



المجلس الوطني لحقوق الإنسان
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Conseil national des droits de l'Homme

المملكة المغربية
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Royaume du Maroc

Public gatherings Dahir n° I-58-377

Memorandum

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M E M O R A N D U M O N
**PUBLIC GATHERINGS: STRENGTHENING SAFEGUARDS FOR FREEDOM
OF ASSEMBLY AND MEETING AND THE RIGHT TO PEACEFUL PROTEST**

1. The National Human Rights Council (CNDH) contributes, in fulfilment of its mandate, particularly under the second paragraph of Article 25 of Dahir (Royal Decree) No. 1-11-19, dated 1st March 2011, to “promoting democracy-building, by fostering broad-based social dialogue and developing any relevant tools and mechanisms to that end.”

Article 13 of the same Dahir gives the Council the power to “examine the compatibility of laws and regulations in force with the provisions of international human rights conventions and international humanitarian law which the Kingdom has ratified or to which it has acceded, as well as with the concluding observations and recommendations of UN treaty bodies on the reports submitted to them by the [Moroccan] Government.”

Under Article 24 of the Dahir, CNDH submits to His Majesty the King “proposals and issue-specific or thematic reports on all matters that contribute to the optimal protection of human rights.”

2. Civil liberty legislations have a direct impact on the protection of the civil and political rights enshrined in the Constitution. CNDH contributes, through its memoranda, to designing and developing ‘organic’ and ordinary laws that can have an impact on the implementation and protection of human rights. The Council has a special and legitimate interest in civil liberties in general and the legal framework governing freedom of assembly and meeting and the right to peaceful protest in particular. This interest is further justified by the “human rights approach”, referred to explicitly in the rational of the Council’s founding law.

3. The following declarative and jurisprudential references and standards were taken into account in this contribution:

- The Constitution, mainly articles 22, 25 and 29;
- Articles 21 and 22 of the International Covenant on Civil and Political Rights;
- The Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly Resolution 34/169 on 17 December 1979;
- The 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);
- Resolution 19/35 of the UN Human Rights Council on the promotion and protection of human rights in the context of peaceful protests¹, adopted on 23 March 2012 (18 April 2012);
- Resolution 25/38 adopted by the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests², adopted on 28 March 2014 (11 April 2014);

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- The relevant recommendations of the Equity and Reconciliation Commission (IER), including recommendations 8.4, 8.5, and 8.6, Chapter 8 on security governance; and
- Moroccan case law on the freedom of assembly and meeting and the right to peaceful protest³.

4. CNDH also considered the recommendations of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (Mr. Maina Kiai), mainly the recommendations of his reports⁴ published on 7/8/2013 and 21/5/2012.

5. This contribution has also taken into account the findings of a study commissioned by the Council on the right to protest⁵ and the recommendations of several thematic workshops held by the Council with NGOs, judges, lawyers, and representatives of different departments and administrations concerned with the freedoms of assembly and the right to peaceful protest⁶ (the Ministry of Interior, the General Directorate of National Security, the Royal Gendarmerie, Auxiliary Forces, and Civil Protection).

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6. CNDH also took into account the Partner for Democracy status granted to the Kingdom of Morocco by the Parliamentary Assembly of the Council of Europe in June 2011. It took into consideration the documents of the Venice Commission and the Organization for Security and Co-operation in Europe (Office for Democratic Institutions and Human Rights, ODIHR/OSCE) on freedoms of assembly and meeting and the right to peaceful protest, mainly the following:

- OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly⁷, adopted by the Venice Commission at its 83rd plenary session (4 June 2010); and
- Venice Commission's opinions on national legislation regulating freedoms of association, assembly and peaceful protest.

7. CNDH's proposals and comments on Dahir No. 1-58-377 of 15 November 1958 on public gatherings are based, particularly, on the following arguments:

1st Argument: CNDH's proposals to make the prior notification procedure for public demonstrations simple and easy are designed to implement the provisions of Article 29 of the Constitution, which explicitly provides for the right to peaceful protest.

2nd Argument: CNDH's proposals on how to deal with the different forms of freedoms of assembly and public gathering and the right to peaceful protest aim at strengthening the declarative and liberal trends and aspects of the national legislation on civil liberties since 1958.

3rd Argument: CNDH proposes in this contribution an approach that gives courts the power they must have as regulators and guarantors of the freedoms of assembly and

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meetings and the right to peaceful protest, as enshrined in articles 29 and 117 of the Constitution. This approach recommends a faster access to justice when there is a litigation regarding the freedoms referred to in article 29 of the Constitution.

4th Argument: The new definitions proposed by the Council aim at adding new forms of collective action by the various actors to the scope of the freedoms guaranteed by article 29 of the Constitution. CNDH believes that any amendment of the legal framework governing freedom of assembly and meeting and the right to peaceful protest must codify the rules enshrined in the national case law and implement the relevant Equity and Reconciliation Commission's recommendations on the right to protest.

Analyzing the above-mentioned texts of reference, CNDH drew the following conclusions:

8. Texts of reference developed by the UN Human Rights Council

The analysis of the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and resolutions 19/35 and 25/38 on the promotion and protection of human rights in the context of peaceful protests shows that there are four elements that should be included in the new legal framework governing freedom of assembly and meeting and the right to peaceful protest:

- Protestors shall have the right to access public spaces, in a way that can be set forth by law, regulations and by agreement between the protesters and the authorities; appropriate communication mechanisms shall be established for this purpose;
- The authorities shall have the duty to protect all protesters, without discrimination, against all forms of threat or harassment;
- The law should explicitly guarantee the safety of journalists and media professionals reporting on peaceful protests and demonstrations, taking into account their specific role, their exposure and vulnerability;
- The law governing freedom of assembly, meeting, and peaceful demonstration should also provide for the main principles that should govern any use of force, mainly the principles of necessity and proportionality.

9. Conclusions drawn from the reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

The conclusions that are related to the elements that CNDH proposes to include in the legal framework governing the rights enshrined in article 29 of the Constitution are based on the findings and conclusions of the Special Rapporteur on the rights to freedom of peaceful assembly and of association's reports:

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- introducing a provision that commits the authorities to provide reasonable alternatives that should not deviate from the purpose of a meeting and target audience when such a meeting is restricted in accordance with international human rights norms and standards;
- providing explicitly that a peaceful meeting shall be presumed as legal until proven otherwise;
- providing for the duty of the authorities to facilitate and protect peaceful assemblies including through negotiation and mediation.

10. Conclusions drawn from the Venice Commission's opinions on national laws governing freedoms of assembly and meetings and the right to peaceful protest

In its opinions on draft laws governing freedoms of assembly, meetings and peaceful protest in member countries of the Council of Europe, the Venice Commission has defined a set of principles that CNDH recommends to take into account in any revision or amendment of the national legal framework in this area.

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In this regard, the Venice Commission recommends that peaceful assembly must not be interpreted restrictively⁸ and should cover all types of exercise of freedoms of assembly, meeting and peaceful protest⁹, including simultaneous and counter-assemblies¹⁰. In the same context, the Commission considered that it is a positive obligation of the State to guarantee the effective exercise of the freedom of assembly¹¹.

The authorities should protect and facilitate any spontaneous assembly as long as it is peaceful. In order for an assembly to be genuinely¹² "spontaneous", according to the Venice Commission, there must be a close temporal relationship between the event which stimulates the assembly and the assembly itself¹³.

According to the Venice Commission, a counter-manifestation is when persons exercise their right to assemble to express their disagreement with the views expressed in another assembly¹⁴. The authorities shall have an obligation to facilitate, as much as possible, counter-demonstrations within sight and sound of one another¹⁵. Holding simultaneous assemblies in one place must take into account the "first come, first served" rule¹⁶.

The Venice Commission has adopted several opinions on laws dealing with the freedom of assembly, meetings and peaceful protest. This freedom should not be interpreted restrictively and laws should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details¹⁷. The Commission also recommends that national legislation governing freedom

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of assembly should clearly articulate three principles: the presumption in favor of holding assemblies, the state's duty to protect peaceful assembly, and proportionality¹⁸. The principle of proportionality is one of the main principles that should guide all restrictions that might be applied; it is absolutely necessary for a balance of interests between the freedoms of assembly, meeting and peaceful protest and the State or public interest¹⁹.

According to the Venice Commission, restrictions on rallies or demonstrations should not be based upon the content of the message demonstrators seek to communicate, unless there is an explicit incitement to violence and racial, ethnic or religious hatred²⁰, or to war²¹.

The Commission stated, moreover, that "the notification procedure is for the purpose of providing information to the authorities to enable the facilitation of the right to assemble, rather than creating a system where permission must be sought to conduct an assembly"²². The notification deadline²³ and, if need be²⁴, the time limits of a court to render its decision should be reduced as much as possible.

Legislation must provide for the autonomy of the organizers in deciding on the place of the event they want to hold. Any alteration of the place of the assembly by the authorities should be negotiated with the organizers, must be within sight and sound of their targeted audiences, and correspond to the social and political objectives of the event²⁵. Finally, the Commission's guidelines stipulate that the organization and holding of assemblies shall be exercised both by individuals and by corporate bodies²⁶.

11. Equity and Reconciliation Commission's recommendations on how to best deal with freedom of peaceful demonstration

The Moroccan truth commission recommended that public authorities should "inform the public and parliament of any incidents requiring the intervention of public force, and to give a detailed account of the course of events, of security operations and their results, the responsibilities and any corrective measures to be taken"²⁷. It also recommended that "security operations and the maintenance of public order falling within the remit of regional and local authorities should be placed under the immediate supervision of local or regional multi disciplinary, supervisory and monitoring committees".

Regarding the use of force in the context of events, the Commission recommended the following:

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- “All apparatuses and agents of the public authority or the security forces should be obliged to keep all documentation relating to a decision to intervene or to resort to public force, as well as reports, notifications and correspondence relating to it;
- Oral orders or instructions should be considered void, except in cases of imminent danger; provided that the oral orders are then followed by written orders, signed to confirm;
- Anyone who is proved to have concealed the occurrence of human or material losses or to have made excessive use of public force, or to have concealed excesses that occurred or forged, destroyed or concealed documents relating to such should be subject to severe administrative and criminal sanctions.”

Some recommendations, such as the publication of reports on the interventions of the public force, can be introduced in the law. Some rather fall within the framework of regulations and others should be introduced in texts governing the powers of Walis, Governors and authority agents.

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12. Moroccan case-law on the exercise of freedoms of assembly, meetings and peaceful protests

For the purposes of the contribution, CNDH studied Moroccan case-law on the exercise of the freedoms of assembly, meetings and peaceful protest. Several decisions are in line with the liberal trends and aspects of the Dahir of 1958 and should be included in the revision of the legal framework governing these freedoms. Other judgments are completely opposite to these trends.

For example, concerning the classification of certain forms of collective action, the Supreme Court (la Cour de cassation) ruled in judgment No. 4/1781 of 07/07/1999 that people gathering in a particular place is not, in itself, a manifestation but a simple gathering and that the main character of a manifestation is demonstrators rallying the street. Similarly, the Rabat Court of Appeal held in its Judgment No. 6997 of 21/11/2001, “a simple gathering of people in a particular place in a sit-in is not a demonstration.” When it comes to harm to public safety, the courts usually confirm this liberal trend. For example, the Court of Appeal of El Jadida ruled in its Judgment No. 01/1236 of 21/03/2001 that “the organization of a peaceful sit-in to demand the right to work is legitimate. The court had no evidence to support the claim that the defendants collectively crossed the street in a way that undermines public safety.”

Another trend in Moroccan case law considers sit-ins as demonstrations that require a prior notification. For example, the Administrative Court in Fez ruled in its Judgment No.

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325/2006 of 10/05/2006 that the sit-in is a form demonstration and can be compared to demonstrations, because in this case people also occupy a public place to express a collective will in the form of opinion or position. As such, sit-ins shall thus be subject to the same prior notification procedure and must respect the same deadlines stipulated by law, according to the court.

It's worth mentioning at the end of this section that Moroccan case-law has established a principle according to which the notification of an event is not considered as an obligation (the Rabat Administrative Tribunal: the Moroccan Association of Support to the Struggle of the Palestinian People vs. the Wali of the Region of Rabat-Salé-Zemmour-Zaer, Decision # 81 of 17 January 2002).

13. Proposals concerning the revision of Dahir No. 1-58-377 of 15 November 1958 on public gatherings

Based on the above-mentioned elements, CNDH proposes revising Dahir No. 1-58-377 of 15 November 1958 on public gatherings and presents its recommendations and proposals as follows:

Proposals on public meetings and gatherings

Having regard to Article 30 of the Constitution, CNDH recommends to systematically add "residence card" next to the national identity card.

CNDH proposes to repeal prison sentences and keep fines provided for in Article 9 for the offenses of the first book on public meetings, and those provided for in Article 14 for the offenses of the book on demonstration in public space.

In order to make the procedures simple and easier, the Council proposes to introduce in Articles 3 and 11 the opportunity to make electronic notification.

Article 1

The Council proposes adding to the principle of freedom of public meetings the principle of presumption that a meeting is always legal until proven otherwise.

The Council proposes replacing, in the same article, the current definition of public meetings by a more general definition according to which the term "public meeting" means the intentional and temporary presence of a number of people wishing to express a common point of view in a public space.

The Council also recommends that Article 1 establishes the positive obligation of public authorities to facilitate and protect peaceful meetings and assemblies.

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Article 3

In order to make the procedures simple and easier, CNDH proposes that the certified copies of the national identity cards, or if need be, the residence permits, be replaced by the mere mention of the numbers of these cards.

CNDH also recommends exempting legally established associations, political parties, trade training and professional bodies from the prior notification to hold public meetings.

Article 6

CNDH proposes to add to this article a provision that grants the organizers of a meeting, the possibility to deploy people that must be clearly and easily identified to control the lines, facilitate the event and ensure compliance with any legally notified restrictions. But of course these security people shall no powers similar to the powers of law enforcement officials and shall never use force. They shall always seek cooperation of the participants. The Council considers that this recommendation will encourage the self-organization of meetings.

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The Council also recommends introducing in the same article a clause granting associations, political parties, unions and other groups the possibility to use public halls at their request, under the terms and the conditions that shall be defined by regulation. CNDH proposes to turn the content of the Prime Minister's circular No. 28/99 of 5 November 1999 on the use of public facilities and halls by associations, political parties and trade unions to a decree.

Article 11

CNDH notes that the practice has far exceeded the scope of Article 11 of the 1958 Dahir on public gatherings. For two decades, public gatherings and demonstrations have been held by coordinations, de facto associations, local and thematic coalitions, unions of unemployed graduates, etc. These organizers are not mentioned in Article 11 (which refers only to associations, political parties, trade unions and professional bodies). The practice has evolved and this justifies, in CNDH's opinion, the urgent need to amend this article and grant the right to hold demonstrations in public spaces to individuals and legal entities.

Article 13

CNDH proposes to introduce in this article a provision that gives the signatories of a notification the right to appeal against any decisions to prohibit an event or protest before the competent administrative tribunal, which shall decide on the matter following an urgent procedure and shall render an urgent judgment.

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Article 14

In order to facilitate spontaneous demonstrations, which is one of the positive obligations of public authorities in facilitating and protecting the exercise of the freedoms this contribution targets, CNDH recommends amending this article by revoking any sanctions against the participants of non-notified demonstrations.

The use of force

CNDH proposes introducing in Article 21 a provision to give the law enforcement officer in charge or any authorized officer the opportunity to attempt negotiation-mediation before any other proceedings.

CNDH also recommends introducing between Articles 25 and 26 a new provision that explicitly enshrines two principles that must govern the use of force: necessity and proportionality. For the Council, the procedures of the use of force on the basis of these two principles must be defined by regulation.

CNDH recommends that under this new provision any use of force must be done under the supervision of the public prosecutor of the court of the first instance.

The Council stresses that the proposed provisions should also explicitly guarantee the safety of journalists and media professionals reporting on peaceful demonstrations.

Notes:

1- A/HRC/RES/19/35 ; 55

2- A/HRC/RES/25/38

3- See Mohammed Alazhar, Les libertés publiques dans la jurisprudence marocaine (en arabe), Imprimerie Annajah Aljadida, Casablanca, 2012

4- A/68/299

5- By Mr. Mohammed Bouzlafa, Professor, University of Sidi Mohammed Ben Abdellah - Fez

6- Two consultation workshops held at CNDH offices in Rabat, January 23, 2014 and February 19, 2014

7- CDL-AD (2010) 020.

8- CDL-AD (2010) 016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §30

9- CDL-AD (2008) 025, Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peacefully, Without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §17. See also : CDL-AD (2009) 035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §12 ; CDL-AD (2010) 033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine , by the Venice Commission and OSCE/ODIHR, §15-17 ; CDL-AD (2009) 052, Joint Opinion on the Order of Organising and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, III, I, Q.

10- CDL-AD (2011) 031, Joint opinion on the draft law on freedom of peaceful assembly of Ukraine by the Venice Commission and the OSCE/ODIHR, §71

11- CDL-AD (2010) 031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §28.

12- CDL-AD (2010) 016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §36.

13- CDL-AD (2008) 020, Joint Opinion on the Draft Law Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §17.

14- CDL-AD (2009) 052, Joint Opinion on the Order of Organizing and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §22.

15- CDL-AD (2009) 052, Joint Opinion on the Order of Organizing and Conducting Peaceful Events of Ukraine by the Venice Commission and OSCE/ODIHR, §53.

16- CDL-AD (2009) 035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §§36-38.

17- CDL-AD (2008) 025, Joint 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 by the Venice Commission and OSCE/ODIHR, §8. See also CDL-AD (2009) 035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §6; CDL-AD (2010) 016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §7.

18- CDL-AD (2010) 016, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, §1 I.

19- CDL-AD (2009) 034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §29. See also CDL-AD (2006) 034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §33.

20-“(…) Restrictions on public assemblies should not be based upon the content of the message they seek to communicate. It is especially unacceptable if the interference with the right to freedom of assembly could be justified simply on the basis of the authorities’ own view of the merits of a particular protest. Any restrictions on the message of any content expressed should face heightened scrutiny and must only be imposed if there is an imminent threat of violence.

Therefore, speeches and demonstrations which call for territorial changes or constitutional changes do not automatically amount to a threat to the country’s territorial integrity and national security, unless the element of incitement to hatred or violence is included.” CDL-AD (2010) 031, Joint Opinion on the on the Public Assembly of Serbia by the Venice Commission and OSCE/ODIHR, §45.

21- CDL-AD (2009) 034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §35.

22- CDL-AD (2009), 034, Joint Opinion on the Draft Law on Assemblies of the Kyrgyz Republic by the Venice Commission and OSCE/ODIHR, §35.

23- CDL-AD (2008) 025, Joint 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 by the Venice Commission and OSCE/ODIHR, §36.

24- CDL-AD (2006) 034, Opinion on the Law on Freedom of Assembly in Azerbaijan, §39.

25- CDL-AD (2012) 007, Opinion on the Federal Law on assemblies, meetings, demonstrations, marches and pickets of the Russian Federation, §23.

26- CDL-AD (2009) 035, Opinion on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria, §19.

27- Final report of the Equity and Reconciliation Commission, Volume 4, p84

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**Public gatherings: Strengthening safeguards for freedom
of assembly and meeting and the right to peaceful protest**

Memorandum - December 2015

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