

Egypt: Law Relating to the Regulation of the Right to Demonstrate in Public Spaces

February 2013

Legal analysis

Executive summary

In this analysis, ARTICLE 19 finds that the Draft Law “*relating to the regulation of the right to demonstrate in public spaces*” of Egypt (Draft Law) overwhelmingly fails to comply with international standards on the right to freedom of expression and freedom of peaceful assembly.

The net effect of the Draft Law, if enacted, would be to wholly reverse any presumption in favour of the rights to freedom of expression and freedom of peaceful assembly in Egypt. Broad powers and draconian sanctions would significantly augment the state’s power to quash legitimate dissent and restrict the functioning of civil society.

ARTICLE 19 is particularly concerned that the Draft Law would give broad and unchecked authority to law enforcement to use severe and potentially lethal force to disperse assemblies, including peaceful assemblies, without regard to principles or proportionality or accountability for basic rights violations.

Further powers include broad discretion to turn vast swathes of Egypt into no-protest zones, particularly in urban areas, and to ban overnight demonstrations while allowing authorities to confiscate tents, stages, and radio equipment.

Several provisions clearly attempt to restrict the collective criticism of government and limit religious debate; not only by banning protest near ministries, embassies or sites of worship, but through overbroad criminal defamation, insult, and blasphemy provisions. Powers of the state to intervene are further provided through provisions that allow authorities to compel organisers to negotiate the substance of their demands prior to any assembly.

Other points of concern include a burdensome notification period of 5-days and an overly formal notification process. The draft law also fails to guarantee spontaneous or counter-demonstrations, and provides draconian restrictions on the freedom of peaceful assembly rights of organisations that receive foreign funds.

Summary of recommendations:

- The right to freedom of peaceful assembly must be guaranteed for everyone, not just to citizens.
- The state’s positive obligation to facilitate the right to freedom of peaceful assembly must be emphasised, and there should be a presumption in favour of assemblies. Any limits on the exercise of the right must be framed within the three-part test of international law.
- The right to freedom of expression through any media of a person’s choice should be recognised.
- The responsibility must be placed on the state, not participants in an assembly, to protect individual or collective interests that an assembly may compromise.
- Peaceful assemblies without notification should not be prohibited or subject to criminal penalties, and spontaneous or non-notified peaceful assemblies must be protected by law, facilitated, and not dispersed.
- If a notification period is retained, it should only be for large assemblies and only require notification by writing or electronically 48 hours in advance.
- The Draft Law should provide processes whereby the authorities can take specific measures to facilitate more than one assembly in one location, including counter-demonstrations that may be spontaneous.

- Broad powers of the Minister of Interior should be removed.
- The decision-making processes of the security committee must be specified in the Draft Law and be compatible with the three-part test. Appeal processes to an independent judicial body must also be specified.
- The Draft Law must specify the composition of the security committees, the structures for accountability, committee financing and obligations to publish information.
- Disproportionate prohibitions on time, place and manner (prohibitions on time, place and manner) and prohibition stages, radio, and tents must be repealed.
- Elements of offenses listed in the Draft Law should be drawn in precise terms to ensure that they are limited to violent conduct, and that peaceful acts, in particular the disruption of traffic and infringing property rights, are not criminalised. The test for criminalising incitement must be set high. The offences of defamation, insult, blasphemy, and provocation, should be repealed.
- The prohibitions on concealing faces, and writing or drawing on property using materials that cause no permanent damage should be repealed.
- Restrictions on non-government organisations must be repealed;
- Article 21 must be repealed.
- Authorities must be required to facilitate the right to freedom of peaceful assembly and protect the rights to life and freedom from torture, inhuman or degrading treatment or punishment.
- The use of force should never be used against peaceful assemblies. The Draft Law must specify that any use of force be a last resort, and the use of or escalation of force must be subject to a strict proportionality assessment by senior officers. Authorities should be liable for any excessive use of force against demonstrators.
- The Draft Law should stipulate that the media and national and international monitors have access to assemblies and the policing operations facilitating assemblies.

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About the Article 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, Comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

If you would like to discuss the work of ARTICLE 19 on issues relating to the right to freedom of peaceful assembly, please contact Andrew Smith, Legal Officer, by e-mail at andrew@article19.org or by telephone at +44 20 7324 2500.

Introduction

In this analysis, ARTICLE 19 assesses the Draft Law “*relating to the regulation of the right to demonstrate in public spaces*” Egypt (the Draft Law)¹ for its compatibility with international standards on the rights to freedom of expression and to freedom of peaceful assembly.

The analysis builds upon ARTICLE 19’s extensive experience of working towards legal and policy reform in many countries on matters concerning the protection of freedom of expression and the right to information. ARTICLE 19’s work on these issues in relation to Egypt include a policy brief contributing to the constitutional drafting process, comments upon the decreasing space for a free civil society and critical expression in the country, as well as a submission to the UN Universal Periodic Review process.²

This analysis concludes that the draft law overwhelmingly fails to comply with international standards on the right to freedom of expression and freedom of peaceful assembly. The net effect of the draft law, if enacted, would be to wholly reverse any presumption in favour of these rights and significantly augment the state’s power to quash legitimate dissent with harsh criminal penalties. The draft law provides broad and unchecked authority to law enforcement to use severe and potentially lethal force to disperse assemblies, including peaceful assemblies, without regard to principles or proportionality or accountability for basic rights violations.

Restrictions on the time, place and manner of expression and peaceful assembly are also extensive. The government may essentially create no-protest zones across vast swathes of Egypt, particularly in urban areas, and restrictions on the time of protest would put an end to any right to assemble for any extended duration in the country. Numerous prohibitions severely limit the freedom to collectively criticise authorities and enter religious debate. These rights are further undermined by broad powers for authorities to compel organisers to negotiate the substance of their demands prior to any assembly. Other points of concern include a burdensome notification period and process, a lack of guarantees for spontaneous or counter-demonstrations, and draconian restrictions on the freedom of peaceful assembly rights of organisations that receive foreign funds.

ARTICLE 19 urges the Shura Council to amend the draft law in light of our recommendations. This process requires a fundamental shift towards recognition of the State’s obligation to facilitate peaceful assemblies and protect and promote the right to freedom of expression.

¹ At the time of writing, the Shura Council was considering the draft law. The Shura Council is able to amend and vote on the law prior to the constitution of Parliament, which will follow Parliamentary elections. The analysis is based on the unofficial translation of the text of the Draft Law (as of 11 February 2013) from Arabic to English. ARTICLE 19 takes no responsibility for the accuracy of the translation or for comments based on mistaken or misleading translation. A copy of the Draft Law is available upon request from ARTICLE 19.

² “Egypt: protecting free expression and information in new constitution”, 9 May 2012, available at: <http://www.article19.org/resources.php/resource/3092/en/egypt:-protecting-free-expression-and-information-in-new-constitution>; “Egypt: Court ruling to block youtube is disproportionate and violates right to information”, ARTICLE 19: <http://www.article19.org/resources.php/resource/3609/en/egypt:-court-ruling-to-block-youtube-is-disproportionate-and-violates-right-to-information>; “Egypt: statement about the crackdown on civil society”, Joint Statement: <http://www.article19.org/resources.php/resource/2963/en/egypt:-about-the-crackdown-on-civil-society>; “ARTICLE 19 provides submission to universal periodic review”, 2 September 2009, see: <http://www.article19.org/resources.php/resource/707/en/egypt:-article-19-provides-submission-to-universal-periodic-review>

International Standards

International human rights law places a responsibility upon States to protect and promote the right to freedom of expression and the right to freedom of peaceful assembly.

The right to freedom of expression

Freedom of expression is guaranteed in Article 19 of the Universal Declaration of Human Rights (UDHR)³ and in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁴ The ICCPR protects the right of all people to seek, receive, and impart information of any form, including political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.⁵ Importantly, the right protects expression that others may find deeply offensive.⁶

The right to freedom of expression is integral to the enjoyment of the right to freedom of assembly.⁷ The UN Special Rapporteur on the right to freedom of opinion and expression described the right as a collective right that “endows social groups with the ability to seek and receive different types of information from a variety of sources and to voice their collective views. This freedom extends to mass demonstrations of various kinds. It is also a right of different peoples, who, by virtue of the effective exercise of this right, may develop, raise awareness of, and propagate their culture, language, traditions and values.”⁸

At the regional level, both the African Charter on Human and Peoples' Rights⁹ (the African Charter) and the Arab Charter¹⁰ protect the right to freedom of expression.

The right to freedom of peaceful assembly

The right to freedom of peaceful assembly is guaranteed in Article 20 of the UDHR, and given legal force through Article 21 of the ICCPR, and is reflected in many other international human rights treaties.¹¹

The right to freedom of peaceful assembly protects any intentional and temporary presence of a number of individuals in a private or public space for a common expressive purpose.¹² This

³ UN General Assembly Resolution 217A(III), adopted 10 December 1948. Article 19 provides: “Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”

⁴ Egypt acceded to the ICCPR on 14 January 1982.

⁵ General Comment No. 34, HR Committee, CCPR/C/GC/34, 12 September 2011, para. 11.

⁶ *Ibid.*

⁷ General Comment No. 34, *op. cit.*, para. 4. General Comment No. 34 provides guidance with regard to elements of Article 21; see *Kivenmaa v. Finland*, Communication No. 412/1990, 31 March 1994, para 9.2.

⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, 20 April 2010, para. 29. General Comment No. 34, *op. cit.*, para. 4.

⁹ At Article 9. Egypt acceded to the African Charter on 25 May 1963.

¹⁰ At Article 32. The article does not comply with international freedom of expression standards.

¹¹ Article 8 of the International Covenant on Economic, Social and Cultural Rights; Article 7(c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise; Convention on the Rights of the Child, Article 15.

¹² Based on proposals of the 2012 annual report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (“an intentional and temporary gathering in a public space for a specific purpose”, *op. cit.*, at para. 24); and the OSCE Guidelines on Freedom of Peaceful Assembly (“the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.”)

includes but is not limited to political demonstrations, inside-meetings, strike actions, pickets, processions, rallies, commemorations, and cultural or religious celebrations. The right to freedom of peaceful assembly also extends to the expression of ideas that may be considered controversial or that are “not necessarily favourably received by the government or the majority of the population”¹³ or that “may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote.”¹⁴

The State is under a positive obligation to enable the exercise of the right to freedom of peaceful assembly, including the obligation to exercise a presumption in favour of the holding of assemblies.¹⁵ Importantly, peaceful assemblies must be protected by the State, including from private third parties such as counter demonstrators and *agents provocateurs*.¹⁶

The HR Committee¹⁷ and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association¹⁸ have both noted the interrelatedness between this right and the right to freedom of expression. The right to freedom of peaceful assembly has also been recognised as central to the right to participate in the conduct of public affairs.¹⁹ In particular, the right to freedom of peaceful assembly has been noted as particularly important for bringing attention to local issues where mass media are limited or restricted.²⁰

Also at the regional level, the Arab Charter²¹ and the African Charter²² both protect the right to freedom of peaceful assembly.

Limitations on the right to freedom of expression and peaceful assembly

The right to freedom of expression and the right to freedom of peaceful assembly are not guaranteed in absolute terms and may be subject to narrowly tailored limitations. Limitations must comply with the three-part test under the following terms:²³

- **Provided by law:** all limitations must “be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.”²⁴ It should be noted that limitations on the right to freedom of expression

¹³ HR Committee, *Viktor Korneenko et al v. Belarus*, Communication No. 1274/2004, para. 7.3.

¹⁴ European Court of Human Rights (ECtHR), *Stankov & UMO Ilinden v. Bulgaria*, Application Nos. 29221/95 and 29225/95 (2001), para. 86. See also: ECtHR, *Hyde Park and Others v. Moldova*, Application No. 33482/06 (2009), para. 30: the prohibition on a protest on the basis that the claims of participants were “unwelcome and unfounded” was not compatible with Article 11 of the European Convention on Human Rights (ECHR).

¹⁵ The HR Committee has found that a failure by the State to produce reasons for interfering with the right to freedom of peaceful assembly is a violation of the ICCPR. E.g. *Mecheslav Gryb v. Belarus*, op. cit.; *Chebotareva v. Russia*, communication No. 1866/2009 (2012); *Belyazeka v. Belarus*, communication No. 1772/2008 (2012).

¹⁶ Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, 2nd revised edition, at Article 21, para. 11. See also ECtHR, *Plattform “Ärzte für das Leben”*, Application No. 10126/82 (1988), para. 34.

¹⁷ See, for example: *Mechislaw Gryb v. Belarus*, communication No. 1316/2004 (2011), para. 9.5 and paras. 13.3 to 13.4; and General Comment No. 34, op. cit., para. 4.

¹⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 12.

¹⁹ General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), CCPR/C/21/Rev.1/Add.7, 12 July 1996, para. 25.

²⁰ OSCE Guidelines on Freedom of Peaceful Assembly, Second Edition, section B.1.5.

²¹ At Article 24(6).

²² At Article 11, although the term “peaceful” is absent from this provision.

²³ The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR, part I.A.2 and I.A.9, UN Commission on Human Rights, 28 September 1984, E/CN.4/1985/4.

²⁴ General Comment No. 34, op. cit.; the Siracusa Principles, *ibid.*, ECtHR, *Muller and Others v. Switzerland*, application No. 10737/84 (1988), para. 29.

must be “provided by law”, whereas limitations on the right to freedom of peaceful assembly must be “in accordance with law”.²⁵

- **Legitimate aim:** all limitations must be in pursuit of a listed “legitimate aim”, namely: respect for the rights or reputations or others; the protection of national security or of public order; or the protection of public health or morals.²⁶ Additionally, the right to freedom of peaceful assembly may also be restricted to protect public safety.²⁷
 - Limitations to protect the **rights of others** must be constructed with care and should not be interpreted, *inter alia*, to restrict political debate.²⁸
 - The genuine purpose and demonstrable effect of restrictions on the basis of protecting **national security** must be to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.²⁹
 - The State must demonstrate that any limitation to protect “**public morals**” is *essential* to the maintenance of respect for fundamental values of the community.³⁰ States are not permitted to invoke protection of “public morals” to “justify discriminatory practices”³¹ or “to perpetuate prejudice or promote intolerance.”³² International human rights bodies have also noted that concepts of morality are constantly evolving,³³ that any limitation “must be based on principles not deriving exclusively from a single tradition”,³⁴ and “must be understood in the light of the universality of human rights and the principle of non-discrimination.”³⁵
 - International standards maintain that measures to protect **public health** must be “both evidence-based and proportionate to ensure respect of human rights.”³⁶
 - States are under a positive obligation to promote and protect the right to freedom of expression, and to take reasonable and appropriate measures to enable

²⁵ See: Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, p. 489. Any law regulating the right to freedom of peaceful assembly must prevent arbitrary interferences with the right and meet the requirements of legality; ECtHR, *Mkrtchyan v. Armenia*, application no. 6562/03 (2007), para. 39.

²⁶ Article 19(3) ICCPR, and Article 21 ICCPR. Similarly, under the ECHR these rights may be restricted to protect national security, the prevention of disorder or crime, for the protection of health or morals, and the protection of the rights and freedoms of others; Article 10(2) ECHR and Article 11(2) ECHR.

²⁷ Article 21 ICCPR.

²⁸ General Comment No. 34, *op. cit.*, para. 28.

²⁹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, ARTICLE 19 London, 1996, Principle 2.a. Also, the HR Committee held that restrictions on publicly supporting a labour dispute, including calling for a national strike, did not constitute a threat to national security; *Sohn v. Republic of Korea*, communication No. 518/1992 (1994).

³⁰ The Siracusa Principles, *op. cit.*

³¹ *Ibid.* See also: General Comment No. 34, *op. cit.*, para. 32: Morality based limitations on rights “must be understood in the light of the universality of human rights and the principle of non-discrimination.”

³² *Hertzberg et al v. Finland*, Communication No. 61/1979, individual opinion by Committee members Opsahl, Lallah and Tarnopolsky, 2 April 1982.

³³ The Siracusa Principles, *op. cit.* See also: *Muller vs. Switzerland*, *op. cit.*, para. 35; and *Alekseyev*, *op. cit.*, at para. 82.

³⁴ General Comment No. 34, *op. cit.*, para. 32.

³⁵ *Ibid.*

³⁶ Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 3 August 2011, A/66/254, para. 18.

demonstrations to proceed peacefully.³⁷ The threshold for prohibiting expression on the basis of protecting **public order** or public safety is high and must be evidence based, rather than premised on speculation.³⁸ The potential for a public order disturbance, in particular from counter-demonstrators, should not be the basis for denying the right to freedom of peaceful assembly. Less restrictive measures, such as the deployment of additional law enforcement officers, should therefore be considered. Any prior restraints of a blanket nature, especially where based on the content of expression, are almost always illegitimate.³⁹

- **Necessity and proportionality:** States must demonstrate in a “specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴⁰ Moreover, this must be supported by evidence and should not be speculative.⁴¹ The restriction must also not be overly broad and must be the least restrictive means available for achieving the protective function. Account must also be taken of the form of expression and the means of its dissemination.⁴²

Notification requirements for assemblies

Any requirements for organisers of a peaceful assembly to notify authorities ahead of time are a restriction on the right to freedom of peaceful assembly and should be justified according to the three-part test.

International standards are clear that prior-notification procedures are compatible with the right to freedom of peaceful assembly to the extent that they allow states to plan to adequately facilitate the assembly.⁴³ The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that states should not impose prior-authorisation requirements, but should at most require only notice of assemblies.⁴⁴ The notification procedure should be subject to a proportionality assessment, should not be unduly bureaucratic, and require a maximum of 48 hours prior to the day the assembly is planned to take place.⁴⁵ The need for notification only exists where there are a large number of demonstrators,⁴⁶ in some countries, notification is only required for marches and parades,

³⁷ ECtHR, Plattform “Ärzte für das Leben”, *op. cit.*, paras 32 and 34.

³⁸ ECtHR, *Barankevich v. Russia*, Application No. 10519/03, 26 July 2007, at para. 33: “mere existence of a risk is insufficient for banning [a peaceful assembly]: in making their assessment the authorities must produce concrete estimates of the potential scale of disturbance in order to evaluate the resources necessary for neutralising the threat of violent clashes.”

³⁹ ECtHR, *Stankov & UMO Ilinden v. Bulgaria*, *op. cit.*, para. 97: “Sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.”

⁴⁰ General Comment No. 34, *op. cit.*, para 35; also: *Shin v. Republic of Korea*, Communication No. 926/2000, HR Committee, 16 March 2004, para. 7.3.

⁴¹ *Alekseyev v. Russia*, Applications nos. 4916/07, 25924/08 and 14599/09, 21 October 2010, para. 86.

⁴² General Comment No. 34, *op. cit.*, para. 34. The same paragraph provides that particular regard should be paid to “the value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.”

⁴³ *Kivenmaa v. Finland*, *op. cit.* See also: OAS Int-AmCHR report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, para. 57.

⁴⁴ 2012 annual report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *op. cit.*, para. 28.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.* Articles 3 and 12 of Moldova’s Law on Public Assemblies only requires notification where there are more

and not for static assemblies.⁴⁷ Moreover, absence of a notification should not be the basis for dispersing a peaceful assembly.⁴⁸ In particular, spontaneous assemblies should be exempt from prior-notification requirements.⁴⁹

Dispersal of assemblies

The dispersal of any assembly should only ever be used as a measure of last resort and in exceptional circumstances; force should never be used against a peaceful assembly. It has been noted that where the right to freedom of peaceful assembly is suppressed, those demonstrations that do occur are more likely to become violent.⁵⁰

Any use of force by authorities against an assembly, whether peaceful or violent, must comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles)⁵¹ and the UN Code of Conduct for Law Enforcement Officials.⁵² Regard must be paid to the right to life⁵³ and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁵⁴ Each of these rights is non-derogable, even during emergencies.⁵⁵

than 50 participants. The Polish Law on Assemblies only requires notification on assemblies of more than 15 people; the Croatia Law on Public Assemblies only requires notification on assemblies of more than 20 people. See the Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (2012).

⁴⁷ See, e.g. UK Public Order Act, 7 November 1986, s.11.

⁴⁸ ECtHR, *Bukta and others v. Hungary*, Application No. 25691/04 (2007), para. 36.

⁴⁹ *Ibid.* See also: 2012 annual report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *op. cit.*, para. 29.

⁵⁰ Annual Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, para. 13.

⁵¹ Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders Havana, Cuba, 27 August to 7 September 1990. In particular: Principles 5, 9, and 12 – 14.

⁵² Adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.

⁵³ Article 6, ICCPR; Article 4, African Charter; Article 5 Arab Charter.

⁵⁴ Article 7, ICCPR; Article 5, African Charter; Article 8 Arab Charter.

⁵⁵ Article 4(2), ICCPR.

Analysis of the Draft Law

The Draft Law should also be considered in the context of Egypt's new constitution, which came into effect on 26 December 2012. The right to freedom of peaceful assembly is protected at Article 45, while Articles 39 to 43 guarantee the right to freedom of expression.⁵⁶ Article 150 provides for derogation from these rights in times of emergency.

Title and definition of “demonstration”

The title of the Draft Law should be strengthened to fully capture the obligation upon authorities to protect and promote the right to freedom of peaceful assembly. This right, with the right to freedom of expression, is a cornerstone of a democracy, and should not be regarded as a problem solely requiring regulation or control.

The Draft Law (Article 1) defines “demonstration” as: “every fixed or mobile gathering of people exceeding 5 individuals for the purpose of peacefully expressing their opinions or demands”.

While it is positive that this definition applies to every static and mobile gathering, and that the expressive purpose of demonstrations is referenced, there are a number of problems:

- Firstly, the purpose of peacefully expressing “opinions or demands” may be construed narrowly to exclude other protected forms of expression. The provision should be interpreted to include all expressive purposes, such as political demonstrations, inside-meetings, strike actions, pickets, processions, rallies, artistic events, and cultural or religious celebrations.
- Secondly, the number of participants in an assembly should only be considered relevant, and if necessary require notification, where it gives rise to a pressing need for the State to take action to facilitate that assembly. For example, in Moldova, any assembly of fewer than 50 persons can take place without prior notification.⁵⁷ At all times, it should be noted that the right to freedom of peaceful assembly is engaged with the presence of anymore than one person, including where there are fewer than 5 people.⁵⁸
- Thirdly, the definition of “demonstration” references the peaceful intent of participants, but throughout the Draft Law the term “demonstration” or “demonstrators” is used in relation to non-peaceful conduct. This contradiction should be addressed by removing reference to peaceful or non-peaceful intent in the definition of “demonstration”. This would not affect the substance of the right to freedom of peaceful assembly, as the right is defined in a separate article.

⁵⁶ Article 39 (freedom of thought, opinion, and expression), Article 40 (freedom of creativity), Article 41 (freedom of information), Article 42 (freedom of the press), and Article 43 (freedom of issuing newspapers).

⁵⁷ 2012 annual report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *op. cit.*, para. 28.

⁵⁸ The OSCE Guidelines on Freedom of Expression, *op. cit.*, and the UN Special Rapporteur indicate that an assembly, by definition, requires the presence of more than one person. However, a single person is still protected by the right to freedom of expression under Article 19 of the ICCPR.

- Fourthly, while the definition applies to assemblies wherever they take place – in public or in private – the title of the Draft Law expressly refers to “public spaces”. This inconsistency creates a lack of clarity over the scope of the law and should be addressed.

Recommendations:

- The title to the Draft Law should reflect the government’s obligation to protect and promote the right to freedom of peaceful assembly in public and private spaces.
- Article 1 should define a “demonstration”, or better an “assembly”, as “an intentional and temporary presence of a number of individuals in a private or public space for a common expressive purpose.” It should not reference the peaceful intentions of participants or their number, and should affirm that any expressive purpose is protected.

The right to freedom of peaceful assembly

Articles 2 and 3 of the draft law provide limited protections to the right to freedom of peaceful assembly.⁵⁹ Article 4 qualifies this right, and is dealt with separately below. These provisions do not comply with international standards; the following problems require addressing:

- Firstly, *the right to freedom of peaceful assembly* should be guaranteed for *everyone* and not be restricted on the basis of citizenship status or on any other discriminatory ground.⁶⁰
- Secondly, these provisions fail to capture the obligation upon states to *facilitate* the exercise of the right to freedom of peaceful assembly. This includes the negative obligation to refrain from unduly or arbitrarily interfering with the exercise of the right, and the positive obligation to protect and promote the right.
- Thirdly, neither article should limit enjoyment of the right to freedom of peaceful assembly according to the “provisions and controls provided for in this law” or “the provisions contained hereunder”. Structurally, since Article 4 provides for limitations, it is not necessary to include limiting language in Articles 2 or 3. Moreover, the formulation reverses the presumption in favour of the right to freedom of peaceful assembly by conditioning the apparent guarantee for the right on legal provisions that contradict international standards.
- Fourthly, while it is positive that the right to use microphones or banners as a means of expression are specifically protected, all means of expression should be protected. The term “legitimate” implies a broad and undefined power for the State to determine the legitimacy of expression, and should be deleted. Consideration should also be given to expanding the list of protected expression. For example, Finnish and Kazakh assembly laws⁶¹ both recognise the right to erect temporary structures like tents within the right to freedom of peaceful assembly.

⁵⁹ Article 2: “The right of peaceful demonstration is guaranteed. Citizens may call for, organize or join demonstrations under the provisions and controls provided for in this law”; Article 3: “Demonstrators have the right to freely express their opinions and demands in an individual or collective manner using any legitimate means including microphones and banners expressing their opinions and orientations subject to the provisions contained hereunder.”

⁶⁰ ICCPR, Article 2 and Article 26. General Comment No. 15 on “the position of aliens under the Covenant”, 4 November 1986.

⁶¹ Kazakhstan Decree of the President in force of Law “On the procedure of organization and conduct of peaceful assemblies, mass meetings, processions, pickets and demonstrations” (1995), Article 1; Assembly Act, Finland

Recommendations:

- The right to freedom of peaceful assembly must be guaranteed for everyone. The term “citizen” should be deleted, and other limiting language should be removed.
- The state’s positive obligation to facilitate the right to freedom of peaceful assembly must be emphasised, and there should be a presumption in favour of assemblies.
- The right to freedom of expression through any media of a person’s choice should be recognised. The term “legitimate” should be deleted, and consideration should be given including protections for the use of temporary structures such as tents.

Limitations on the right to freedom of peaceful assembly

Article 4 limits the rights guaranteed in Articles 2 and 3 as follows:

The practicing of the right to demonstrate shall not impair security or public order; distort the interests of citizens; blocking roads or transportations, obstructing traffic movement; infringements against properties or freedom of work; or any serious threats to any of the foregoing.

The right to freedom of peaceful assembly is not risk-free, and its exercise should not be premised upon any expectation that participants guarantee otherwise. Article 4 fails to establish the responsibility of the state for protecting the rights of others and for securing other collective interests – including protecting participants in an assembly. Moreover, the provision fails to require that any limitation on the right must comply with the three-part test:

- Article 4 does not meet the requirement of **legality**, as the restrictions are too vague. The level of severity the term “impair” requires before authorities are required to protect listed interests is unclear, although it appears to be less than a “serious threat”. Other key terms in the provision are also ambiguous and further undermine the foreseeability of state action against assemblies.
- In light of the exhaustive list of **legitimate aims** outlined above, the following problems should be addressed:
 - Limitations cannot be placed on an assembly because is perceived to “distort the interests of citizens”. This blatantly violates international standards, as it gives authorities a broad discretion to interfere with the content of expression they disapprove of.⁶²
 - Blanket prohibitions on “blocking roads or transportations” or “obstructing traffic movement” are impermissible as they fail to balance competing interests in the use of public spaces between participants in assemblies and non-participants. While protecting public order is a legitimate aim, a certain level of disruption to ordinary life, including disruption of traffic, must be tolerated else the right to freedom of peaceful assembly would be deprived of all substance.⁶³ Authorities must facilitate the exercise of the right by, for example, rerouting traffic.⁶⁴

(1999, as amended 2001), Section 11..

⁶² ECtHR, *Hyde Park and Others v. Moldova*, Application No. 33482/06 (2009), para. 30.

⁶³ C.f. ECtHR, *Balcik v. Turkey*, application no. 25/02, 25 November 2007, para 52. See also: ECtHR, *Sergey Kuznetsov v. Russia*, Application No. 10877/04, 23 October 2008, para 44; European Court of Justice, *Eugen Schmidberger v. Republic of Austria*, Case C-112/00, judgment of 12 June 2003; Organisation of American States (OAS), Inter-American Commission on Human Rights (Int-AmCHR), Report on Citizen Security and Human

- “Infringements against property” is a broad term that potentially encompasses damage or destruction of property as well as mere acts of trespass. An appropriate balance should be struck between property rights and the right to freedom of peaceful assembly that recognises the importance of the latter to the healthy functioning of any democracy.⁶⁵
- No language in Article 4 indicates that state action against assemblies should be restrained by the principles of **necessity and proportionality**. In particular, the term “impair” implies a low threshold for authorities to be able to impose restrictions, without regard to the necessity or proportionality of the measure. Necessity requires authorities to identify the precise nature of the threat, and prove a direct and immediate connection between the expression and that threat. Authorities are then tasked with employing the least restrictive means of countering that threat.

Recommendations:

- The responsibility must be placed on the state, not participants in an assembly, to protect individual or collective interests that an assembly may compromise.
- Any limits on the exercise of the right to freedom of peaceful assembly must be framed within the three-part test.
- The term “impair” should be replaced with “pose a serious and credible threat to”.
- The phrase “distort the interests of citizens” should be deleted, and “infringements against property” should be replaced, if necessary, with “protecting property from damage or destruction”.
- References to prevent disturbances to traffic should be deleted, as they are nevertheless covered under the heading of public order.

Notification requirements

Articles 5-7 of the Draft Law establish requirements for the “notification” of demonstrations, although in effect establish an authorisation regime. These include the obligation to serve notice of a demonstration in writing no less than 5 days in advance, including the following information: the reasons for demonstration; its place and proposed route; expected number of participants; start and end time, and identifying information for three organisers. The Minister of Interior can notify concerned authorities with the demands of a demonstration, so they can “consider finding solutions” to them beforehand. Demonstrations without notification, as well as demonstrations that breach conditions of an assembly are prohibited (Article 16 of the Draft Law). Sanctions for violations of Article 16 can lead to fines between 20,000 (£1,950) and 50,000 (£4,865) Egyptian pounds (Article 24). Unauthorised demonstrations may also be dispersed.

As outlined above, prior-notification procedures are compatible with the right to freedom of peaceful assembly to the extent that they allow for states to plan facilitating the assembly. In light of these standards, the following problems with the Draft Law should be addressed:

- Firstly, the Draft Law effectively establishes a *de facto* authorisation process, since non-notified assemblies are prohibited, and extensive prior restraints and other administrative

Rights, 31 December 2009, (OEA/Ser.L/V/II), para. 193; and OAS Int-AmCHR: report of the Office of the Special Rapporteur for Freedom of Expression (2008), para. 70.

⁶⁴ OAS Int-AmCHR Report on Citizen Security and Human Rights, *op. cit.*, para. 193.

⁶⁵ ECtHR, *Appleby and others v. the United Kingdom*, Application no. 44306/98 (2003), para. 47.

hurdles essentially defeat any presumption in favour of assemblies. Blanket prohibitions of this sort also prevent spontaneous assemblies, which are protected by international human rights law. Moreover, severe fines clearly violate the proportionality principle.⁶⁶

- Secondly, there is no legitimate purpose for authorities to require “reasons calling for the organisation of the demonstration and its demands.” They should also not be allowed to make interventions to address grievances or demands, as this would allow interference with the content of expression and “negotiation” to be used as a means to hide popular grievances from public view. Moreover, compelling assembly organisers to enter formal negotiations with powerful state bodies would have a chilling effect on the exercise of democratic rights.
- Thirdly, the notification procedure set in the Draft Law is overly bureaucratic and burdensome and may deter individuals from exercising their right to freedom of peaceful assembly. A pressing social for notification only exists for large or mobile assemblies, and a time limit of any more than 48 hours prior to the assembly is unnecessarily burdensome. To plan to facilitate an assembly, the authorities should only require basic information, such as identifying information for one organiser, the start time and location, the route if the assembly is mobile, and the expected number of participants. Notification should also be provided for by numerous means, including by writing, telephone, email, or in person. This information should only be gathered for the purpose of facilitating assemblies and should not be retained otherwise.
- Fourthly, the Draft Law does not provide for authorities to provide acknowledgments of a notification. Those who notify the authorities of their assembly will therefore be uncertain whether or not proceeding with their assembly will result in criminal sanction. This will considerably chill the exercise of the right to freedom of peaceful assembly.
- Fifthly, although the Cabinet is empowered by Article 12 to designate zones where notification is not required and time restrictions do not apply, including parts of Tahrir Square and other urban locations. This provision does too little to protect the exercise of the right to freedom of expression and freedom of peaceful assembly.⁶⁷

Recommendations

- Peaceful assemblies without notification should not be prohibited or subject to criminal penalties (Article 5, Article 16, Article 24), and spontaneous or non-notified peaceful assemblies must be protected by law, facilitated, and not dispersed (Article 17).
- If a notification period is retained, it should only be for large assemblies and only require notification by writing or electronically 48 hours in advance. Authorities should only require: identifying information for one organiser, the assembly’s start time, the number of participants, and location.
- Authorities should formally acknowledge receipt of a notification within 24 hours, so that it is clear an assembly can proceed on the basis of the terms specified therein.

⁶⁶ A measure in the canton of Geneva, Switzerland, on fines for failure to receive an authorisation, was criticised in the 2012 report of the Special Rapporteur on the rights to freedom of peaceful assembly, *op. cit.*, para. 28.

⁶⁷ General Comment No. 34, *op. cit.*, para. 21.

The facilitation of counter-demonstrations

The Draft Law contains no provision on the processes that authorities should comply with where two assemblies seek notification for or begin demonstrations in the same place.

As outlined above, international standards require states to facilitate the right to freedom of peaceful assembly of all people, and this includes the right to stage counter-demonstrations within sight and sound of any assembly one wishes to oppose or offer an alternative perspective to.

Recommendations:

- The Draft Law should provide processes whereby the authorities can take specific measures to facilitate more than one assembly in one location, including counter-demonstrations that may be spontaneous.

Broad powers of Interior Minister

Article 9 of the Draft Law provides extensive powers to the Minister of Interior to object to demonstrations and apply to the judiciary for the cancellation, postponement or changing the place or route of the demonstration. “Substantiated reasons” must be provided, but no further guidance is given. The judge is required to provide an expedited justified decision.

Article 9 is incompatible with international standards on the right to freedom of expression and peaceful assembly as it does not comply with the three-part test.

- Provided by law: It is positive that the power to object to or make amendments to a demonstration rests with a judge required to give an expedited and reasoned decision. However, Article 9 provides no guidance as to what “substantiated reasons” the Minister of Interior’s application should be based upon. There is no provision for the organiser of the assembly to be represented in this process, even though their fundamental rights are being negotiated. Without proper guidance for judges, this power is of undeterminable scope.
- Legitimate aim: The term “substantiated reasons” does not make clear that any reason for restricting the right to freedom of peaceful assembly must be to narrowly-tailored to protect one of the listed legitimate aims under Article 19(3) or Article 21 of the ICCPR.
- Necessary and proportionate: There is no requirement for the Minister of Interior to ensure that the restriction sought is necessary in a democratic society, i.e. that it responds to a pressing social need, and that it is the least restrictive measure available.

Recommendation:

- Article 9 should be repealed in its entirety.

Security committees

Article 8 requires the Interior Minister to establish committees chaired by the security manager in every governorate to be responsible, with demonstration organisers, for the “review” of the controls and guarantees to secure the demonstration, protect lives, public and private properties. The route of the demonstration may be changed at the last minute in agreement with the demonstration organisers for any urgent reasons related to securing the demonstration.

While it is positive that Article 8 seeks to involve demonstration organisers in decision-making processes at the local level, there are a number of uncertainties:

- Firstly, the use of the term “review” makes it unclear whether the committee establishes the conditions to be imposed on the assembly – or that they are reviewing decisions made by another body (such as the Interior Ministry). This lack of clarity must be addressed.
- Secondly, the Draft Law should clearly establish that the committee’s function is to facilitate the exercise of the right to freedom of peaceful assembly, while protecting other individual and collective interests. The provision is framed to presume the proportionality and necessity of controls and last minute revisions on assemblies. It is also unclear if committees, like the Interior Ministry, will be expected to address the substantive concerns of assembly organisers.
- Thirdly, the Draft Law does not specify how the committee will reach substantive decisions regarding controls to be placed on assemblies, according to what criteria (e.g. the three-part test), and how reasons will be given. Thus, decisions are not likely to comply with the three-part test. There is no provision allowing the decisions of the committee to be appealed to an independent judicial body. International standards provided that assembly organisers should not be compelled to accept alternatives offered by authorities.⁶⁸
- Fourthly, the Draft Law does not specify in respect of the committee as a public body: (i) membership, selection processes, and criteria; (ii) committee financing; (iii) internal and external accountability; and (iv) obligations to publish information.

Recommendations:

- Article 8 must make clear the function of local security committees, including its obligation to facilitate the right to freedom of peaceful assembly.
- The decision-making processes of the security committee, including the criteria that they make decisions by, must be specified in the draft law and be compatible with the three-part test. Appeal processes to an independent judicial body must also be specified.
- The Draft Law must specify the composition of the security committees, the structures for accountability, committee financing and obligations to publish information.

Prohibitions on time, place, and manner

Articles 10 – 16 of the Draft Law prohibit a range of conduct during assemblies, including acts of expression that are peaceful and protected under international human rights law.

Location and time

There are a number of restrictions on the permissible location and times of assemblies. These appear to be in addition to the conditions that may be placed on assemblies by security committees (Article 8) and the Minister of Interior (Article 9), and powers under Article 12 to create zones where time and place restrictions do not apply. The Minister of Interior can designate a list of locations as “no demonstration” zones (Article 10)⁶⁹ and the Draft Law also

⁶⁸ OSCE Guidelines on Freedom of Peaceful Assembly, *op. cit.*, para. 103.

⁶⁹ Article 10: “the competent governor, in coordination with the Minister of Interior shall define a certain prohibited area not exceeding 500 meters for the demonstration before any of the following locations: the areas

makes it an offence to “exceed the prohibited area” or install tents in such areas (Article 16) under a penalty between 20,000 - 50,000 Egyptian pounds (Article 24).

ARTICLE 19 notes that extensive and blanket prohibitions on the location of an assembly, particularly where they create 1km-diameter “no protest zones” that would exclude most urban protests, subject the exercise of fundamental democratic rights to the whim of governorates and the Interior Ministry. Each restriction zone does not require the specification of a legitimate aim or a necessity or proportionality assessment to be carried out, or at any point reviewed. The creation of criminal offences based on these restrictions is further disproportionate.

Specific offences limit the times at which demonstrations may take place. Article 16 prohibits any demonstration in a residential area after 11:00pm, and it is not specified when assemblies may commence again. Article 24 provides sanctions. Article 11 prevents the erection of tents for the purpose of overnight stays and Article 25 provides seizure powers.

ARTICLE 19 is concerned that these blanket prohibitions on overnight assemblies restrict the freedom of individuals to exercise their rights for an extended but nevertheless temporary duration, such as 24-hour vigils and encampments. Legitimate public order concerns relating to noise levels can be addressed through less restrictive measures. Protests of extended durations have played a critical role in progress towards democratisation in the region and should not be subject to blanket bans.

Impermissible restrictions on expression

Article 15 prohibits “carrying banners, delivering any statements, chants or songs that are defamatory or insulting, blasphemous against holy religions” and “the denigration of any state authority or institutions in a manner that exceeds freedom of peaceful expression.”

The extent of offences created to limit expression according to its content, even where peaceful, is particularly problematic:

- Firstly, the criminal prohibition of insult or defamation fails to comply with international standards. ARTICLE 19 argues that criminal defamation laws fail to strike the appropriate balance between the right to freedom of expression and the right to a reputation. This position is supported by international standards,⁷⁰ and reflects a global trend towards decriminalisation.⁷¹

The purpose of any defamation law should be to protect the right to reputation, not to protect feelings or sensitivities. Therefore “insult” laws are generally incompatible with international standards. In particular, public officials must be required to display a higher degree of tolerance toward criticism than other individuals. Where criminal defamation statutes continue to exist, they must only be employed in the most serious of cases and never to forms of expression that cannot be verified (such as opinions); that

(1) Presidential palaces; (2) Legislative councils; (3) Offices of ministries; (4) Premises of embassies and diplomatic missions; (5) court houses and buildings; (6) hospitals; (7) worship locations; (8) archaeological places; (9) Prisons, police stations, police points and camps; (10) military regions. The Cabinet may add additional locations, which protection is necessary for the considerations of public security and order.

⁷⁰ General Comment No. 34, *op. cit.*, para. 47; Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002; African Commission Resolution 169 of 2010.

⁷¹ Ghana, Togo, Mexico, the United Kingdom, Ireland, Sri Lanka, Georgia, and the Maldives have decriminalised defamation and the Central African Republic has removed imprisonment for criminal libel.

the defence of truth and public interest both be available, and imprisonment is never appropriate as a penalty.

- Secondly, it is not permissible to limit the right to freedom of expression to protect religions or ideas or connected symbols from criticism, since international human rights law protects people and not abstract beliefs or ideas.⁷² Moreover, religious beliefs, even between adherents to the same faith, are subjective and often disputed. For this reason, blasphemy prohibitions are often abused to restrict religious expression or to silence criticism of governments. Blasphemy laws should therefore be repealed.
- Thirdly, no public authority or institution has a right to a reputation under international human rights law, and it is therefore illegitimate to criminalise expression on the basis that it interferes with such a right. The freedom to criticise public authorities and institutions is central to the right to freedom of expression and the right to freedom of peaceful assembly. This offence should therefore be deleted.

Furthermore, the Draft Law (in Article 11) prohibits the erection of stages for speeches or radio at demonstrations and the use of tents, and is subject to seizure provisions under Article 25. It also prohibits wearing masks or covers that conceal the face features and writing or drawing using colours, chalks or any other means on public or private properties (Article 11) under penalty of imprisonment for an unspecified period and fines (Article 23).

Both of these offences prohibit a broad range of expressive conduct, without specifying a legitimate aim for the restriction, or reference to principles of necessity or proportionality.

Stages, other temporary structures, and the use of radio are integral means of expression and may only be legitimately be restricted according to the three-part test under Article 19(3) and Article 21 of the ICCPR. A blanket prohibition on all stages and all use of radio during assemblies is entirely disproportionate, and may also illegitimately interfere with the work of media organisations and non-participants in an assembly.

While protecting properties from graffiti may be a legitimate aim, property rights must be balanced against freedom of expression rights. Where materials such as chalk are used and no permanent damage is caused, such expression should be tolerated.

The prohibition on facial coverings undermines the rights of individuals to exercise their rights to freedom of expression and freedom of peaceful assembly without being identified. Individuals should only be required to reveal their identities to authorities where there is reasonable cause to believe that the individual has committed a criminal offence. ARTICLE 19 is particularly concerned that this provision will have a disproportionate impact on the freedom of peaceful assembly rights of Muslim women who cover their faces for religious reasons.

Violence and incitement

Numerous provisions target violent conduct that would not be considered an exercise of the right to freedom of *peaceful* assembly. Indeed, the state is required to act to protect the rights of others, including life and property. However, in most cases, these acts will already be prohibited under the criminal law, and it may therefore not be necessary to repeat them in the Draft Law.

⁷² General Comment No. 34, *op. cit.*, para. 48.

Under Article 14, it is a criminal offence during a demonstration to: (i) attack public or private properties; (ii) close roads, squares or water streams or install barriers or barricades to prevent traffic movements; (iii) burn tires, wood or any other materials using any petroleum or flammable substances; (iv) carrying any weapons, ammunition, explosives, fireworks or any other aggressive materials;⁷³ This is punishable with a minimum of 3 months imprisonment and fines of between 20,000 and 50,000 Egyptian Pounds (Article 22).

In relation to points (i) and (ii), it is not clear what is meant by the terms “attack”, “close roads”, or “prevent traffic movements”. These provisions could feasibly be categorised as peaceful conduct, particularly where any disruption to property or traffic is incidental. Again, concerning peaceful conduct the State must balance the rights to property and public order against the right to freedom of peaceful assembly (see above).

Article 15 prohibits, among other things, expression that is “provocative or inciting for violence or hatred”, and provides criminal penalties of imprisonment for a non-specified period, and a fine between 10,000 and 30,000 Egyptian pounds. ARTICLE 19 acknowledges that Article 20(2) of the ICCPR requires that states prohibit certain forms of incitement, but stresses that the threshold for criminality in these cases is high. Distinction must also be drawn between expression that provokes violence or hatred, and expression that incites violence or hatred. ARTICLE 19 has developed a 6-factor test for identifying incitement and for determining the threshold for imposing prohibitions in accordance with international standards that should be considered in these cases.⁷⁴

Liability

There is a lack of clarity regarding the liability of organisers of assemblies, vis-à-vis individual participants or non-participants who engage in prohibited conduct in or around an assembly.

The draft law must make it clear that organisers will not be held vicariously liable for the conduct of other participants in assemblies unless they have specifically directed that those individuals act unlawfully. Placing too much or unfair responsibility on the organisers to an assembly will act to chill the exercise of that right.⁷⁵

This should not affect practices to encourage dialogue between organisers and the authorities leading up to and during the assembly. As with any individual, an organiser will be liable for their own conduct.

Recommendations:

- Articles 10, 16 and 24 must be repealed as they place disproportionate prior-restrictions on the location of assemblies.
- Articles 11, 16, 25 should be repealed as they place disproportionate restrictions on the times that peaceful assemblies can take place.
- The prohibition in Article 11 on stages, radio, and tents should be repealed.
- The elements of the offences listed in Article 14 should be drawn in precise terms to ensure that they are limited to violent conduct, and that peaceful acts, in particular the disruption of traffic and infringing property rights, are not criminalised.

⁷³ Note that these numerals have been added to aid the clarity of the analysis, and do not appear in the Draft Lw.

⁷⁴ ARTICLE 19, Prohibiting incitement to discrimination, hostility, or violence (2012); available at: <http://www.article19.org/resources.php/resource/3572/en/Prohibiting%20incitement%20to%20discrimination,%20hostility%20or%20violence>

⁷⁵ Republic of Latvia Constitutional Court, No. 2006-03-0106 (23 November 2006), para.34.4.

- The test for criminalising incitement under Article 15 must be set high and determined according to the six-factor test, so as to protect the right to freedom of expression.
- The offences within Article 15 of defamation, insult, blasphemy, and provocation, should be repealed and reforms to the same extent taken in respect of the criminal code.
- The prohibitions in Article 16 on concealing faces, and writing or drawing on property using materials that cause no permanent damage should be repealed.

Restrictions on non-government organisations

Article 21 provides severe sanctions (imprisonment and fine of at least 50,000 Egyptian pounds) for those who “receive financial sums from entities or individuals inside or outside Egypt to organise demonstrations that threaten public security” And those who “offer or present” such cash in the process.”

As noted, the exercise of the freedom of peaceful assembly is inherently prone to risk and public order disturbances are, to an extent, inevitable. It is the obligation of States to minimise this risk by permitting assemblies to take place and ensuring that participants and non-participants are protected in the exercise of their rights.

ARTICLE 19 is seriously concerned that this provision seeks to deter non-government organisations from seeking funds and/or other forms of assistance from overseas donors, and to prevent entities that receive such funds from exercising their rights to freedom of expression and freedom of peaceful assembly.

This provision is wholly incompatible with international human rights law.

Recommendations:

- Article 21 must be repealed.

The use of force to disperse assemblies

Articles 17 – 19 of the Draft Law concern the policing of assemblies, including the powers to disperse assemblies and use force against participants in assemblies. Based on a decision of a competent security manager or the Ministry of Interior, the police can disperse any demonstration organised without notification, if the agreed instructions and guidelines for the demonstration are violated, or if the demonstrators commit any act that endangers public security, prevents access to work or attacking any public institution, obstructing traffic movement in roads, squares or transportation line, affecting the work of public authorities, or hindering the application of laws and regulations (Article 17). Article 18 establishes a hierarchy for the use of force to disperse demonstrations with a variety of measures⁷⁶ and Article 19 provides that more severe measures may be taken if there is “an aggression against souls or properties” or based on a judicial order.

The problems with these provisions are numerous and grave:

- Firstly, neither the obligation upon police to facilitate the right to freedom of peaceful assembly is not specified, nor is the obligation to protect the rights of participants and

⁷⁶ Article 18: “To the extent possible, dispersion of demonstrations in cases indicated in the above article shall follow the below order: Directing verbal warnings threatening the dispersion of the demonstration by the field commander of police; using tear gas; using water hoses; using plastic batons; firing cartridges in the air.”

non-participants to life and freedom from torture, inhuman or degrading treatment or punishment.

- Secondly, the permissible reasons for dispersing an assembly are vast – and much broader than those analysed under Article 4. The interests listed potentially prohibit a range of peaceful conduct where there is no imminent threat of violence. The use of force should never be used against peaceful assemblies, particularly where participants are unable to leave a dispersal zone.⁷⁷
- Thirdly, that the methods of dispersal listed should all be considered only in the last resort is not specified.⁷⁸ Similarly, the process for escalating a response to an assembly that may be permissibly dispersed is not clearly specified or subject to clear considerations regarding proportionality.⁷⁹ The leap between oral notification and use of potentially lethal force is obviously significant, and no provision is made for negotiated management with organisers or demonstrators or to give demonstrators a reasonable time to disperse voluntarily. Further, the need to use weapons may be mitigated if the police are given adequate defensive equipment such as shields and helmets, and are trained in effective measures of crowd-control that do not require the use of force.
- Fourthly, no provision requires the police to distinguish between peaceful and non-peaceful participants in an assembly, or non-participants and *agents provocateurs*. Rather, the conduct of an individual or minority decides whether measures may be taken to disperse the entire assembly.
- Fifthly, no provision concerns the obligation on authorities to ensure access to adequate medical care for injured persons, or decontamination facilities where irritant chemicals are used.
- Sixthly, no provisions concern the necessity of any review of the use of force in relation to assemblies by authorities or any independent body. The draft law must provide for the accountability of law enforcement officers, security managers or the Ministry of Interior where authorities use excessive force to disperse an assembly.⁸⁰ Investigations must be prompt, and impartial and ensure redress for victims.

Recommendations:

- Authorities must be required to facilitate the right to freedom of peaceful assembly and protect the rights to life and freedom from torture, inhuman or degrading treatment or punishment.
- The use of force should never be used against peaceful assemblies.
- The draft law must specify that any use of force be a last resort, and the use of or escalation of force must be subject to a strict proportionality assessment by senior officers.

⁷⁷ The UN Basic Principles, *op. cit.*, Principle 13 provides “[i]n the dispersal of assemblies that are unlawful but not violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict force to the minimum extent necessary.”

⁷⁸ ECtHR: *Khandzhov v. Bulgaria* (2008) para. 73 where vigorous and immediate use of force to silence the applicant from criticising a public official was found to constitute a violation of Article 10.

⁷⁹ C.f. Section 107, District of Columbia, US, First Amendment Rights and Police Standards Act (2004). The UN Basic Principles, *op. cit.*, Principle 14: “[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.”

⁸⁰ The UN Basic Principles, *op. cit.*, Principle 7.

- Authorities should be required to distinguish between peaceful participants in an assembly, peaceful bystanders and non-peaceful participants or *agents provocateurs*.
- Authorities should be required to provide medical assistance, including decontamination facilities, to injured participants in assemblies.
- Any use of force must be subject to subsequent review to determine lessons learnt and identify any excessive use of force.
- Authorities should be liable for any excessive use of force against demonstrators.

Access to assemblies for media and monitors

The Draft Law contains no provisions relating to the access of the media to assemblies. ARTICLE 19 notes that international law requires that states protect, promote, and respect the right to freedom of expression and media freedom at all times, including during assemblies. Journalists and the media play an important role in informing the public about assemblies. In addition, a media presence – akin to the presence of people monitoring the assembly – acts as a safeguard for the rights of the participants to freedom of assembly and expression.

It is recommended that police officers are obliged to give to journalists and assembly-monitors from domestic and international organisations as much access as possible to public assemblies.

Recommendations:

- The Draft Law should stipulate that the media and national and international monitors have access to assemblies and the policing operations facilitating assemblies.