

## **The Right to Peaceful Assembly in Algeria**

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Date of submission: 22/04/2022 – Date of acceptance : 08/05/2022 – Date of publication: 11/05/2022

**Abstract:** The right to peaceful assembly is a very important right: at the internal level to allow monitoring of popular trends and demands that enable correcting the course of authority, and to spare it severe crises. Meanwhile, at the international level because it is subject to permanent control by international human rights monitoring bodies.

Algeria has been under international scrutiny over it for several years, at the end of which it witnessed a unique popular movement (Hirak) despite its intensity and duration, it managed to overcome one of its most distressing periods. This prompted her to adopt other legal amendments.

**Keywords:** Peaceful assembly, human rights, international monitoring, constitution, conditions and modalities, meetings and demonstrations.

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## Introduction:

Those interested in international human rights law agree about the great importance that the United Nations attaches to human rights in general in various fields, regardless of the generation of rights to which they belong. However, this importance increases remarkably when it comes to civil and political rights due to their nature on the one hand, and their being the most vulnerable to violation on the other hand.

If this situation prevails in the normal circumstances of states, the interest is doubled when the state encounters difficult political, economic, or social conditions in which popular discontent is at its peak, forcing the people or groups of them to gather peacefully in closed spaces or public roads to put pressure on authorities to comply with their demands.

Yet both national and international approaches are different in this regard. While states seek to impose restrictions that limit, as much as possible, the right to peaceful assembly, in order to avoid any slippage that may lead to disruption of the security situation. In return, the United Nations insists that the restrictions be narrowed to the extent required by the urgent necessity of optimizing this right.

Algeria is one of the countries that over the past years has gone through many and strong waves of peaceful assemblies, whether in the form of meetings or demonstrations, the latest of which was the movement of Hirak that erupted in February 2019 and lasted for several weeks, and did not subside until after the Corona epidemic entered the country.

This caused the country, to some extent, embarrassment at the international level, as despite its inclusion of the popular Hirak in the 2020 constitution, and its recognition as a peaceful means through which the people expressed their ambition to bring about deep social and political transformations, which the authority assumes has actually happened through adherence to the constitutional path. On the contrary, a current of the people continued to demonstrate, as before, insisting on the same political demands and considering that the presidential elections that took place in December 2019 were a circumvention of the popular will, and a denial of its ambitions.

Between this and that, the right to peaceful assembly was of interest to everyone. The authorities in Algeria, since the start of the Hirak in 2019 and for more than a year, have tried to deal with these demonstrations with flexibility and containment, and to balance as much as possible between rights and freedoms and public order, while the international human rights bodies took a position of monitoring and oversight to record violations and make observations, at a time when the internal security situation was at stake.

If the foregoing is a reflection of the exercise of the right to peaceful assembly at the field level, the problem at hand is:  
How does Algeria handle the right to peaceful assembly at the legal level?

The importance of this study from the theoretical side lies in shedding light on the concept and scope of the right to peaceful assembly between international law and domestic law, while showing the differences between them. From the practical side, its importance is based on clarifying the role of the right to peaceful assembly in maintaining the stability of states or causing their destruction, depending on the legal approach adopted by the state, and on how it deals with the exercise of this right.

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In order to answer the problem posed, the descriptive and analytical approaches were adopted, while relying exclusively on the texts of agreements, laws, international resolutions, and national reports. The study was also divided into two main parts:

- 1- The right to peaceful assembly in international and national legal texts.
- 2- Monitoring the compliance of national law with international law with regard to the right to peaceful assembly.

### **Chapter one: The right to peaceful assembly in international law**

In this request, the right to peaceful assembly will be addressed in the International Covenant on Civil and Political Rights, specifically Article 21 of it, and the general comment thereon, as well as to the most important observations of international human rights bodies directed to Algeria, as described below.

#### **Section One: Under the legal texts**

What is meant here in particular are the texts related to the International Covenant on Civil and Political Rights, which will be detailed later, in particular, Article 21 of it, as well as General Comment on it, No. 27 of 2020 issued by the Human Rights Committee, which will be dealt with after clarifying the legal status of this international covenant.

The covenant is an international treaty legally binding on the States Parties<sup>1</sup>, adopted and submitted for signature, ratification and accession pursuant to United Nations General Assembly Resolution 2200 A (D-21) dated December 16, 1966, and entered into force on: March 23, 1976, in accordance with the provisions of Article 49 of it. The covenant contains 53 articles dealing with various civil and political rights, including Article 21 relating to the right to peaceful assembly<sup>2</sup>.

As for its applicability to Algeria, it is legally binding as it is a state party that ratified it on September 12, 1989, more than two decades after its signing on December 10, 1968<sup>3</sup>. Algeria translated its commitment to it by publishing it in the Official Gazette No. 20 on May 17, 1989 corresponding to Shawwal 12, 1409.<sup>4</sup>

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<sup>1</sup> See: The 1969 Vienna Convention on the Law of Treaties, article 2. USE OF TERMS

“ 1. For the purposes of the present Convention:

(a) "Treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

(b) "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty;”

Available in PDF format at:

<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

<sup>2</sup> See the website of the Office of the High Commissioner for Human Rights at the following link:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

<sup>3</sup> See the website of the Office of the High Commissioner for Human Rights at the following link:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=3&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=3&Lang=EN)

<sup>4</sup> The Official Gazette can be viewed on its official website. See:

<http://www.joradp.dz/HAR/Index.htm>

This means that Algeria must implement the provisions of this covenant in good faith<sup>5</sup>, and submit its treatment of the right to peaceful assembly to the oversight of the Human Rights Committee charged with monitoring the implementation of civil and political rights, and to other international human rights monitoring instruments.<sup>6</sup>

### **First: The text of Article 21 of the International Covenant on Civil and Political Rights**

In this article, the International Covenant detailed the right to peaceful assembly stipulates that:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

Despite the simple phrases used in the text of this article, they remained a subject of controversy between the delegations of the states party to the Covenant and the international human rights monitoring bodies at times, and at other times the subject of ambiguity with regard to some broad terms such as “necessary measures”, “a democratic society”, “public order”.

This prompted the Human Rights Committee to issue a general comment in 2020, bearing the number 37, in which it explained in detail all the points that were subject to confusion or disagreement in Article 21.

### **Second: General comment No. 37 (2020) on the right of peaceful assembly (article 21)**

The General comment was issued more than 5 decades after the conclusion of the international covenant, and it included more than 100 paragraphs that were drafted to be a facilitator in disputed matters regarding the right to peaceful assembly, the most important of which were mentioned in the following:<sup>7</sup>

The Comment stated that the right to peaceful assembly is an individual right of every human being, exercised collectively, and is inalienable to citizens and other foreign nationals, immigrants (regular and irregular), asylum seekers, refugees and stateless persons.

It defined a peaceful assembly as any non-violent assembly held by people for specific purposes, primarily for the purpose of expression, that is practiced collectively and involves a common element between the group, such as expressing a position on a particular issue, emphasizing collective solidarity or Group identity or any other objectives of a recreational, cultural, religious or commercial nature, whether held in public or private places, indoors or outdoors, or even on the Internet, such as virtual gatherings held on social networking sites, whether they take the form of meetings, sit-ins, protests, sit-ins, marches, demonstrations,

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<sup>5</sup> See: The 1969 Vienna Convention on the Law of Treaties , mentioned in a previous footnote, Article 26. "PACTA SUNT SERVANDA"

“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

<sup>6</sup> See about those instruments and mechanisms:

<https://www.ohchr.org/en/instruments-and-mechanisms>

<sup>7</sup> See : General comment No. 37 (2020) on the right of peaceful assembly (article 21)\*, CCPR/C/GC/37, United Nations, Human Rights Committee.

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processions, or others, the type of peaceful assembly or its form does not matter as long as it falls within the specific definition.

Although the general comment raised the issue of the absence of a clear dividing line between peaceful and non-peaceful assemblies, it emphasized the presumption of assemblies peacefulness, and considered that the intended violence in Article 21 is the participants' use of physical force against others that may lead to injury or death, or serious damage to properties, noting that merely pushing or jostling assembly participants, or disrupting the movement of vehicles, pedestrians, or daily activities is not considered violence. Nor is it necessary for participants to carry items that could be considered weapons or protective equipment, such as gas masks or helmets, to consider their behavior violent. Rather, this has to be determined on a case-by-case basis, subject to, inter alia: local regulations governing the carrying of arms (particularly firearms), local cultural practices, evidence of violent intent, and the risk of violence arising from such matters.

The General Comment also considers that spontaneous assemblies that are ordinarily a direct response to current events are protected under this article, whether coordinated or not, and an assembly is not considered violent because the organizers do not meet the local legal requirements that apply to assemblies.

It also clarifies that isolated acts of violence by some participants should not be attributed to other participants, to the organizers or to the assembly itself, and that the peacefulness of the assembly is based on the behavior of its participants. As for the violence practiced against the participants by the authorities, or instigators acting on behalf or members of the public against the assembly, or participants in counter-demonstrations, does not make the assembly non-peaceful.

The general comment adds that despite the possibility of peaceful assemblies contravening the system, such as causing disturbances and causing disruption to the movement of vehicles, pedestrians or economic activities, it is not permissible to consider an assembly violent just for these considerations, and the comment goes further by recognizing that this right protects even acts of civil disobedience, and campaigns Direct action provided it is not violent. It also emphasized the set of obligations imposed on states by Article 21 of the International Covenant, which are:

- Commitment not to interfere in a peaceful assembly without a convincing justification, and not to impose penalties on organizers and participants without a legitimate reason.

- Commitment to facilitating peaceful assembly by closing streets or redirecting traffic, protecting participants from attacks including interference or violence by members of the public, and ensuring that assemblies and counter-assemblies are held without any undue disruption.

- Commitment to hold violators of the right to peaceful assembly accountable, and to provide effective remedies to victims of violations.

- Commitment not to enact, interpret or apply laws in a manner that discriminates in the enjoyment of this right.

- Commitment to domestic law recognition of the right to peaceful assembly, clearly defining the duties and responsibilities of all public officials, and ensuring public awareness of the relevant law and regulations.

- The obligation to ensure the right of journalists and human rights defenders to monitor assemblies, and not to expose them to reprisals, harassment, confiscate or destroy their equipment, and even if the assembly is dispersed or declared illegal, states should not end the right to monitor.

As for some unclear sentences in Article 21, they were interpreted by the General Comment as follows:

- “Those imposed in conformity with the law”: means by law or administrative decisions based on law, that the relevant law is sufficiently precise to enable individuals to decide how to regulate their conduct, and does not give absolute or total discretion to those charged with its enforcement.

- “Which are necessary in a democratic society”: means that restrictions are legal if they are necessary and proportionate to achieve one of the legitimate bases stipulated in Article 21, and that they are gradual from least to most intrusive, the last of which is prohibition. As for comprehensive restrictions, they are disproportionate and illegal.

As for the restrictions imposed on peaceful assembly, the General Comment detailed them, placing the burden of proof on the public authority, and stating the “interests” that justify them as follows:<sup>8</sup>

- “National security”: the state must demonstrate that it is experiencing real threats to its territorial integrity or political independence (as if the assembly involved the use of force against these elements).

- “Public Safety”: it must be demonstrated that the assembly poses a real and significant danger to the safety of people (their lives or security) or to a risk of serious damage to properties (such as crowding in a stadium or on a bridge that does not accommodate the number of participants).

- “Public order”: is a set of rules that ensure the proper functioning of society or the main principles on which society is based, which also means respect for human rights, (therefore, the protection of the right to peaceful assembly is at the core of public order).

- “Public Health”: its protection allows for the imposition of exceptional restrictions, examples of which are the possibility of limiting assemblies in the event of the outbreak of epidemics or infectious diseases, which make the assembly dangerous.

- “Morals”: restrictions are imposed on it as an exception only, and this is not to protect moral concepts that derive from only one social, philosophical or religious tradition, as the General Comment imposes their understanding within the framework of the universality of human rights, pluralism and the principle of non-discrimination. It does not permit its imposition, for example, on the basis of opposition to the expression of sexual orientation.

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<sup>8</sup> See also: OHCHR, Joint report on the proper management of assemblies, Available at the link: <https://www.ohchr.org/en/calls-for-input/reports/2016/joint-report-proper-management-assemblies>

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- “The protection of the rights and freedoms of others”: the General Comment states that they may relate to persons not participating in peaceful assemblies, but that the latter, by their nature, cause certain disturbances of normal life, the authority must take into account these disturbances, and accommodate this disruption.

In terms of “content”: the general comment required that restrictions be neutral, forbidding their imposition based on the message of the assembly, or to suppress expressions by the political opposition of criticism of a government, or protest against authority, including calls for democratic changes in the government, the constitution, the political system, or the pursuit of self-determination, as well as prohibiting its imposition to prohibit prejudice to the honor and reputation of officials or state agencies.

In turn, the General Comment obligated the authorities to allow the use of flags, uniforms, banners and slogans as legitimate forms of expression that should not be restricted, even if they were reminders of a painful past. Exceptionally, appropriate restrictions may be applied if such symbols directly and essentially incite discrimination, hostility or violence, and an assembly may not be restricted merely because it provokes hostile reactions from the public.

In terms of “location”, the public comment required the authorities to allow gatherings to be held in full view of their target audience in public squares and streets, and to be generally available in the vicinity of courts, parliaments, sites of historical interest and other official buildings as public places, and even in places private interests, while ensuring that the interests of other rights holders are respected. Peaceful assemblies should not be relegated to remote areas, nor should single location be specified for all gatherings, neither should a total ban be imposed on them in the capital, in the city center or on its streets.

In terms of “time”, the general comment considered that imposing a specific time or date for holding assemblies is a matter of concern, and stressed the need to allow sufficient time for participants to express their views, until peaceful assemblies end on their own. It also prohibited restricting assemblies only because of their recurrence.

In terms of “means”, participants are given the right to limit their use of equipment such as posters, loudspeakers, sound systems, musical instruments and display equipment.

In terms of “requirements” on participants: authorities are prohibited from asking organizers or participants to contribute to the costs of policing, security services, medical assistance, cleaning or other public services, or from asking for pledges not to participate in future assemblies.

In terms of “sanctions” imposed on gathering organizers or participants for unlawful behavior, the General Comment required that they be proportionate, non-discriminatory, not based on vaguely or broadly defined crimes or suppress protected behavior, and not based on counter-terrorism laws, while empowering them From recourse to the judiciary in a timely manner to seek remedies.

The general comment was not enough to claim all of the above clarifications, but also detailed the obligations and powers of law enforcement agencies, whether in terms of the tasks of warning, arrest, search, preventive detention, containment or cordon, disperse, exhausting non-violent means, promoting a culture of accountability. It cautioned that these

tasks should be limited to law enforcement officials trained in maintaining security during gatherings for this purpose, and that it should not be assigned to the army.<sup>9</sup>

In contrast, the general comment does not impose any obligation on the organizers and participants other than responsibility for their own conduct. As for the other practices it urged, such as appointing supervisors or guards when necessary, it considered them to be good practices that should not be a condition on them.

The general comment paid clear attention to the notification systems for gatherings, as evidenced by the following:

- Preventing states from imposing a procedure for requesting a license from public authorities for holding peaceful assemblies, as it is related to a fundamental right guaranteed by the International Covenant.
- Allowing the authorities to provide a notification before assemblies, to help facilitate them and maintain security, provided that this is in accordance with transparent procedures that do not constitute a heavy burden or an undue bureaucratic procedure.
- Preventing the invocation of failure to provide advance notice to consider the assembly illegal, or using it as a basis to break up the assembly or imposing criminal penalties on participants or organizers.
- Obligation of states to expressly specify the terms of notification of assembly by law.
- Reducing the period for providing prior notification, ranging from 48 hours as an ideal model, and 3-6 days, as is the case in several countries. Spontaneous gatherings are exempted from the notification requirement.
- Requiring the authorities to notify organizers early on any restrictions on assemblies within sufficient time to allow them to appeal against the decision before the courts.

## **Section two: Under international monitoring**

International oversight is carried out through specialized bodies, namely the Human Rights Council, the Human Rights Committee, and the special procedures<sup>10</sup>, but the latter will be excluded in this research, due to its method, which often depends on the accountability of the state regarding certain cases or specific people, and will be addressed instead to the other two devices:

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<sup>9</sup>See also: A Guide to Ten Principles for the Good Governance of Associations, issued by the United Nations High Commissioner for Human Rights, available at the following link:  
<https://www.ohchr.org/sites/default/files/Documents/Issues/FAssociation/10PrinciplesProperManagementAssemblies.pdf>

<sup>10</sup> See about these instruments and their mechanisms:  
<https://www.ohchr.org/en/instruments-and-mechanisms>



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### **First: Under Human Rights Council monitoring**

The Human Rights Council, in turn, relies on two different mechanisms of oversight, one of which is submitting complaints mechanism, which presents specific cases of violation, and the place is narrow here for studying them, in addition, it may deviate from the search for objectivity to diagnosis, and therefore this oversight mechanism will not be addressed in this research.

Instead, it will highlight its other oversight mechanism, which is the universal periodic review, whereby states periodically present their human rights files to other states, and receive recommendations from member states to adopt specific reforms, after taking a look at the reality of rights within the state under review, and find out the most important defects.<sup>11</sup>

In this context, Algeria presented its file to the Council in 2017, which resulted in receiving a number of observations, including those related to the right to peaceful assembly, the following is a set of observations received, attached to the name of the country that made the note<sup>12</sup>:

- Take steps to ensure its To ensure compliance with the International Covenant on Civil and Political Rights by upholding the right of peaceful assembly and the right to freedom of association, according to Articles 21 and 22 of the Covenant (Norway)
- Avoid applying severe restrictions on freedom of assembly and prohibiting peaceful demonstrations (Uruguay)
- Bring the legal provision on freedom of association and assembly fully in conformity with international human rights standards (Netherlands)
- Take measures to promote a safe, respectful, enabling environment for civil society, including through abolishing the legal and policy measures, which unwarrantedly limit the right to association (Zambia)

To which Algeria responded that in all matters relating to democratic freedoms, human rights, the rule of law and governance, Parliament takes into account all ratified treaties when drafting legislation. This principle is adhered to by the fact that ratified treaties take precedence over national laws, and the Constitutional Council may annul a national law if it determines that the law is inconsistent with ratified treaties.<sup>13</sup>

### **Second: Under Human Rights Committee monitoring**

This committee is based on two mechanisms, namely the complaints that will not be addressed for the same reason mentioned above, and the reports submitted by the state and discussed by the committee in their regard after reviewing the reports of non-governmental organizations and other stakeholders.<sup>14</sup>

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<sup>11</sup> OHCHR, Basic facts about the UPR, available at the following link

<https://www.ohchr.org/en/hr-bodies/upr/basic-facts>

<sup>12</sup> See the reference document: A/HRC/36/13/Add.1 - Para. 6 and 7, issued by the Human Rights Council on 19 September 2017.

<sup>13</sup> See the reference document: A/HRC/36/13/Add.1 – Para 12.

<sup>14</sup> See for more information about the committee (CCPR)

In this regard, the Committee made the following observations to Algeria:<sup>15</sup>

The Committee expressed its deep concern about Law No. 91-19 on Public Meetings and Demonstrations, amending and supplementing Law No. 89-28, on the grounds that its provisions are too restrictive on the organization of demonstrations, including:

(a) Prior authorization by the Executive, and at its discretion on the basis of vague criteria, such as national principles, public order or morals;

(b) eight days' notice too long;

(C) Criminal penalties for any public gathering that does not meet these conditions and such events are classified in the Criminal Code as unarmed gatherings.

It also expressed its equally concern about the unpublished decree issued on June 18, 2001, which banned demonstrations in the capital, especially since the reports in its possession indicate the application of the decree in general throughout the country.

The Committee expressed its concern about reports of frequent cases of:

(a) Violent dispersal of public and private gatherings;

(b) Protesters' ill-treatment, imprisonment and sometimes prosecution;

(c) Prosecution or harassment of persons who operate special facilities used for private or exclusively ad hoc meetings.

Accordingly, the Committee requested that Algeria amend the following:

(a) Amend Law No. 91-19 to remove all restrictions on peaceful demonstrations that are not absolutely necessary or with respect to the provisions of article 21 of the Covenant, and institute a simplified arrangement for obtaining prior authorization for public demonstrations;

(b) Repeal the unpublished decree of 18 June 2001;

(c) Ensure that demonstrators and organizers of gatherings are not prosecuted for exercising their right to peaceful assembly;

(d) Take effective measures to ensure that law enforcement officials do not use excessive force while dispersing crowds.

This is what Algeria responded to in practice by amending the constitution in 2020, and working to amend Law 91-19

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<https://www.ohchr.org/en/treaty-bodies/ccpr/introduction-committee>

<sup>15</sup> See : Human Rights Committee, Concluding observations on the fourth periodic report of Algeria, Issued on 17 August 2018, the reference document: CCPR/C/DZA/CO/4

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### **Chapter two: The right to peaceful assembly in Algerian law**

This will be studied through various Algerian constitutions up to the 2020 Constitution, in addition to other laws, specifically the Law No.89-28 related to public meetings and demonstrations, and the Law No. 91-19 amending and supplementing it, to identify the provisions that made international monitoring bodies criticize Algeria's legal treatment of the right to peaceful assembly, and consider them to be in violation of its international obligations under the International Covenant on Civil and Political Rights

#### **Section one: The right to peaceful assembly in Algerian constitutions**

Since its independence, Algeria has gone through different periods politically, economically and socially, which cast a shadow over the drafting of the country's various constitutions. This is what made every constitutional amendment a prominent station in the country's legal path, indicating the status of rights and freedoms under it.

Although each constitution has its own treatment of the right to peaceful assembly, which may converge or diverge with other constitutions, in terms of content and scope, in this regard, the focus will be on the 2020 constitution as a milestone for the right to peaceful assembly given the developments that it brought.

#### **First: Before 2020 constitution**

##### **- For the 1963 constitution:**

The right to peaceful assembly was stipulated among the basic rights in Article 19 as follows: "The republic guarantees freedom of the press, freedom of other media, freedom of association, freedom of expression, public address and freedom of assembly". It was also subjected to a set of restrictions imposed on all other rights set forth in Article 22, which states: "No one may use the aforementioned rights and freedoms to prejudice the independence of the nation, the integrity of national territories, national unity, the institutions of the republic, the people's socialist aspirations, and the principle of the oneness of the National Liberation Front."<sup>16</sup>

The following is noted on the constitutional stage at that time:

- On the political and economic levels: Algeria was a newly independent country emerging from a fierce military war, adopting a one-party system and socialism.
- On the legal level: The International Covenant on Civil and Political Rights had not yet been promulgated, and there was only the Universal Declaration of Human Rights, which is a document that is only morally and not legally binding.

Therefore, despite the fact that the recognition of basic rights within the young constitution without an international obligation in itself was a good sign, the several and strict restrictions that Algeria included at the time did not indicate a serious intent to commit to enabling citizens the right to assemble peacefully.

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<sup>16</sup> See the website of the second chamber of parliament, the National Assembly, at the link: <http://www.majliselouma.dz/index.php/ar/2016-07-19-12-56-20/2016-07-19-13-25-03/1018-1963>

**- For the 1976 constitution:**

The right to peaceful assembly was recognized within Chapter Four, which includes basic freedoms, human rights and the citizen, at the core of Article 55, which states: "Freedom of expression and assembly is guaranteed, and it cannot be invoked to strike the foundations of the socialist revolution. This freedom is exercised while observing the provisions of Article 73 of the Constitution". As for Article 73, it stipulates defining this right as follows: "The law defines the conditions for dropping the basic rights and liberties for everyone who uses them with the intention of violating the constitution, the main interests of the national group, the unity of the people and the national territory, the internal and external security of the state, or the socialist revolution".<sup>17</sup>

It follows from this that:

-Algeria's survival on the same political and economic system identical to the orientation of the former Soviet Union, which means that it also adopted the same approach resulting from that system, which is to focus on economic, social and cultural rights instead of civil and political rights promoted by the Western bloc led by the United States of America.

- Algeria was not at that time acceding to the International Covenant on Civil and Political Rights, which means that it was not bound by it, especially in light of the differences between the eastern and western blocs on the concept of human rights, which is one of the polarization aspects between the former Soviet Union and the United States in the conflict that reached up to legal field, with the result that states were somehow under the protection of the party whose approach it pursued in human rights practices.

**- For the 1989 constitution:**

In turn, this Constitution included in the fourth chapter entitled Rights and Freedoms the recognition of the right to peaceful assembly under the text of Article 39: "Freedoms of expression, association and assembly are guaranteed to the citizen."<sup>18</sup>

What is noticeable at this stage is the absence of a provision for restrictions similar to those contained in the previous two constitutions, for two reasons:

-On the one hand, there was an international transformation witnessed during that period, represented by the beginning of the collapse of the Soviet Union and the extension of American hegemony over various international files, including human rights file, which resulted in changing Algeria's legal approach by ratifying the International Covenant on Civil and Political Rights on September 12, 1989, which in turn urges providing for broad guarantees of the rights covered by it, including reducing restrictions unless absolutely necessary.

- On the other hand: the previous consideration resulted in the adoption of this constitution, in contrast to the two constitutions before, for the political and economic openness that was

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<sup>17</sup> See the website of the second chamber of parliament, the National Assembly, at the link: <http://www.majliselouma.dz/index.php/ar/2016-07-19-12-56-20/2016-07-19-13-25-03/1017-1976>

<sup>18</sup> See the website of the second chamber of parliament, the National Assembly, at the link: <http://www.majliselouma.dz/index.php/ar/2016-07-19-12-56-20/2016-07-19-13-25-03/1016-1989>

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enshrined in easing restrictions on rights and freedoms to the maximum extent, but often completely abolished.

### **- For the 1996 constitution:**

There was no significant difference between this constitution and its predecessor, either with regard to the wording of the article recognizing the right to peaceful assembly, which kept the previous text verbatim with the change of article number to 41, or with regard to the absence of any restrictions on it.<sup>19</sup>

The most likely explanation is Algeria's keenness to send a message to the international community by its commitment to the same option that it adopted in the previous constitution, and its lack of intention to violate the provisions of the International Covenant on Civil and Political Rights, despite the security conditions in which it was living.

### **- For the 2016 constitution:**

In general, this constitution came with a different imprint from the previous constitutions at the level of rights and freedoms. With regard to peaceful assembly, the previous legal text was retained in the core of Article 48, with a new legal text included in Article 49 which content is: "The freedom of peaceful demonstration is guaranteed to the citizen within the framework of the law that determines the manner of its exercise".<sup>20</sup>

It is noted from the two articles that:

- The constitution differentiated for the first time since independence between two terms: freedom of assembly and freedom of peaceful demonstration.
- And that it guaranteed them to citizens only, in contravention of the 1989 and 1996 constitutions.

It seems that the constitutional legislator was meticulous in choosing the legal terminology in view of the circumstances that prevailed in 2016, and their summary:

- That the country witnessed crisis situations distributed among a political elite rejecting the current political situation at the time, and their protests ranged between gathering in closed places or protesting in public streets, and a smoldering social front that resolved its decision in peaceful demonstration in open spaces to pressure the authority (such as demonstrations protesting against the exploitation of shale gas Teachers' protests, doctors' protests, police demonstrations, etc.), which required a different approach to each form of assembly, and it seems that the authorities took this into account.
- The country has also witnessed waves of immigrants coming from friendly and brotherly countries that have been exhausted by war, including refugees, asylum seekers, legal immigrants and others illegally. Some of them also crowded into areas and neighborhoods that unite their diaspora. Therefore, the constitutional legislator estimated that ensuring peaceful assembly for them on an equal basis with citizens would lead to severe security slips.

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<sup>19</sup> See the website of the second chamber of parliament, the National Assembly, at the link: <http://www.majliselouma.dz/index.php/ar/2016-07-19-12-56-20/2016-07-19-13-25-03/1015-1996>

<sup>20</sup> See: Law No. 01-16 of March 06, 2016 issued in the Official Gazette No. 14 of March 7, 2016

However, these considerations would not have been legally valid as justifications for the constitution's violation of the International Covenant on Civil and Political Rights. Rather, any declaration of them would be considered an unacceptable failure by Algeria in implementing its international obligations for the following reasons:

- That both peaceful meetings and demonstrations are forms of peaceful assembly, and that the constitutional distinction between them often leads to a distinction between them in law, and this is contrary to the text of Article 21 of the International Covenant.
- The guarantee of these two freedoms to citizens alone is illegal according to Article 21, on which the general comment indicated that peaceful assembly is a civil right that every person enjoys regardless of his nationality.

This was what led to the presentation of international observations to Algeria, which, among other observations, contributed to the acceleration of a new constitutional amendment in 2020.

### **Second: Under the 2020 constitution**

The first section of chapter two of the constitution was formulated under the title "Basic Rights and Public Freedoms", and included texts unique to other previous constitutional treatments. This can be seen, for example, through the development of the following constitutional texts:<sup>21</sup>

**Article 34:** "Constitutional provisions relating to fundamental rights and public freedoms and their guarantees obligate all public authorities and bodies.

Rights, freedoms and guarantees may not be restricted than by law, for reasons related to the maintenance of public order and security, and the protection of national constants, as well as those necessary to protect other rights and freedoms enshrined in the Constitution.

In any case, these restrictions cannot affect the essence of rights and freedoms.

In order to achieve legal security, the state, when drafting legislation related to rights and freedoms, ensures access, clarity and stability."

**Article 35:** "The state guarantees basic rights and freedoms.

The institutions of the Republic aim to ensure the equality of all male and female citizens in rights and duties by removing obstacles that hinder the development of human personality and prevent the effective participation of all in political, economic, social and cultural life".

Through these texts, it appears that the 2020 constitution tends to favor rights and freedoms at the expense of public order compared to other constitutions, as it obligates the authorities and public bodies to guarantee the rights and freedoms stipulated, and prevents their restriction except by law, according to specific justifications, without prejudice to their essence. As it obligated the state to ensure access to the law related to rights and freedoms, its clarity and stability, etc..

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<sup>21</sup>See: Presidential Decree No.20/ 442, issued in the Official Gazette No. 82 of December 30, 2020

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As for the right to peaceful assembly, it is included in **Article 52**, which states: “Freedom of expression is guaranteed.

Freedom of assembly and freedom of peaceful demonstration are guaranteed, and they are exercised as soon as they are authorized.

The law determines the conditions and modalities of its exercise”.

Through this article, it can be noted the approval of the amendment of Algeria’s international obligations, despite the preservation in principle of both the freedoms of assembly and peaceful demonstration, it has unified the formal procedure for them, so both are practiced by mere declaration according to the notification systems defined by the general comment on Article 21. This is in contrast to what was used in the past, as will be clarified, as the determination of the conditions and modalities of its exercise was entrusted to the law, and the constitution did not leave the absolute or comprehensive discretionary power in the hands of public bodies in charge of law enforcement.

### **Section two: The right to peaceful assembly in Algerian legislation**

One of the consequences of the political openness enshrined in the 1989 constitution was Algeria’s adoption of new legal reforms in line with the social, political and economic change. The result was the amendment of a number of laws, including Law No. 89-28 on public meetings and demonstrations<sup>22</sup>, and Law No. 91-19 supplementing and amending it<sup>23</sup>. Which is still in effect until now, and this is what will be discussed below:

#### **First: Under the Law No. 28-89 on Public Meetings and Demonstrations**

The law was issued with the aim of consecrating the right of assembly in accordance with the provisions of Article 39 of the Constitution (Constitution of 1989), separating in two successive chapters the provisions that apply to both public meetings and public demonstrations, and dedicating a third chapter to penal provisions.

This law organized in the first chapter the legal provisions related to public meetings, defining them in Article 2 as any temporary gathering agreed upon by persons and organized in a place open to the general public to exchange ideas or defend common interests, and acknowledged its permissibility in Article 3 provided that it takes place in accordance with the provisions of this law.

Law No. 28-89 in Article 4 stipulated that the general meeting be preceded by a declaration signed by three persons enjoying their civil and national rights and their domicile of the Wilaya, stating the purpose of the meeting, its place, its date by day and hour, its duration, the number of persons scheduled to attend, and the body concerned with it, if necessary. It is submitted to the state or the Municipal People’s Assembly, at most 3 full days before the date of the meeting, in return for immediate delivery of a receipt showing information about the organizers and other information about the meeting as has been declared. The organizers are obliged to submit it whenever the authority requests them to do so in accordance with Article 5.

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<sup>22</sup> Law No. 89-28, issued in the Official Gazette No. 4, dated on December 31, 1989

<sup>23</sup> Law No. 91-19, issued in the Official Gazette No. 62, dated on December 2, 1991.

The law permitted the local authorities to request a change of the meeting place by suggesting a better place to the organizers, in terms of the necessary guarantees set forth in Article 6. Article 8 also prohibited holding public meetings in places of worship, public buildings not designated for this, and on the public road, while Article 9 prohibited prejudice Symbols of the November 1 Revolution or public order and morals in any meeting or demonstration.

Article 10 of the law obligated the formation of an office for the public meeting to ensure the proper conduct of the meeting in the light of order and respect for the law, preserving its declared character and purpose, respecting the constitutional rights of citizens, and prohibiting any speech that contradicts public security and good morals or contains dangerous elements that may lead to the commission of a penal violation. While Article 11 permitted the local authorities to appoint an employee to attend the meeting at the request of the organizers, with his identification to the attendees at the opening. Article 12 also permitted the office to stop the meeting if its course poses a threat to public security, and the employee appointed by the authorities may intervene based on the office's mandate or the occurrence of an accident or violence. As for Article 13, it established the responsibility of the organizers and members of the office at the start and conclusion of the meeting.

However, meetings and demonstrations that take place on the public road in accordance with local customs and traditions, private meetings printed with personal and nominal invitations, and meetings exclusively reserved for members of legally established associations are exempted from the permit procedure in accordance with Article 14.

As for the second chapter of the law, it defined public demonstrations in Article 15 as processions, parades or gatherings of people, and generally every demonstration that takes place on a public road and must be declared. Article 16 prohibited gatherings on a public road if it would impede its use, while defining what is meant by it.

Article 17 of the law stipulated that a declaration must be submitted at least 5 full days before the date of the demonstration with the same conditions and modalities set out for the meetings, with minor differences, some of which relate to the association (or associations) concerned, the conduct of demonstrations, processions, or parades, the prescribed means to ensure their conduct, and assigned the authority to immediately hand over the receipt of the declaration to the Wali, who was approved by Article 18, to request a change of course from the organizers and to suggest another course that would allow the ordinary conduct of the demonstration.

The law considers every demonstration that takes place without a permit as a gathering in accordance with Article 19, and the civil liability of the organizers, according to Article 17, above is established for all violations and exaggerations following the demonstration's conduct in accordance with Article 20.

As for the third chapter, it included the following penal provisions:

- Imprisonment from 2 to 3 months, and a fine of 2,000 to 10,000 AD, with one of the two penalties only, for each violation of the provisions of Articles 4, 5, 8, 10, 12 and 15, without prejudice to the follow-up in the event of a felony or misdemeanor committed during the public meeting and included in the Penal Code (Article 21).



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- Dispersing the demonstrations mentioned in Article 19 of this law in accordance with Article 97 of the Penal Code (Article 22).

- Imprisonment from 3 months to a year and a fine of 3,000 to 15,000 AD, or one of the two penalties for anyone who submits a false declaration about the demonstration, or summons by any means before filing the permit, or participates in organizing an unauthorized demonstration (Article 23).

- Penalties stipulated in Article 100 of the Penal Code for those inciting demonstrations that turn violent, and those calling for violence in their public speeches or writings (Article 24).

Imprisonment from 6 months to 3 years and a fine of 6000 to 30000 dinars for anyone who was found during a demonstration carrying a visible or hidden weapon or any tool dangerous to public security, without prejudice to more severe penalties stipulated in the Penal Code regarding gatherings (Article 25).

### Second: Under the Law No. 91-19 amending and supplementing Law No. 28-89

The year 1991 was marked by the momentum of political events, and the increasing of demonstrations and counter-demonstrations, led by the prominent political parties in the political scene. However, the strongest presence in the collective memory is the events of June 1991, and the bloody confrontations witnessed between the demonstrators of the Islamic Salvation Front party and the law enforcement forces, which made the authority review its accounts, and hurry to adopt a new amendment to the previous Law No. 89-28, by the Law No. 91 -19 which amended the provisions of 9 articles of its previous, and supplemented it with 5 new articles, as follows:

**As for the amended articles:** **Article 2** changes the concept of a public meeting as a “temporary gathering” that is organized “outside the public road in a closed place that is easy for the general public to join”. **Article 5** by changing the date of declaring the meeting to “at least 3 full days before the date of the meeting” and the authorities to which the declaration is submitted to “the Wali for the municipalities of the Wilaya headquarters, the Wali for the municipalities of Algiers, the Wali or his authorized representative for other municipalities”. **Article 9** prohibits “any opposition to national principles in any meeting or demonstration” in addition to what was previously prohibited. **Article 13** by establishing the responsibility of the organizers and members of the office “from the start of the meeting to its conclusion”. **Article 15** by using the sentence “or gatherings of persons” instead of “or crowds of persons” in connection with the definition of public demonstrations, and replacing the sentence “and must be declared” with the condition “public demonstrations are subject to prior authorization”. **Article 17** by including the following provisions in place of the previous provisions: “The license application must be submitted to the Wali at least 8 full days before the date set for the demonstration”, The “request” is signed by three of them, not the “declaration”, Adding the “number of people expected to attend and the places from which they are present”, “the period of time” the “material means used for it” and the means established to ensure its conduct “from its launch until the dispersal of the demonstrators”, The Wali shall deliver a receipt for “license application” and not “permit” within the required information, with the addition of a paragraph “that his decision of acceptance or rejection must be expressed in writing at least 5 days before the scheduled date of the demonstration”. **Article 19** by considering the crowd as any demonstration that “takes place without a permit or after it has been prohibited”. **Article 23** by restating two paragraphs related to those who are subject

to penalties as follows: “Anyone who participated in organizing an unauthorized demonstration, and anyone who violated the provisions of Article 9 of this law”.

**As for the complementary articles:** some of them included the extension of the competence of the Wali to prevent the meeting if it was found that it threatens public security or public order (**Article 6 bis**), or the granting of licenses regarding audio devices (**Articles 20 bis 2/1 and 20 bis 3**). Some of them are provisions that legally prohibit the involvement and exploitation of minors in public demonstrations of a political nature (**Article 19 bis**), and the use of fixed audio devices near educational institutions and hospitals (**Article 20 bis 2/2**). Also, among them are provisions imposed on the responsibility of organizers for losses and damages caused by the demonstrations, the application of Article 142 of Municipal Law No. 90-08, which recognized the state and the municipalities whose responsibility is declared the right of recourse against the perpetrators or participants in causing the damages (**Article 20 bis 1**).

### **Conclusion:**

Algeria has gone through several legally distinct phases, during which the right to peaceful assembly was affected between restriction and expansion, as follows:

- It was recognized within wide restrictions under the 1963 and 1976 constitutions, in view of the totalitarian political and economic approach that characterized the Algerian regime at the time, which was evident in the repression exercised by the authority over all opposition voices.

- It was almost completely recognized under the 1989 and 1996 constitutions, with a difference at the level of ordinary laws, which is the compatibility of Law 89-28 with that expansion that the 1989 Constitution brought in conformity with the International Covenant on Civil and Political Rights, while Law 91-19 constituted a violation of both the Constitution (in its two versions of 1989 and 1996) as well as the International Covenant.

- The 2016 constitution ostensibly constituted a shift in rights and freedoms, which was supposed to extend to the right to peaceful assembly, but the introduction of a constitutional article to differentiate for the first time between demonstration and meeting, while preserving Law 91-19, was intended to maintain the same legal restrictions on peaceful demonstration which occupies open public spaces, and the authority considered it a danger, especially in light of the congestion of the Algerian street at the time for several reasons, the most important of which was the almost complete absence of the former president.

- The narrowing of the right to peaceful demonstration under the 2016 constitution, just as it was launched in the 1989 constitution, led to an explosion of the situation at the popular level, taking into account the difference in the outcome of matters, and this is due to the skill of the military authority in adhering to the constitutional path in 2019, compared to the security approach which the military authorities dealt with when stopping the constitutional process in 1991.

- As for the 2020 constitution, it came in line with Article 21 of the International Covenant on Civil and Political Rights and with General Comment No. 37 (2020), by creating two articles in Chapter Four that obligate the state, all authorities, and public bodies to guarantee rights and freedoms, and recognizing the right to peaceful assembly, in Article 52, for citizens and others, and limiting it to a declaration instead of a license in any form, and

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assigning the determination of the modalities and conditions of its exercise to a law, pending the outcome of the amendment of the law related to peaceful assembly that the country is preparing.

- In conclusion, through the constitutional amendment of 2022, it appears the state's clear desire to comply with international obligations and not leave a loophole to convict it of violating international agreements and covenants, which is a wise act that would spare the country a lot of harassment from stalkers, provided that this is done in balance with the preservation of public order

-This means that it should not be less than the keen to ensure the safety of the country. It is assumed that this is the reason for the recognition of the possibility of imposing legal restrictions for reasons related to public order, security, national constants and other rights and freedoms guaranteed by the Constitution as stipulated in Article 34/2, in addition to its adherence to the text of Article 52 to differentiate between meetings and demonstrations, Which may indicate that the procedures required for each of them are different, most likely at the level of the deadlines for depositing the permit, the means allowed to be used when exercising this right, the handling of public order forces with peaceful meetings, or other matters that may seem formal but important to avoid slipping.