated in articles 39 and 41 of the present law can be prohibited from entering the Tunisian territory either definitively or for a maximum period of ten years.

Article 45 :

Penalties for the crimes related to gathering do not preclude application of the more severe penalties, especially those provided for in articles 74 through 79 and in articles 116, 117, 119 and 121 of the Penal Code.

Article 46 :

The court may require the individuals having deliberately continued to participate in an armed or non-armed gathering despite all the legal dispersal warnings, to compensate for the damages caused to others as a result of the gathering.

Article 47 :

The law No. 1969-4 dated January 24, 1969, concerning public assemblies, processions, parades, demonstrations and gatherings, is repealed.