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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai**

### *Summary*

The Special Rapporteur on the rights to freedom of peaceful assembly and of association presents the mandate's second thematic report to the Human Rights Council, pursuant to Council resolutions 15/21 and 21/16.

In chapters I and II of the report, the Special Rapporteur provides an overview of activities he carried out between 1 May 2012 and 28 February 2013.

In chapters III and IV, the Special Rapporteur addresses two issues he considers to be among the most significant ones of his mandate, namely funding of associations and holding of peaceful assemblies.

The Special Rapporteur outlines his conclusions and recommendations in chapter V.

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## I. Introduction

1. This second report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 21/16. This report describes the activities carried out by the mandate holder over the period 1 May 2012 to 28 February 2013, and addresses two key issues repeatedly evoked during the interactive dialogue with Council's Member States in June 2012, namely, funding of associations and holding peaceful assemblies. In the light of Council resolution 21/16, specific attention is also paid to the importance of freedom of peaceful assembly and of association to the work of civil society actors, including with respect to the progressive realization of economic, social and cultural rights.

2. In the preparation of this report, the Special Rapporteur convened a two-day expert meeting on 8 and 9 December 2012 in Mombasa, Kenya. He also took into account relevant elements of work available within the Council<sup>1</sup>.

3. As already highlighted in his first thematic report, the Special Rapporteur underlines that the rights to freedom of peaceful assembly and of association are interrelated and interdependent, but they are also two separate rights. The present report will therefore cover the right to freedom of association and the right to freedom of peaceful assembly.

## II. Activities

### A. Communications

4. A total of 170 communications were sent by the Special Rapporteur from 1 May 2012 to 28 February 2013. Observations on communications addressed throughout the year are contained in an addendum of the present report (A/HRC/23/39/Add.2).

### B. Country visits

5. The Special Rapporteur conducted a country mission from 14 to 23 January 2013 to the United Kingdom of Great Britain and Northern Ireland. He thanks the Government of the United Kingdom for its exemplary collaboration prior to and throughout his visit (see A/HRC/23/39/Add.2). He further thanks Azerbaijan, Chile, Guatemala, Honduras, the Kyrgyz Republic, the Maldives, Rwanda and Tunisia for extending invitations to him, and hopes to honour these invitations in the near future.

### C. Participation in various events

6. From 1 May 2012 to 28 February 2013, the Special Rapporteur participated in the following events organized by States and international and regional human rights mechanisms:

- Seminar entitled "Human Rights Defenders and Peaceful Protest", organized by the Norwegian Ministry for Foreign Affairs (Oslo,<sup>2</sup> 6-8 June 2012);

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<sup>1</sup> Country situations mentioned in the present report have been the subject of communications sent to Governments, as well as press releases issued by special procedures mandate holders and high-level United Nations officials.

- Sub-regional East Africa training on “Strengthening civil society organizations’ utilization of United Nations human rights mechanisms”, jointly facilitated by the East Africa Regional Office of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Programme on Women’s Economic, Social and Cultural Rights, CIVICUS and the International Service for Human Rights (Nairobi, 10 September 2012);
- Development policy day on “The role and challenges of civil society organizations working in a disabling environment for civil society”, organised by Kepa (Helsinki, 11 October 2012);
- Organization for Security and Co-operation in Europe (OSCE), Supplementary Human Dimension Meeting on freedom of peaceful assembly and of association (Vienna, 8-9 November 2012);
- In-house discussion on “The promotion and protection of human rights in the context of peaceful protests”, organized by the Swiss Federal Department of Foreign Affairs (Bern, 21 January 2013).

7. Furthermore, the Special Rapporteur attended the following events organized by civil society:

- Workshop on “New technology and human rights monitoring”, organized by University of Stanford (Stanford, 6-7 August 2012);
- Fifth Asian Regional Human Rights Defenders Forum (Bangkok, 3-5 September 2012);
- Academic trip to Malaysia (6-8 September 2012);
- Lecture marking Human Rights Day, organized by Zimbabwe Human Rights NGO Forum and Zimbabwe Lawyers for Human Rights (Harare, 10 December 2012);
- Regional consultation with civil society actors from francophone West Africa and Central Africa countries, organized by World Movement for Democracy (Ouagadougou, 15-16 February 2013);
- Video message for Human Rights Council side-event, “Restrictions on NGO funding”, organized by the Observatory for Human Rights (Geneva, 28 February 2013).

### **III. Ability of associations to access financial resources: a vital part of the right to freedom of association**

#### **A. Definition of concepts**

8. The ability to seek, secure and use resources is essential to the existence and effective operations of any association, no matter how small. The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.

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<sup>2</sup> See Joint recommendation put forward by United Nations and African Commission on Human and Peoples’ Rights special procedures mandate holders, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12524&LangID=E>.

9. Legal frameworks and policies related to resources have a significant impact on the freedom of association; they can strengthen the effectiveness and facilitate the sustainability of associations or, alternatively, subjugate associations to a dependent and weak position. Moreover, for associations promoting human rights, including economic, social and cultural rights, or those involved in service delivery (such as disaster relief, health-care provision or environmental protection), access to resources is important, not only to the existence of the association itself, but also to the enjoyment of other human rights by those benefitting from the work of the association. Hence, undue restrictions on resources available to associations impact the enjoyment of the right to freedom of association and also undermine civil, cultural, economic, political and social rights as a whole.

10. The term “resources” encompasses a broad concept that includes financial transfers (e.g., donations, grants, contracts, sponsorships, social investments, etc.); loan guarantees and other forms of financial assistance from natural and legal persons; in-kind donations (e.g., contributions of goods, services, software and other forms of intellectual property, real property, etc.); material resources (e.g. office supplies, IT equipment, etc.); human resources (e.g. paid staff, volunteers, etc.); access to international assistance, solidarity; ability to travel and communicate without undue interference and the right to benefit from the protection of the State.

11. Due to word limit constraints, this section will primarily deal with the issue of financial resources, including monetary transfers, in-kind donations and other forms of financial assistance (hereinafter “funding”). The report covers financial resources provided by natural and legal persons, whether domestic, foreign or international, including individuals; associations, whether registered or unregistered; foundations; governments; corporations and international organizations (including United Nations funds and programmes).

12. In recent years, civil society actors have been facing increased control and undue restrictions in relation to funding they received, or allegedly received. Combined with the global financial crisis that has compelled some donors to reduce funding, this situation has, in many instances, led to a decline in the number of associations and a decrease in or readjustment of the activities of existing ones, or in worst cases, to the extinction of some associations. This problem is not isolated and exists in all parts of the world, usually as a result of undue restrictions occurring when an association: (a) seeks; (b) secures; or (c) uses financial resources; and these measures aim, in many cases, to silence the voices of dissent and critics.

13. This does not mean that associations do not have any obligations. Associations have to ensure that funds are used for the purposes intended and that they are transparent and accountable to their donors, according to the terms of their funding agreements. It is crucial that associations – like other sectors in society – work with integrity and ethically as a way of generating trust within the sector. In this regard, the Special Rapporteur refers to a number of civil society-led initiatives, such as the International Non-Governmental Organisations (INGO) Accountability Charter, which are valuable examples of the sense of responsibility shown by civil society actors.

14. The Special Rapporteur believes domestic, foreign and international donors also have responsibilities. Donors should pay due attention to the local political, social and economic context in which associations operate, particularly associations working with grassroots communities, marginalized and vulnerable peoples, and on “unpopular” or cutting-edge issues. Donors should also respect the autonomy of civil society organizations so that associations can address the needs and concerns of the population. The Special Rapporteur deeply regrets that some domestic public donors exclusively fund associations which support Government policies, despite the fact that the right to freedom of association, which is an essential component of democracy, underlies a pluralism of views. The Special

Rapporteur also invites donors to diversify funding beneficiaries, and when applicable, take appropriate action to support associations facing undue restrictions.

## **B. International legal framework related to the ability to access financial resources**

15. Article 22 of the International Covenant on Civil and Political Rights (hereafter the Covenant) affirms that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” Article 6 (f) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55) explicitly refers to the freedom to access funding, stating that the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions.” On 21 March 2013, the Human Rights Council adopted resolution 22/6, in which it called upon States to ensure that reporting requirements “do not inhibit functional autonomy [of associations]” and “do not discriminatorily impose restrictions on potential sources of funding.”

16. In communication No. 1274/2004, the Human Rights Committee observed that “the right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by article 22 extends to all activities of an association [...].”<sup>3</sup> Accordingly, fundraising activities are protected under article 22 of the Covenant, and funding restrictions that impede the ability of associations to pursue their statutory activities constitute an interference with article 22. Other United Nations treaty bodies have emphasized the obligation of States to allow civil society to seek, secure, and utilize resources, including from foreign sources. The Committee on Economic, Social, and Cultural Rights highlighted this issue when it expressed “deep concern” with Egypt’s Law No. 153 of 1999, which “gives the Government control over the right of NGOs to manage their own activities, including seeking external funding.”<sup>4</sup>

17. The Declaration on Human Rights Defenders<sup>5</sup> constitutes another relevant frame of reference: article 13 states that “everyone has the right, *individually and in association with others*, to solicit, receive and utilize *resources* for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration” (emphasis added). This provision is important because it makes no distinction between the sources of funding, be it from domestic, foreign or international sources. It is also essential because it makes clear that not only legally registered associations, but also individuals – and therefore associations which have no legal status, such as unregistered associations – are eligible to access funding. Although the Declaration is not a binding instrument, it must be recalled that it was adopted by consensus by the General Assembly and contains a series of principles and rights that are based on human rights standards enshrined in other international instruments which are legally binding. It is clear from this standpoint that the guiding principles it sets forth notably emanate from the provisions of article 22 of the International Covenant on Civil and Political Rights and can therefore be applied to other forms of associations, regardless

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<sup>3</sup> Human Rights Committee, communication No. 1274/2004, *Korneenko et al. v. Belarus*, Views adopted on 31 October 2006, para. 7.2.

<sup>4</sup> See also CAT/C/BLR/CO/4, para. 25; CERD/C/IRL/CO/2, para. 12; A/55/38, para. 155; CRC/C/MWI/CO/2, para. 25.

<sup>5</sup> General Assembly resolution 53/144, annex.

of the goals they pursue. In the light of this reasoning, and taking due consideration of the provisions of the Covenant, which make no distinction between registered and unregistered associations, the Special Rapporteur underlines that legislation limiting foreign funding to registered associations only, as is the case in existing and draft legislation in Bangladesh, violate international human rights norms and standards pertaining to freedom of association. Furthermore, he recalls that the formation of associations should not be subject to a prior authorization procedure, but rather regulated by a system of notification that is simple, easily accessible, non-discriminatory and non-onerous or free of charge.<sup>6</sup>

18. Despite these clear legal obligations that not only call upon States to avoid placing restrictions, but also to facilitate access to funding, civil society actors are in too many instances subject to regulations put in place to control, rather than enable access to funding. The Special Rapporteur underlines that freedom of association may be subject to certain restrictions only, which need to meet the provisions of article 22, paragraph 2, of the Covenant. He underscores again that freedom should be the rule, and restrictions the exception.<sup>7</sup> He also underlines that one of the key principles of freedom of association is the presumption that the activities of associations are lawful.

### C. Meeting international human rights norms and standards

19. The Special Rapporteur notes with concern laws and practices that constrain civil society organizations from seeking, receiving or utilizing foreign funding. As will be detailed in the following section of the report, most of the justifications put forward by States to restrict foreign funding do not comply with article 22, paragraph 2, of the Covenant, which states that “no restrictions may be placed on the exercise of [the right to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” As will be repeatedly emphasized in this section, the conditions for any restriction are cumulative, that is, motivated by one of the above limited interests, have a legal basis and “necessary in a democratic society”.

20. Under international law, problematic constraints include, *inter alia*, outright prohibitions to access funding; requiring CSOs to obtain Government approval prior to receiving funding; requiring the transfer of funds to a centralized Government fund; banning or restricting foreign-funded CSOs from engaging in human rights or advocacy activities; stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as “foreign agents” or other pejorative terms; initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding. The ability of CSOs to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association, and these constraints violate article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights.

21. The Special Rapporteur also warns that the political environment, where for instance patriarchy, sexism and authoritarian regimes are structural challenges, can also unduly undermine access to funding to civil society.<sup>8</sup> Furthermore, criminalization in certain countries of peaceful activities, such as protection of human rights, non-discrimination and

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<sup>6</sup> A/HRC/20/27, paras. 58-59, 95.

<sup>7</sup> Ibid., para. 16.

<sup>8</sup> A/66/203, para. 73.

equality or promotion of gender equality, can also make it difficult, if not impossible, for associations working on these issues to raise funds.<sup>9</sup>

## **1. Financing terrorism**

22. One of the most common reasons used by governments to limit access to funding relate to security measures, including protection against terrorism and prevention of money-laundering. The crime of terrorism, which aims at the “destruction of human rights, fundamental freedoms and democracy, threaten[s] territorial integrity and security of States and destabiliz[es] legitimately constituted Governments”,<sup>10</sup> has devastating consequences and has caused tragic human suffering. The Special Rapporteur is aware that States have an interest in protecting “national security or public safety”, which are legitimate grounds for restricting freedom of association, but he underscores that there is also need for States to comply with international human rights law while countering terrorism.

23. Under the Covenant, any limitation must not only pursue a legitimate interest but also be “necessary in a democratic society.” It is only when groups engage in the aforementioned confined activities that they can be labelled as a terrorist group. It is therefore a violation of international law for counter-terrorism or “anti-extremism” measures to be used as a pretext to constrain dissenting views or independent civil society. As highlighted by the Special Rapporteur on the promotion and protection of human rights while countering terrorism, “[s]tates shall not invoke national security as a justification for measures aimed at suppressing opposition or to justify repressive practices against its population. The onus is on the Government to prove that a threat to one of the grounds for limitation exists and that the measures are taken to deal with the threat.”<sup>11</sup> In order to meet the proportionality and necessity test, restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only. They must not target all civil society associations, as is regrettably the case in a new law against organized crime in Venezuela. Laws drafted in general terms limiting, or even banning funding under the justification of counter-terrorism do not comply with the requisites of “proportionality” and “necessity”.

24. The Special Rapporteur also calls for sectoral equity, noting that commercial companies and other entities have been abused for terrorist purposes. He calls on States to avoid measures that disproportionately target or burden civil society organizations, such as imposing onerous vetting rules, procedures or other CSO-specific requirements not applied to the corporate sector writ large.

25. The Special Rapporteur notes a set of standards developed by the Financial Action Task Force (FATF), an intergovernmental body established in 1989, which specifically addresses the issue of money-laundering and terrorist financing. FATF Recommendation 8 (formerly Special Recommendation VIII) on non-profit organizations recommends that “countries review the adequacy of laws and regulations [to ensure] entities are not abused for the financing of terrorism.” The Special Rapporteur underlines –as does an instructive World Bank working paper analysing FATF’s response towards financing terrorism –, that very few, if any, instances of terrorism financing have been detected as a result of CSO-specific supervisory measures; “rather it is financial intelligence that is essential.”<sup>12</sup>

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<sup>9</sup> See for instance, the opinion adopted by the Working Group on Arbitrary Detention on communication No. 39/2012 addressed to Belarus (A/HRC/WGAD/2012/39), para. 47.

<sup>10</sup> Commission on Human Rights resolution 2005/80, preambular para. 11.

<sup>11</sup> See A/61/267, para. 20.

<sup>12</sup> Emile van der Does de Willebois, *Nonprofit Organizations and the Combatting of Terrorism Financing: A Proportionate Response*, World Bank Working Paper No. 208 (Washington D.C.,

Recommendation 8 does not adequately take into account that States already have other means, such as financial surveillance and police cooperation, to effectively address the terrorism financing threat. Moreover, FATF fails to provide for specific measures to protect the civil society sector from undue restrictions to their right to freedom of association by States asserting that their measures are in compliance with FATF Recommendation 8. The Special Rapporteur insists on the need to combat terrorism, but he warns against the implementation of restrictive measures – such as FATF Recommendation 8 – which have been misused by States to violate international law.

26. Fundamentally, the Special Rapporteur believes civil society organizations play a significant role in combatting terrorism. By their direct connections with the population and their prodigious work in, *inter alia*, poverty reduction, peacebuilding, humanitarian assistance, human rights and social justice, including in politically complex environments, civil society plays a crucial role against the threat of terrorism. Unduly restrictive measures, which can lead donors to withdraw support from associations operating in difficult environments, can in fact undermine invaluable CSO initiatives in the struggle against terrorism and extremism, and ultimately have adverse consequences on peace and security.

## **2. State sovereignty against foreign interference**

27. In recent years, the protection of State sovereignty or of the State's traditional values against external interference has also been increasingly invoked to restrict foreign funding or to launch slander offensives against those receiving foreign funding. Foreign funding to civil society has been deliberately depicted as a new form of imperialism or neo-colonialism and recipients have been subject to defamation, stigmatization and acts of harassment. This tendency has a serious impact on the work of civil society actors, not to mention their ability to access funding as it deters them from seeking foreign funding. This situation is particularly alarming for associations promoting human rights and democratic reforms who have been accused of “treason” or of “promoting regime change”.

28. For instance, in the Russian Federation, a new law adopted in July 2012 requires foreign-funded non-commercial organizations engaging in “political activities” – which is broadly defined as attempts to influence official decision-making or to shape public opinion for this objective – to register as organizations “performing the functions of foreign agents”, which in Russian is synonymous with “foreign spy”. The adoption of this law has been followed up by a series of audits of organizations, including prominent human rights organizations. In Egypt, the State-owned press has campaigned against civil society organizations, branding them as foreign agents due to foreign funding that some of them allegedly received. In Ethiopia, legislation not only prohibits associations working in rights-based areas from receiving more than 10 per cent of their funding from foreign sources, but also requires associations to allocate at least 70 per cent of their budget to programme activities and no more than 30 per cent to administrative costs, which are broadly defined. The enforcement of these provisions has a devastating impact on individuals' ability to form and operate associations effectively, and has been the subject of serious alarm expressed by several United Nations treaty bodies.<sup>13</sup> In the same vein, a law on associations, adopted in January 2012 in Algeria, prohibits associations from receiving funding from legations and foreign non-governmental organizations, unless a “cooperative relation duly established with the foreign entity” – subject to prior authorization from the relevant authorities – is in place. Serious concerns about this legislation were notably

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<sup>13</sup> 2010), p. 13.

<sup>13</sup> CAT/C/ETH/CO/1, para. 34; CCPR/C/ETH/CO/1, para. 25.

expressed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression further to his mission to Algeria.<sup>14</sup>

29. It is paradoxical that some of the States stigmatizing foreign-funded associations in their own countries are receiving foreign funding themselves (in the form of loans, financing or development assistance), often in substantially greater amounts than that flowing to CSOs in their country. Others are the very same States providing funding to associations abroad, while rejecting foreign funding for associations in their own countries. But what is clear is that these new trends have a dramatic effect on civil society as they have not only resulted in restrictions to the enjoyment of freedom of association, but also led to further human rights violations.

30. In order to analyse whether the limitation motivated by the protection of State sovereignty complies with international human rights law, it must first be explored whether it falls within one of the limited legitimate grounds for restrictions. The protection of State sovereignty is not listed as a legitimate interest in the Covenant. The Special Rapporteur emphasizes that States cannot refer to additional grounds, even those provided by domestic legislation, and cannot loosely interpret international obligations to restrict the right to freedom of association. In his view, such justification cannot reasonably be included under “the interests of national security or public safety” or even “public order”. Affirming that national security is threatened when an association receives funding from foreign source is not only spurious and distorted, but also in contradiction with international human rights law.

31. Human Rights Council resolution 22/6 calls upon States to ensure that “that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto.” Article 2 of the International Covenant on Economic, Social and Cultural Rights requires States to “take steps, individually or through international assistance and co-operation [...] to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant”. Coupled with article 11 of the same Covenant, which provides for States to “take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation *based on free consent*” (emphasis added), this means that States have the obligation to mobilize resources that are available within the society as a whole, but also to gather those that are available from the international community.<sup>15</sup> Hence, restrictions on foreign funding under the guise of preservation of State sovereignty arguably constitute a violation of States’ obligation to respect, protect and fulfil these rights, as it amounts to failure on the part of the State to maximize resources through international assistance and cooperation. This is also the sense of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, which stipulate that violations of these rights notably include: “the adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights [...]; the adoption of any deliberately retrogressive measure that reduces the extent to which any such right is guaranteed.”<sup>16</sup>

32. Protection of State sovereignty is not just an illegitimate excuse, but a fallacious pretext which does not meet the requirement of a “democratic society”. The expression

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<sup>14</sup> A/HRC/20/17 Add. 1 paras. 83-86; see also CEDAW/C/DZA/CO/3-4, para. 19.

<sup>15</sup> See Audrey Chapman and Sage Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Antwerp, Intersentia, 2002).

<sup>16</sup> Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht, 22-26 January 1997), para. 14 (d) and (e); see also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), para. 72.

“democratic society” places the burden on States imposing restrictions to demonstrate that the limitations do not harm the principles of “pluralism, tolerance and broadmindedness”.<sup>17</sup> Associations, whether domestic- or foreign-funded, should therefore be free to promote their views – even minority and dissenting views, challenge governments about their human rights record or campaign for democratic reforms, without being accused of treason and other defamatory terms. Dissenting views should be seen by the authorities as an opportunity for dialogue and mutual understanding. The European Court of Human Rights in affirming this principle ruled that “an organisation may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental democratic principles.”<sup>18</sup>

33. In addition to the fact that justification on the grounds of State sovereignty violates international norms and standards related to freedom of association, the Special Rapporteur is extremely concerned about increased denigration and unfounded accusations against individuals and organizations receiving foreign funding. Special procedures mechanisms have expressed their particular dismay about cases of vicious verbal attacks, intimidation, property damage, physical assaults and even criminalization against activists accused of having ties to a foreign entity, on the sole ground that they had allegedly received foreign funding (e.g. Azerbaijan, Uzbekistan). Allowing or inciting public discredit on individuals’ or organizations’ honour and reputation or inciting nationalist and xenophobic sentiment is likely to cause associations to engage in self-censorship and, more gravely, to incite hatred and fuel further human rights violations.

34. Finally, the Special Rapporteur is concerned that in most cases, States which restrict or stigmatize foreign funding under the guise of preservation of sovereignty are also those which limit access to domestic funding or which subject associations to discriminatory treatment due to the thematic area they focus on. Where domestic funding is scarce or unduly restricted, it is critical for associations to be free to rely on foreign assistance in order to carry out their activities. The Special Rapporteur recalls again that “governments must allow access by NGOs to foreign funding as a part of international cooperation to which civil society is entitled, to the same extent as Governments”.<sup>19</sup> He believes that States must demonstrate a change in mentality by highlighting that funding associations contribute to the development of a flourishing, diversified and independent civil society, which is characteristic of a dynamic democracy.

### **3. Transparency and accountability**

35. Restrictions to funding are also regularly justified by the need to ensure greater transparency and accountability within the civil society sector. Combatting fraud, embezzlement, corruption, money-laundering and other modes of trafficking is legitimate, and may qualify as being in the “interests of national security, public safety, or public order”. Nevertheless, it is not sufficient to simply pursue a legitimate interest, limitations need also to be prescribed by law and “be necessary” in a democratic society. In this regard, limitations must be proportionate to the interest to be protected and must be the least intrusive means to achieve the desired objective. In this respect, several legislations or practices unduly restrict the ability of associations to access funding since other less intrusive measures exist to mitigate the risk.

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<sup>17</sup> European Court of Human Rights (ECtHR), *Handyside v. the United Kingdom*, application No. 5493/72, judgement of 7 December 1976, para. 49.

<sup>18</sup> ECtHR, *Zhechev v. Bulgaria*, application No. 57045/00, judgement of 21 June 2007, para. 47.

<sup>19</sup> A/59/401, para. 82.

36. For instance, the obligation for associations to route funding through state channels; to report on all funds received from foreign sources and how these are allocated or used (e.g. Kyrgyz Republic); to obtain authorization from the authorities to receive or use funds (e.g. Jordan, Sudan) all constitute human rights violations. In some cases, not only does legislation providing for an authorization procedure not comply with international law, but the implementation of such strict provisions is also problematic. For example, in Bangladesh, a human rights association encountered arbitrary delays greatly in excess of the legal 45-day period before receiving a response to an application for project approval from the NGO Affairs Bureau; in Egypt, a women rights association was granted approval for funding seven months after its request, which was far beyond the 60 days prescribed by law. In some other cases (e.g. Azerbaijan, Uganda, Zimbabwe), activists were subject to intimidation and sometimes physical assault aimed at forcing them to provide the names of their funding partners.

37. Fundamentally, the Special Rapporteur believes that associations should be accountable to their donors, and at most, subject by the authorities to a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities.

38. The transparency and accountability argument has, in some other cases, been used to exert extensive scrutiny over the internal affairs of associations, as a way of intimidation and harassment. The Special Rapporteur warns against frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations. Controls need therefore to be fair, objective and non-discriminatory, and not be used as a pretext to silence critics. Composition of the supervisory body also needs to be independent from the executive power to ensure its decisions are not arbitrary. The Special Rapporteur is of the view that if an association fails to comply with its reporting obligations, such minor violation of the law should not lead to the closure of the association (e.g. Belarus) or criminal prosecution of its representative (e.g. Egypt); rather, the association should be requested to promptly rectify its situation. Only this approach corresponds to the spirit and the letter of freedom of association.

#### **4. Aid effectiveness and funding control**

39. International development cooperation between States has greatly increased in recent years and has allowed for advancing global development. To ensure the quality of aid, more collaborative approaches have now emerged. The Aid Effectiveness Agenda of the Paris Declaration (2005), the Accra Agenda for Action (2008) and the Busan Partnership for Effective Development Cooperation (2011) are implementation frameworks aimed at enhancing the effectiveness of aid. They have gradually required harmonization of donor initiatives and accountability of development partners, but also required partner States to take ownership of aid initiatives. Nevertheless, in some cases, the principles identified within this framework (namely, ownership, alignment, harmonization, results and mutual accountability) have been interpreted by some States as giving them the sole power to determine priorities and subsequently control the plans of CSOs, thereby justifying limitations over the activities of civil society actors, including their right to seek and use foreign funding. While an inclusive and participatory process towards aid is to be welcomed, a rights-based approach is needed to ensure civil society's access to funding is not unduly restricted.

40. The Special Rapporteur highlights that coordination of aid is not listed as a legitimate ground for restrictions under the International Covenant on Civil and Political Rights. Furthermore, he underlines that barriers in the name of aid effectiveness have little in common with "the interests of national security or public safety, public order (ordre

public), the protection of public health or morals or the protection of the rights and freedoms of others”.

41. The Special Rapporteur stresses that even if the restriction were to pursue a legitimate objective, it would not comply with the requirements of “a democratic society”. In particular, deliberate misinterpretations by Governments of ownership or harmonization principles to require associations to align themselves with Governments’ priorities contradict one of the most important aspects of freedom of association, namely that individuals can freely associate for any legal purpose. Hence, Governments which restrict funding in the name of aid effectiveness violate the key democratic principles of “pluralism, tolerance and broadmindedness” and therefore unduly restrict freedom of association.

42. The Special Rapporteur wishes to highlight that there is an inherent contradiction in States restricting funding to associations, while at the same time receiving increased funding through international cooperation. He believes that instead of aiming to limit the participation of civil society actors, aid effectiveness rather aims to provide all relevant stakeholders, including associations, with greater influence to contribute to, *inter alia*, poverty reduction, strengthening of democratic reforms and human rights promotion. For example, in Busan, Republic of Korea, assurances were made to “implement fully respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment, *consistent with agreed international rights*, that maximizes the contributions of CSOs to development” (emphasis added). The independence of the civil society sector, including in terms of access to funding, should therefore be guaranteed. In the context of ongoing discussions related to the post-2015 Millennium Development Goals, the Special Rapporteur believes that civil society involvement and contributions to development are paramount, and that States should exert all efforts to support, rather than inhibit, their work.

## **IV. Ability to hold peaceful assemblies: an integral component of the right to freedom of peaceful assembly**

### **A. Background**

43. The ability to hold peaceful assemblies is a fundamental and integral component of the multifaceted right to freedom of peaceful assembly, which shall be enjoyed by everyone. Such ability is of utmost importance to the work of civil society actors, including those promoting the realization of economic, social and cultural rights, as it enables them to publicly voice their message, which ultimately benefits the realization of the right(s) they strive to promote and protect, especially in the context of the ongoing dire economic crisis. This is all the more relevant for groups most at risk of violations and discrimination, such as women, youth, indigenous peoples, persons with disabilities, persons belonging to minority groups, groups at risk because of their sexual orientation and gender identity and non-nationals.

44. However, in far too many instances, the ability to hold peaceful assemblies has been denied or restricted by authorities in violation of international human rights norms and standards. As a consequence, the right to take part in the conduct of public affairs, as recognized in article 25 of the International Covenant on Civil and Political Affairs, has been narrowed. In this connection, the Special Rapporteur wishes to refer once again to the Human Rights Committee’s general comment No. 25 (1996) on participation in public affairs and the right to vote, which considers that “citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their

representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association".<sup>20</sup>

45. As repeatedly stressed by the Human Rights Council, "peaceful protests should not be viewed as a threat, and therefore encourage[s] all States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes".<sup>21</sup>

## B. Procedural and practical measures for holding peaceful assemblies

46. Article 21 of the International Covenant on Civil and Political Rights recognizes the right to freedom of peaceful assembly to be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21 and 21/16 of the Human Rights Council. Article 15 of the Convention of the Rights of the Child recognizes this right for persons below 18 years of age. Unregistered associations should equally be able to enjoy this right.

47. The Special Rapporteur recalls that the exercise of the right to freedom of peaceful assembly can be subject to certain restrictions only, "which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."<sup>22</sup> In this connection, he stresses once again that freedom is to be considered the rule and its restriction the exception.

48. He further reminds that whenever authorities decide to restrict an assembly, they should provide assembly organizers, in writing, with "timely and fulsome reasons" which should satisfy the strict test of necessity and proportionality of the restriction(s) imposed on the assembly pursuant to legitimate aims.<sup>23</sup>

### 1. Presumption in favour of holding peaceful assemblies

49. The Special Rapporteur has already stressed in his first thematic report to the Human Rights Council (A/HRC/20/27), that States have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to facilitate the exercise of the right to freedom of peaceful assembly (para. 27). The law only protects assemblies that are not violent and where participants have peaceful intentions, and that shall be presumed. Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (para. 25).

50. In this connection, the Special Rapporteur highlights again the existence of "presumption in favour of holding peaceful assemblies," as was first stressed by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Panel of Experts on Freedom of Peaceful Assembly and the Council of Europe's European Commission for Democracy through Law (the Venice Commission)<sup>24</sup>. This means that an assembly should be presumed lawful and deemed as not constituting a threat to public order. Such presumption should apply to everyone, without any discrimination, and should be "clearly and explicitly established in the law, enshrined either in constitutions or in laws governing

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<sup>20</sup> Human Rights Committee, general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service (art. 25), para. 8.

<sup>21</sup> Human Rights Council resolutions 19/35 (preambular para. 11) and 22/10 (preambular para. 16).

<sup>22</sup> Human Rights Council resolution 15/21.

<sup>23</sup> A/HRC/20/27, para. 42.

<sup>24</sup> See OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, Second edition (Warsaw/Strasbourg, 2010).

peaceful assemblies” (A/HRC/20/27, para. 26). The Special Rapporteur believes that unclear legal provisions should be clarified, and that in the absence of clarity, such provisions should be interpreted in favour of those wishing to exercise their right to freedom of peaceful assembly.

## **2. Notification procedure and decision-making**

51. The aforementioned presumption further means that, in a free and democratic society, no authorization should be required to assemble peacefully. In this regard, the Special Rapporteur stresses again that the exercise of the right to freedom of peaceful assembly, should be “governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others” (A/HRC/20/27, para. 28). The notable exception to this principle is that of spontaneous peaceful assemblies where organizers are unable to comply with the requisite notification requirements or where there is no existing or identifiable organizer. Fundamentally, the Special Rapporteur reiterates that “should the organizers fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment” (para. 29).

52. Furthermore, the Special Rapporteur is of the opinion that notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.<sup>25</sup> In his view, such notification should be submitted a maximum of, for example, 48 hours prior to the day the assembly is planned to take place. The organizers should send a single notification to a designated primary authority, and not to multiple authorities (e.g one or several municipal authorities, as is sometimes done in the case of parades, and/or law enforcement agencies).<sup>26</sup> The primary authority should communicate the details of the notification to all relevant bodies.<sup>27</sup>

53. In this regard the Special Rapporteur believes that the organizers should be able to notify the designated primary authority of the holding of a peaceful assembly in the simplest and fastest way, by filling, for instance, a clear and concise form, available in the main local language(s) spoken in the country, preferably online to avoid uncertainties and possible delays in postage. The notification should merely contain information regarding the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer.

54. By contrast, as in the view of the OSCE/ODIHR Panel of Experts,<sup>28</sup> a notification should be considered as unduly bureaucratic if any of the following requirements is imposed on the organizers: that there be more than one named organizer; that only registered organizations are considered as legitimate organizers; that formal identity documents, such as passports or identity cards, be produced; that identification details of others involved in the event, such as stewards be provided; that reasons for holding an assembly, bearing in mind the principle of non-discrimination, be given; and that the exact number of participants, which is difficult to predict, be given. In this connection, the authorities should not punish organizers if the number of participants does not match the anticipated number, as stipulated by domestic legislation (as has occurred in the Russian Federation).

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<sup>25</sup> OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 115.

<sup>26</sup> Based on consultation with members of the OSCE/ODIHR Panel of Experts.

<sup>27</sup> OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 117.

<sup>28</sup> Based on consultation with members of the OSCE/ODIHR Panel of Experts.

55. The Special Rapporteur further echoes the views of the Panel of Experts that the authorities should be flexible in cases of (a) late notification, if there is a good reason; (b) incorrect completion of form; or (c) failure to provide all necessary information. The notification timeline should not restart from the beginning and there should be some flexible means of correcting minor omissions or errors.<sup>29</sup>

56. Another inappropriate requirement attached to the notification process is informally or formally imposing on the organizers the expectation to negotiate the time and place of the assembly with the authorities. Such requirement would be tantamount to restricting the planned assembly and would need to pass the strict test of necessity and proportionality, as defined in article 21 of the Covenant, which is applicable to restrictions. The Special Rapporteur also warns against authorities proposing an alternative time and place for an assembly, when processing a notification, as this would also be imposing restrictions on the right to freedom of peaceful assembly and should satisfy the aforementioned test.

57. The Special Rapporteur is also of the opinion that the notification procedure should at all times be free of charge so as not to financially deter organizers from exercising their right to freedom of peaceful assembly. Similarly, the cost of protecting and facilitating the assembly (such as deploying security barriers, medical services or temporary sanitary facilities) should not be borne by the organizers.

58. Once the organizers have notified the designated primary authority of their intention to hold an assembly, a receipt acknowledging that timely notification has been submitted should be provided in an expeditious manner. Should the organizers not hear from the authority prior to the designated time for holding the assembly, it should be assumed that said assembly does not present any problem. The Special Rapporteur warns against any possible abuse of the receipt system.<sup>30</sup>

59. The Special Rapporteur is mindful of States' obligation to guarantee law and order, but restrictions on peaceful assembly in relation to its "time, place and manner"<sup>31</sup> should be limited to the extent that such restrictions meet the aforementioned strict test of necessity and proportionality. Any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes "incitement to discrimination, hostility or violence", in conformity with article 20 of the Covenant. In this connection, he stresses the recommendation that he has already put forward to States to "provide individuals exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression".<sup>32</sup>

60. Should the assembly be restricted in compliance with international human rights norms and standards, the authorities should provide reasonable alternatives to the organizers to hold peaceful assemblies, which fundamentally should always be facilitated within "sight and sound" of the target audience so that the message they (organizers and participants) want to convey reaches this target audience.<sup>33</sup>

61. In far too many instances, authorities in many countries fail to apply the aforementioned strict test of necessity and proportionality when reviewing the imposition of a possible restriction to the right to freedom of peaceful assembly. Peaceful assemblies

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<sup>29</sup> Based on consultation with members of the OSCE/ODIHR Panel of Experts.

<sup>30</sup> See CCPR/CO/82/MAR, para. 24.

<sup>31</sup> OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 99.

<sup>32</sup> A/HRC/20/27, para. 84 (g).

<sup>33</sup> OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 99 and 101.

have been prohibited or repressed because the message conveyed do not please the authorities, as has been done in Algeria, Azerbaijan, Bahrain, Belarus, China, Cuba, Egypt, the Iran (Islamic Republic of), Indonesia, Russian Federation, Syrian Arab Republic and Zimbabwe. Organizers and participants have been charged with, *inter alia*, “sedition” and “rioting”.

62. This has also been the case for peaceful protestors advocating economic, social and cultural rights, such as indigenous peoples protesting the exploitation of a coal mine (Bangladesh), local residents denouncing the health impact of nuclear power plants (India), students protesting university reforms (Chile), employees protesting the closure of a mine (Myanmar), activists criticizing the increase in fuel prices (Sri Lanka) or students supporting an ethnic group forcibly displaced by the construction of a dam (Sudan).

63. The Special Rapporteur is particularly troubled by the imposition of blanket bans in many States, such as Azerbaijan and Bahrain, typically in the interests of national security, public safety or public order. He firmly believes that such blanket bans, are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peacefully assembly. States have also resorted to pre-emptive measures to quash peaceful assemblies, including by preventing participants from reaching assembly points, as in Sri Lanka and Myanmar.

64. Finally, organizers should be given the possibility of an expedited appeal procedure, with a view to obtaining a judicial decision by an independent and impartial court prior to the notified date of the assembly. The decision of the regulatory authority and of the appeal court should be published for the purposes of transparency and fairness, possibly on a specific website.<sup>34</sup>

### **3. Access to public space**

65. A key measure with regard to facilitating the holding of peaceful assemblies is to make public space available for organizers and participants. The Special Rapporteur deems it useful to refer again to an important decision of the Spanish Constitutional Court which stated that “in a democratic society, the urban space is not only an area for circulation, but also for participation”. The Inter-American Commission on Human Rights (IACtHR) also stressed that although the exercise of the right of assembly can sometimes be disruptive to the normal routine of daily life, or may even cause problems or affect the exercise of other rights that the State has an obligation to protect and ensure, such as freedom of movement, “such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves”.<sup>35</sup> Furthermore, the Human Rights Council in its resolution 22/10 urged States to facilitate peaceful protests by providing protestors with access to public space and protecting them, where necessary, against any forms of threats, and underlined the role of local authorities in this regard.<sup>36</sup> The issue of access to public space is all the more important in light of the increased privatization of public space in many States, where peaceful assemblies have been curtailed through the use by private bodies, both companies and individuals, of civil injunctions, which can be difficult to challenge, coupled with the issue of aggravated trespass, as in the United Kingdom of Great Britain and Northern Ireland, for example.

<sup>34</sup> Based on consultation with members of the OSCE/ODIHR Panel of Experts.

<sup>35</sup> Organization of American States (OAS), IACtHR, *Report on Citizen Security and Human Rights*, 31 December 2009 (OEA/Ser.L/V/II), para. 198. Available at:  
<http://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>

<sup>36</sup> Human Rights Council resolution 22/10, para. 4.

66. Access to public space means concretely that organizers and participants should be able to use public streets, roads and squares to conduct (static or moving) peaceful assemblies. The Special Rapporteur believes that spaces in the vicinity of iconic buildings such as presidential palaces, parliaments or memorials should also be considered public space, and peaceful assemblies should be allowed to take place in those locations. In this regard, the imposition of restrictions on “time, place and manner” should meet the aforementioned strict test of necessity and proportionality. In Kenya, protesters have been temporarily prohibited from gathering around the Supreme Court as they awaited a decision, as well as from other public places.

67. In this connection, the IACMR stressed that “the competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly, [including] rerouting pedestrian and vehicular traffic in a certain area”.<sup>37</sup> An assembly causes only a temporary obstruction to traffic, that is, a temporary interference with the rights and activities of others. The Special Rapporteur finds it troubling that in some States, street protests are forbidden under domestic legislation (Malaysia); it is prohibited for street marches to impede the movement of traffic and pedestrians (Belarus); mass gatherings are prohibited and subject to a heavy fine as they may, *inter alia*, disrupt traffic and transportation (Russian Federation); application to hold a peaceful assembly to celebrate International Peace Day was rejected by the authorities, allegedly because it would have, *inter alia*, disrupted traffic (Myanmar); women human rights defenders have repeatedly been arrested and detained for disrupting traffic during peaceful street marches (Zimbabwe).

#### **4. Pre-event planning**

68. The Special Rapporteur considers pre-event planning, including risk assessment, by law enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, as a good practice which may contribute to the success of the assembly. However, participation of organizers in such planning should never be made compulsory.

69. Possible issues for discussion include an estimate of the number of participants expected; itinerary of the assembly, if it is not static; specific needs of persons with disabilities and groups at risk, such as women, indigenous peoples and groups who, due to their sexual orientation and/or gender identity may be in need of greater protection by the authorities; need to deploy properly trained and clearly identified stewards whose role is to provide assistance to organizers by, *inter alia*, informing and orienting the public during the event, but who should not be used to palliate deficiencies in the security apparatus. Importantly, when organizers cannot be identified due to the nature of certain assemblies (such as those convened through the Internet), the authorities must undertake such planning and be prepared to the same extent.

70. Law enforcement authorities should be prepared and properly trained to handle the presence of agents provocateurs and counter-demonstrators aiming to disrupt or disperse the assembly, and to extract them from the assembly or contain them effectively. The authorities should also be prepared to handle simultaneous demonstrations, which should be facilitated and protected when possible.

71. Fundamentally, law enforcement authorities should always be forthcoming and genuinely cooperate with organizers, bearing in mind their duty to facilitate and protect peaceful assemblies.

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<sup>37</sup> OAS/IACMR, *Report on Citizen Security and Human Rights*, 31 December 2009 (OEA/Ser.L/V/II), para. 193.

## 5. New communication technologies

72. The Special Rapporteur stresses again the utmost importance of new communication technologies, including the Internet and mobile phones, in organizing peaceful assemblies. Such technologies allow organizers to mobilize a large group of people in a prompt and effective manner, and at little cost. This importance was highlighted by both panelists and delegations during the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests.<sup>38</sup> It should be noted that individuals who post on social media organizers' calls for assemblies should not be considered as organizers, as has regrettably been the case in Malaysia, for instance.

73. The Special Rapporteur is of the opinion that organizers and participants of peaceful assemblies should be allowed access to the Internet and other new technologies at all times, as made clear by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who also stated that "any determination on what [website] content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences".<sup>39</sup> In this connection, the OSCE/ODIHR Panel of Experts recommended that "States should ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded in any way".<sup>40</sup> Finally, the Human Rights Council, in its resolution 20/8, recognized the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms (para. 2) and "called upon all States to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries" (para. 3).

74. Likewise, new communications technologies, in particular the Internet, should be seen by the authorities as an excellent opportunity to interact with a large and diversified audience prior to and during peaceful assemblies, with a view to sensitizing them on their role and functions, and ultimately building or reinforcing trust among the population.

75. The Special Rapporteur is concerned that access to new communications technologies, in particular the Internet, or to specific websites, has allegedly been temporarily blocked prior to, during or after peaceful assemblies (e.g., in Algeria, China and Egypt).

76. The Special Rapporteur also warns against possible abusive use of laws governing the prevention and fight against offences linked to information and communications technologies, which "should be applied only as an exception to the general norm of permitting the open and free use of the Internet, like all other forms of communication; only very few qualified and clearly legislated exceptions should be permitted".<sup>41</sup>

## 6. Responsibility of organizers

77. Whenever organizers have deliberately not respected a legitimate restriction imposed on the right to freedom of peaceful assembly, sanctions should be proportionate to the offence with a view to not dissuading the holding of future assemblies. In many countries where a regime of authorization is in place, exorbitant fines are often in place in case organizers do not request authorization to demonstrate or do not respect the content of the authorization. Such fines are in many cases disproportionate, and have a chilling effect

<sup>38</sup> A/HRC/19/40, paras. 8, 16 and 52.

<sup>39</sup> A/HRC/17/27, paras. 70 and 79.

<sup>40</sup> OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, p. 35.

<sup>41</sup> A/HRC/20/17/Add.1, para. 105.

on the enjoyment of the rights to freedom of peaceful assembly and of expression, as in the legislations of Azerbaijan, Russian Federation and (Canton of Geneva) Switzerland.

78. Furthermore, as stated previously, organizers of peaceful assemblies should never be held liable for the unlawful behaviour of others.<sup>42</sup> The principle of individual liability of participants should be upheld, notably due to the presumption of peacefulness of the assembly. The Special Rapporteur is concerned that organizers have sometimes been brought to court for the violent behaviour of others, as in Malaysia. He is similarly concerned about legal provisions criminalizing organizers for the violent conduct of others, as in the Canton of Geneva, Switzerland.<sup>43</sup>

## V. Conclusion and recommendations

79. The Special Rapporteur considers the two issues discussed in the present report to be critical for the enjoyment of the rights to freedom of peaceful assembly and of association. He expresses serious concern that undue barriers to funding are put in place, especially in a climate of harassment and exclusion of civil society actors on one hand, and in the context of a global financial crisis on the other. It is crucial that civil society not bear any more restrictions and obligations than private corporate bodies, for instance, in these areas. In a framework of ongoing democratic reforms in several countries across the world and of discussions related to the post-2015 Millennium Development Goals Agenda, he believes States have the obligation to facilitate, not restrict, access for associations to funding, including from foreign sources, so that they can effectively take part in the democratic process and enrich post-Millennium Development Goals talks, and ultimately contribute to development.

80. Moreover, the Special Rapporteur believes that the “Arab Spring”, and the “occupy movement” which subsequently flourished in many parts of the world, have opened a door which will never be closed. They provide a non-violent alternative for change as well as give authorities a chance to understand the views and feelings of citizens. These events indelibly confirmed that holding peaceful assemblies is a legitimate and powerful means to make calls for democratic change; greater respect for human rights, including economic, social and cultural ones; and accountability for human rights violations and abuses. The ability to hold such assemblies has proven particularly crucial for groups most at risk of violations and discrimination enabling them to address their often desperate plight in a meaningful manner.

81. As general recommendations, the Special Rapporteur calls upon States:

- (a) To create and maintain, in law and in practice, an enabling environment for the enjoyment of the rights to freedom of association and of peaceful assembly;
- (b) To ensure that any restriction complies with international human rights norms and standards, in particular in line with the strict test of necessity and proportionality in a democratic society, bearing in mind the principle of non-discrimination;
- (c) To ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review;

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<sup>42</sup> A/HRC/20/27, para. 31.

<sup>43</sup> As of April 2013, the law is still the subject of an appeal before the Swiss Federal Tribunal.

(d) To ensure that sanctions for the non-respect of restrictions complying with international human rights norms and standards are proportionate and not set at a level that would deter individuals from exercising their right to freedom of association and/or of peaceful assembly;

(e) To ensure that those who violate and/or abuse the rights of individuals to freedom of association and of peaceful assembly are held fully accountable by an independent and democratic oversight body and by the courts of law.

82. In relation to freedom of association, the Special Rapporteur calls upon States:

(a) To adopt a regime of notification for the formation of associations, and to allow for the existence of unregistered associations;

(b) To ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities;

(c) To recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights;

(d) To recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding;

(e) To adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received.

83. In relation to freedom of peaceful assembly, the Special Rapporteur calls upon States:

(a) To establish in law, in a clear and explicit manner, a presumption in favour of holding peaceful assemblies, and to facilitate and protect peaceful assemblies;

(b) To ensure that peaceful assemblies are governed at most by a regime of notification regarding the holding of peaceful assemblies, in lieu of a regime of authorization. The notification procedure, where introduced, should be as simple and expeditious as possible;

(c) To provide organizers, whenever an assembly is restricted in compliance with international human rights norms and standards, with reasonable alternatives to hold their peaceful assemblies, which should be facilitated within “sight and sound” of the target audience;

(d) To ensure access to public space, including public streets, roads and squares, for the holding of peaceful assemblies, with the consequence of rerouting pedestrian and vehicular traffic when necessary;

(e) To ensure and facilitate at all times access to the Internet and other new communications technologies, and to further ensure that any restriction on such access or on the content of websites is reviewed by a competent judicial court;

(f) To guarantee that assembly organizers are never held responsible and liable for the unlawful behaviour of others.

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