

Analysis Paper Summary

The Right to Freedom of Peaceful Assembly

Between the Hammer of Legislation and State of Exception and the Anvil of Internal Political Divide and Security Justifications

2018

Introduction

The right to freedom of peaceful assembly covers several areas. It is a form of community and grassroots action, which holds the *de facto* political authority to account. As an inherent right, freedom of peaceful assembly is of paramount importance to exercise many other human rights and public freedoms, enshrined in international conventions and standards, modern constitutions, and national legislative. Abuse of, and encroachment on, the right to freedom of peaceful assembly by the State and its security agencies amounts to political corruption.

Practically, the right to freedom of peaceful assembly has been abused on several occasions in both the West Bank and the Gaza Strip. The internal Palestinian political divide of 2007 has paved the way to a security approach to dealing with the right to freedom of peaceful assembly. Most often, the executive and judicial powers have not addressed violations of this right in tandem with the law. Sometimes, law has been abused. Abuse of law by the political echelon is another form of political corruption.

This report describes, diagnoses and analyses the current context and practical application of the right to freedom of peaceful assembly in the Palestinian society. It provides an overview of the forms of abuses of this right in the aftermath of the internal Palestinian political divide of 2007. After Palestine was conferred the status of non-member observer State in the United Nations and following accession to a number of international conventions, the State of Palestine has been under the obligation to safeguard the right to freedom of peaceful assembly. However, effective implementation of this right has been frequently violated by security agencies in the West Bank and Gaza Strip.

The report comprises two sections. Section 1 delineates the nature of the right to freedom of peaceful assembly in relation to other freedoms. It reviews, and draws a distinction between, forms of the right to freedom of peaceful assembly, such as public and private meetings and demonstrations. The importance of distinguishing between public and private meetings lies in the different legal systems, which govern each form of meeting. Public meetings are supervised by administrative control authorities because exercising this right has the potential to threaten and disturb public order. On the other hand, private meetings are completely free and duly protected by the principles of the right to private life. In other words, freedom of private meetings is a natural and logical extension of the inviolability of the home. Private meetings are held in private homes or indoor halls.[1] A review of Palestinian regulations on the right to freedom of peaceful assembly shows that the word *demonstration* is not mentioned directly.[2] Article 26 of the Basic Law refers to the forms

[1] Fat'h al-Bab, Mohammed (1993). *Administrative Control Powers in the Exercise of the Freedom of Public Meetings*. Cairo Publishing House, p. 146.

[2] In Egypt, a *demonstration* is cited as *rally*. See Judgement of the Administrative Court, dated 15 June 1985, Case No. 4525 of the Judicial Year 39, Unpublished. According to the court ruling: "[i]t should,

of peaceful assemblies, namely, *processions* and *gatherings*: "[…] to conduct public meetings, gatherings and processions, within the limits of the law." The Law of Public Meetings and its Bylaw use the word *rally*, rather than *demonstration*. It is noted that the Palestinian legislature deals with the *public meeting* and *rally* (*demonstration*) as if they were commensurate. As it is organised on the public road, a rally or demonstration poses a greater threat to public order and has the potential to disrupt citizens' daily life and freedom of movement and access. Evidently, Article 2 of the Law on Public Meetings provides that "[c]itizens shall have the right to hold public meetings, seminars and rallies freely. These may only be infringed or restricted in accordance with the controls provided for by this law."

Section 1 also provides an overview of international instruments. A review of relevant international and regional conventions and standards[3] shows that the international community permanently pays special attention to the right to freedom of peaceful assembly. The international community also calls on States to maintain this right. According to the provisions of law, restrictions on the exercise of the right to freedom of peaceful assembly is allowed only when absolutely necessary. However, some overbroad expressions have the potential to use legal provisions under the aforesaid instruments to place restrictions on this right. This section also investigates the legal basis of the right to freedom of peaceful assembly. Palestinian regulations pay attention to this right. A number of statutory documents incorporate constitutional and legal provisions that regulate the right to freedom of peaceful assembly. First and foremost, Article 26 of the Basic Law is in tandem with relevant international and regional conventions and standards. After it was established, the Palestinian National Authority (PNA) enacted items of legislation to regulate the right to freedom of peaceful assembly. In this context, the Law on Public Meetings No. 12 of 1998 is entirely consistent with relevant international conventions, particularly the International Covenant on Civil and Political Rights (ICCPR). To ensure law enforcement, Article 7 of the Law on Public Meetings vests the Minister of Interior with the power to issue forth the bylaws and decisions needed to implement the provisions of the law. Accordingly, the late President Yasser Arafat, in his capacity as the Minister of Interior, passed the Bylaw of the Law on Public Meetings on 30 April 2000.

The Bylaw of the Law on Public Meetings No. 1 of 2000 is marred by the suspicion of unconstitutionality (or inconsistence) because it was issued by the Minister of Interior.

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initially, be indicated that the peaceful rally, which the plaintiff seeks to organise, falls within the scope of processions and gatherings." (quoted in Fat'h al-Bab, Mohammed, op. cit., p. 171).

[3] Articles 5 and 12 of the United Nations Declaration on Human Rights Defenders emphasise and ensure this right. Also see Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by General Assembly resolution 53/144 of 9 December 1998, https://www.ohchr.org/en/professionalinterest/Pages/RightandResponsibility.aspx (Last accessed, 20 November 2017). This right is further safeguarded by Article 11 of the European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf (Last accessed, 20 November 2017).

Having been amended, Articles 68 and 70 of the Basic Law of 2003 entitle the Council of Ministers, rather than the Minister of Interior, to issue forth bylaws. However, a close reading of the Bylaw shows that it places extensive restrictions on the right to freedom of peaceful assembly, contradicting PNA's earlier declaration of commitment to international human rights standards and conventions. In particular, the Bylaw is in conflict with the ICCPR, to which the State of Palestine acceded lately. The PNA is under a primary obligation to respect and enforce provisions of the ICCPR. Palestinian legislation also need to be brought in line with the ICCPR. Additionally, the Bylaw contravenes the democratic approach, which the PNA outlines in its Basic Law and Law on Public Meetings.

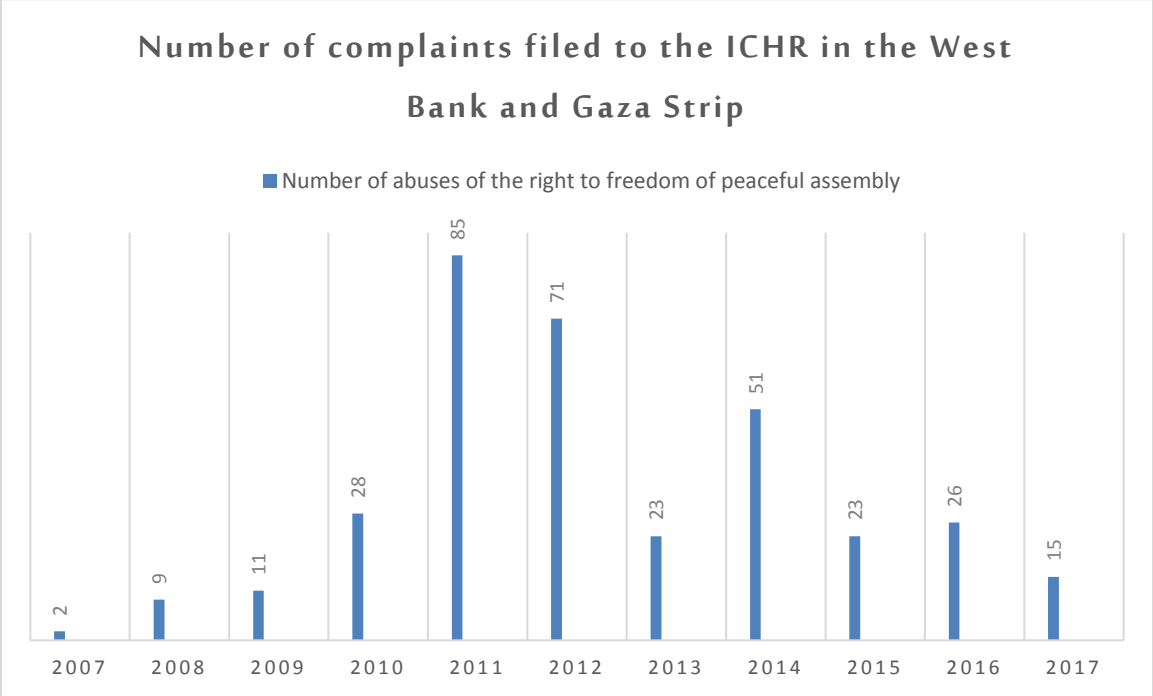
In spite of the new developments that have taken place after Palestine acceded to several international conventions, including the ICCPR, the status of the right to freedom of peaceful assembly has remained unchanged. According to the Independent Commission for Human Rights (ICHR), "international obligations of the State of Palestine have not changed. More than two years after it acceded to the ICCPR, the State of Palestine has not submitted reports on the right to freedom of peaceful assembly to the Human Rights Committee."[4] The State of Palestine has not aligned national legislation with relevant international conventions. Not to mention amending effective regulations, new items of legislation have not been enacted with a view to promoting protection of the right to freedom of peaceful assembly.

Titled "The Current Context of the Right to Freedom of Peaceful Assembly in Palestine: The Internal Political Divide as a Tool for the Oppression of Assemblies", Section 2 provides an overview of the reality of the right to freedom of peaceful assembly in both the West Bank and the Gaza Strip during the internal Palestinian political divide (June 2007-2017). It is noted that the year 2007 was the worst for human rights and public freedoms in general, and the right to freedom of peaceful assembly in particular.[5] This is attributed to the political situation and stalemate in the national reconciliation effort. The chart below shows the number of complaints the ICHR received from early 2007 to October 2017.

[4] ICHR, *22nd Annual Report, 1 January – 31 December 2016*, p. 79.

[5] On 13 August 2007, the Spokesman of the Gaza-based Executive Force of the Ministry of Interior (MoI) posted a statement on the MoI website: "On the basis of the public interest, for the purpose of maintaining security and in accordance with the rule of law, participation in any rallies without an official permission from the Executive Force is strictly prohibited." On 22 August 2007, the Public Relations Department of the Nablus Police District Directorate station issued a statement, according to which the Nablus Police District Director announced that any gatherings, rallies or demonstrations would not be allowed except after necessary official licences issued by the legally authorised authority are obtained in accordance with the Palestinian law. On 26 November 2007, the Bethlehem Police District Director issued a decision, prohibiting the organisation of assemblies or rallies without prior permission from legally authorised bodies. For more information, see Palestinian Centre for Human Rights (2009), *The Right to Freedom of Expression and Right to Freedom of Peaceful Assembly under the Palestinian National Authority (1 November 2006-31 July 2008)*, p. 53-54.

Number of complaints filed to ICHR on the right to freedom of peaceful assembly in the West Bank and Gaza Strip[6]



A question remains: Have the agencies that violated the right to freedom of peaceful assembly developed any clearly defined procedures or policies for accountability or review? According to ICHR reports, particularly the ICHR *2016 Annual Report*, these agencies have not made any clearly defined[7] or publicised policies for accountability, especially in cases involving the right to freedom of peaceful assembly. Furthermore, the said agencies have not taken any new measures or procedures to protect this right.[8]

The internal Palestinian political divide has also adversely impacted the right to freedom of peaceful assembly. A review of the reality of this right between June 2006 and October 2017 shows that the internal political divide played a role in increasing violations of the right to freedom of peaceful assembly, as well as other human rights and freedoms.[9] During the internal Palestinian political divide, practices largely contravened the Basic Law and Law on Public Meetings. The internal divide can be summed up in a state of fear and intimidation, which has affected supporters of Hamas movement in the West Bank and vice versa [supporters of Fatah movement in the Gaza Strip].

[6] Complaints were monitored based on ICHR annual and monthly reports. It is worth noting that the number of complaints lodged to the ICHR does not provide a benchmark of the volume of abuses of the right to freedom of peaceful assembly. However, it is indicative of this right in practice.
[7] ICHR, *22nd Annual Report*, op. cit., p. 91.
[8] Ibid.
[9] Interview with Taher al-Masri, ICHR legal researcher, 28 November 2017.

Commissions of inquiry into abuses of the right to freedom of peaceful assembly serve as a mechanism and tool, which the legislative or executive powers use to investigate a particular incident. These commissions submit recommendations and findings to the relevant authority in order to take appropriate actions. Commissions of inquiry do not strip the Public Prosecution and judicial bodies of their inherent powers. The findings and recommendations made by these commissions are not of a judicial nature, nor do they deprive citizens or their families of having recourse to competent judicial bodies. In view of the dysfunction of the Palestinian Legislative Council (PLC), parliamentary commissions of inquiry have not been established. Hence, inquiries have been launched by the executive power only. Commissions of inquiry established by the executive are of two types: those formed by the President of the State of Palestine and others established by lower administrative levels. The President of the State of Palestine has established a number of commissions to investigate several cases, most notably the Independent Commission of Inquiry into the Attack on Peaceful Assemblies in late June and early July 2012.[10] Formed by the President of the State of Palestine, membership on the commission included independent personalities and representatives of national institutions, and political parties. The commission compiled and submitted a report on the incident. At the legislative level, So criteria have not so far been approved for commissions of inquiry and fact-finding committees. Usually, relevant decisions provide for establishment, membership and purposes of commissions of inquiry. However, these do make clear the criteria for membership, tasks and powers of commissions, operational standards, nature and binding nature of the decision made by commissions. This problem even affects international commissions of inquiry. Only in one case did a commission of inquiry set its own operational standards, namely, the commission formed in the aftermath of the incidents of the court compound.[11] Also, commissions of inquiry face key challenges. In general, recommendations are not implemented due to a lack of will to ensure accountability, particularly on the political level. As a result, offenders feel "immune" and are not held to account.[12] This is the case of the commission of inquiry into the trial of Basel al-A'raj. Practically, most recommendations presented by the commission were not implemented, raising a question on how credible and effective these commissions are as the results of their inquiry are not respected. As most recommendations are not implemented,

[10] This commission was formed after the ICHR received 21 complaints from citizens who participated in a peaceful assembly on 1 July 2012 in downtown Ramallah. Complainants claimed they had been attacked by reported that Police officers in uniform and plain clothes. The attack took place to prevent participants from exercising their right to freedom of peaceful assembly and protesting Shaul Mofaz's visit to the city of Ramallah. According to complaints, Police personnel assaulted participants with their fists, feet and batons. Police officers also detained a number of participants for several hours. Subsequently, the ICHR issued a statement, denouncing the attack on the peaceful assembly and requesting that a commission be established to investigate the incident. The commission submitted its report to the PNA President. Recommendations were published in the media. Ibid. 101.

[11] Interview with Dr. Issam Abdeen.

[12] Ibid.

commissions of inquiry were only established to appease public rage at persecution or to serve as a media marketing strategy.

In spite of ongoing violations, commissions of inquiry are rarely formed. Even in cases where they were established, these commissions were relegated to a pro forma role. In the best case scenario, their decisions were limited to disciplinary sanctions. Serious accountability actions were not initiated by competent judicial bodies.[13] Additionally, the role of commissions of inquiry in the process of accountability is inadequate. Although they are set up to investigate encroachments on the right to freedom of peaceful assembly, failure to implement the recommendations presented by these commissions undermines their role. In principle, the fact that the Executive forms and engages civil society in commissions of inquiry marks a progress, albeit minimal, towards promoting the philosophy of accountability for abuses of the right to freedom of peaceful assembly.

The report includes a set of recommendations as follows:

a) On the legislative level:

When it is in session, the PLC is recommended to:

1. Redraft and amend the Law on Public Meetings and its Bylaw. Some provisions of the Law are inconsistent with those of the Bylaw. These are also unconstitutional under the Amended Basic Law of 2003.
2. Align Palestinian regulations on the right to freedom of peaceful assembly with relevant international conventions, particularly those ratified by the State of Palestine. In this context, it recommended that the Law on Public Meetings and its Bylaw be presented to the Council of Ministers' Legislative Harmonisation Committee for the Alignment of Palestinian Legislation with International Conventions and Standards. In this context, the Palestinian Constitutional Court rendered a decision, ruling for the superiority of international treaties to domestic legislation, requiring that a comprehensive review process is initiated.
3. Create a legislative framework to regulate the formation and functions of commissions of inquiry in Palestine. Clearly defined controls will be in place to govern functions of these commissions.

b) On an institutional and policy level:

1. Put an end to the internal Palestinian political divide, which is a primary cause of increasing violations of the right to freedom of peaceful assembly.

[13] Ibid.

2. Ensure that executive officials are committed to domestic and international standards for protection of the right to freedom of peaceful assembly in light of Palestine's accession to several international conventions and declarations.
3. Promote accountability systems within the executive power to ward off any impingements on the right to freedom of peaceful assembly. The MoI and its respective agencies will develop clear and public measures and make specific policies to consolidate accountability. Every person who abuses the right to freedom of peaceful assembly will held to account on both administrative and criminal levels.
4. Promote integrity, transparency and right of access to information within the commissions of inquiry, which are established by political levels to investigate violations of the right to freedom of peaceful assembly.
5. Publish the findings and recommendations reached by the commissions of inquiry into any abuses of human rights, particularly the right to freedom of peaceful assembly.
6. Ensure that the executive power, particularly the MoI, provide training and rehabilitation to relevant staff to deal with issues of peaceful assembly. Training will introduce relevant international best practice. Clearly defined codes of conduct will also be developed to show how peaceful assemblies are dealt with in line with international standards, to which the State of Palestine is committed.
7. Engage civil society organisations in the policies and interventions carried out by the executive in relation to the right to freedom of peaceful assembly with a view to creating an enabling environment of community accountability.