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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 its first thematic report to the Human Rights Council, pursuant to Council resolution 15/21.

Following an introduction (chap. I), the Special Rapporteur provides in chapter II an overview of his activities during the first year of his mandate.

In chapter III, the Special Rapporteur highlights best practices that promote and protect the rights to freedom of peaceful assembly and of association. The right of peaceful assembly covers not only the right to hold and to participate in a peaceful assembly but also the right to be protected from undue interference. It further protects those monitoring peaceful assemblies. The right to freedom of association ranges from the creation to the termination of an association, and includes the rights to form and to join an association, to operate freely and to be protected from undue interference, to access funding and resources and to take part in the conduct of public affairs. This chapter ends with an emphasis on the right to an effective remedy and accountability for human rights violations and abuses.

In chapter IV, the Special Rapporteur outlines his conclusions and recommendations to relevant stakeholders.

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## I. Introduction

1. This report is submitted to the Human Rights Council by the Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolution 15/21. This is the first thematic report of the Special Rapporteur, who took up his functions on 1 May 2011. It introduces the activities of the Special Rapporteur over the period 1 May 2011 to 30 April 2012, and highlights, what he considers “best practices, including national practices and experiences, that promote and protect the rights to freedom of peaceful assembly and of association” (para. 5 (b) of the resolution).

2. “Best practice” not only applies to what is required by international human rights law, but also includes principles that go beyond these legally binding obligations (A/HRC/16/51, para. 10). It refers to both legal and institutional frameworks and must be based on an existing or emerging practice, coming from State institutions, intergovernmental organizations, international treaty bodies, international, regional or domestic courts (jurisprudence) or scholars.

3. In order to identify such best practices, the Special Rapporteur sent a questionnaire to Member States, national human rights institutions, regional human rights mechanisms, non-governmental organizations (NGOs) and other stakeholders. A total of 87 replies were received (see A/HRC/20/27/Add.1). The Special Rapporteur is grateful to those who responded to his questionnaire. For the sake of ensuring a balanced approach, he encourages any stakeholder to engage with him and to comment on any issues mentioned in the present report so as to ensure that the best practices identified rightly reflect the situation on the ground. As prescribed by Council resolution 15/21, the Special Rapporteur also used other “elements of work available within the Council” to prepare this report. He further referred to urgent appeals and allegation letters sent by special procedure mandate holders.

4. The Special Rapporteur underlines that, while the rights to freedom of peaceful assembly and of association are clearly interrelated, interdependent and mutually reinforcing, they are also two separate rights. They are indeed in most cases governed by two different types of legislation and, as shown in the present report, they face different challenges. This implies that each should be treated separately. The present report therefore covers successively best practices related to the right of peaceful assembly and to the right to freedom of association.

5. Considering the very large scope of the rights at stake, this report does not pretend, nor intend to be exhaustive, but rather aims at presenting a first overview of legal and institutional frameworks that should be adopted and implemented to comply with the spirit and the letter of human rights in the context of the rights of freedom of peaceful assembly and of association.

6. Although the present report is related to best practices, the Special Rapporteur believes it is important to bear in mind that, in certain contexts, the rights of peaceful assembly and to freedom of association are totally or partially denied, as seen in many countries at the time of drafting the report.

## **II. Activities**

### **A. Communications**

7. A total of 140 communications were sent by the Special Rapporteur from 1 May 2011 to 30 April 2012. Observations on countries to which communications were addressed throughout the year are enclosed in an addendum of the present report (A/HRC/20/27/Add.4).

### **B. Country visits**

8. Since 1 May 2011, the Special Rapporteur sent 41 country visit requests. The Special Rapporteur thanks the Government of Georgia for its collaboration during his first country mission from 6 to 13 February 2012 (see A/HRC/20/27/Add.2 for final conclusions and recommendations). He further thanks Azerbaijan, Guatemala, Honduras, the Kyrgyzstan, Maldives, Tunisia and the United Kingdom of Great Britain and Northern Ireland for extending an invitation. However, he deeply regrets that the Government of the Syrian Arab Republic did not respond to his letter dated 1 December 2011, in which he proposed dates for a mission, after the Government extended an invitation for a mission to take place “during the first months of [2012]”.

### **C. Participation in various events**

9. The Special Rapporteur took part in two regional consultations that helped him gather relevant inputs for the elaboration of the present report, organized by the Human Rights House Foundation and the Office for Democratic Institutions and Human Rights (ODIHR), and the Cairo Institute for Human Rights Studies and the International Service for Human Rights, respectively. From 2 to 4 February 2012, in Tbilisi, he had the opportunity to meet with representatives from civil society from, inter alia, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Georgia, Hungary, Norway, Poland, the Republic of Moldova, the Russian Federation, Serbia, Switzerland, Turkey and the United Kingdom; as well as with activists from Kazakhstan, Kyrgyzstan and Turkmenistan in cooperation with the Open Society Institute. On 13 and 14 April 2012, in Cairo, he participated in a regional consultation, which brought together human rights defenders from the Middle East and North Africa region, the Special Rapporteur on the situation of human rights defenders and the African Commission on Human and Peoples' Rights Special Rapporteur on human rights defenders.

10. In terms of conferences, on 12 July 2011, the Special Rapporteur met with the Secretary General of the Organization of American States in Washington, D.C. From 14 to 16 September 2011, he participated in the sixth Dublin Platform for Human Rights Defenders, organized by Front Line, The International Foundation for the Protection of Human Rights Defenders. From 21 to 23 November 2011, he attended the conference ‘Protecting Democracy – Reclaiming Civil Society Space in Africa’, organized by the Centre for Citizens' Participation in the African Union, which took place in Johannesburg, South Africa. On 30 November 2011, he participated in the Fourth High Level Forum on Aid Effectiveness, held in Pusan, Republic of Korea. On 17 and 18 January 2012, in Addis Ababa, he participated in a consultation between special procedures mandate holders of the United Nations and the African Commission on Human and Peoples' Rights. From 26 to 28 January 2012, he participated in the 2012 Wilton Park conference, organized by the Governments of Norway and Switzerland and entitled “Peaceful protest: a cornerstone of democracy. How to address the challenges?” On 14 and 15 March 2012, he attended the

European Union Presidency Conference entitled “Civil Society Organisations, Human Rights and Development” in Copenhagen, organized by Concord Danmark and, on 16 March 2012, he attended the Fiftieth Anniversary Conference of the Ministry of Foreign Affairs of Denmark in Copenhagen.

11. On 13 September 2011, pursuant to Council decision 17/120, the Special Rapporteur participated in a panel discussion on the promotion and protection of human rights in the context of peaceful protest, organized during the eighteenth session of the Council. The Office of the United Nations High Commissioner for Human Rights prepared a summary report of the discussion (A/HRC/19/40).

### **III. Best practices related to the rights to freedom of peaceful assembly and of association**

#### **A. Common principles**

##### **1. Legal framework**

12. The rights to freedom of peaceful assembly and of association serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. The rights are essential components of democracy as they empower men and women to “express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable” (Council resolution 15/21, preamble). Such interdependence and interrelatedness with other rights make them a valuable indicator of a State’s respect for the enjoyment of many other human rights.

13. Resolution 15/21 reaffirms that “*everyone* has the rights to freedom of peaceful assembly and of association” (emphasis added). This provision must be read jointly with article 2 of the International Covenant on Civil and Political Rights, which stipulates that “each State Party undertakes to respect and to ensure to *all* individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”(emphasis added), and article 26 thereof, which guarantees to all individuals equal and effective protection against discrimination on grounds identified in article 2. This applies *inter alia* to minors, indigenous peoples, persons with disabilities, persons belonging to minority groups or other groups at risk, including those victims of discrimination because of their sexual orientation and gender identity (see Council resolution 17/19), non-nationals including stateless persons, refugees<sup>1</sup> or migrants, as well as associations, including unregistered groups. The rights to freedom of peaceful assembly and of association are key human rights in international human rights law, which are enshrined in article 20 of the Universal Declaration of Human Rights.

14. The right to freedom of peaceful assembly is guaranteed in article 21 of the Covenant on Civil and Political Rights and the right to freedom of association in article 22. They are also reflected in article 8 of the International Covenant on Economic, Social and Cultural Rights and in other specific international<sup>2</sup> and regional human rights treaties or

<sup>1</sup> Article 15 of the Convention relating to the Status of Refugees

<sup>2</sup> Article 7 (c) of the Convention on the Elimination of All Forms of Discrimination against Women; International Labour Organization (ILO) Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

instruments,<sup>3</sup> including the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (art. 5).

15. According to article 4 of the International Covenant on Civil and Political Rights, the right of peaceful assembly and the right to freedom of association are not absolute rights. Resolution 15/21 (OP 4) makes clear that they “can be subject to certain restrictions, 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”.

16. The Special Rapporteur emphasizes that only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception. He refers to general comment No. 27 (1999) of the Human Rights Committee on freedom of movement: “in adopting laws providing for restrictions ... States should always be guided by the principle that the restrictions must not impair the essence of the right ... the relation between right and restriction, between norm and exception, must not be reversed”. As a result, when States would like to restrict these rights, all the above conditions must be met. Any restrictions must therefore be motivated by one of the above limited interests, have a legal basis (be “prescribed by law”, which implies that the law must be accessible and its provisions must be formulated with sufficient precision) and be “necessary in a democratic society”.

17. As outlined by the Organization for Security and Co-operation in Europe (OSCE), “the word ‘necessity’ does not mean ‘absolutely necessary’ or ‘indispensable’, but neither does it have the flexibility of terms such as ‘useful’ or ‘convenient’: instead, the term means that there must be a ‘pressing social need’ for the interference”.<sup>4</sup> When such a pressing social need arises, States have then to ensure that any restrictive measures fall within the limit of what is acceptable in a “democratic society”. In that regard, longstanding jurisprudence asserts that democratic societies exist only where “pluralism, tolerance and broadmindedness”<sup>5</sup> are in place. Hence, States cannot undermine the very existence of these attributes when restricting these rights. Furthermore, the Special Rapporteur refers to general comment No. 31 (2004) of the Human Rights Committee on the nature of the general legal obligation imposed on States parties to the Covenant, which provides that “where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights” (para. 6).

18. In addition, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful.

19. The Special Rapporteur further particularly emphasizes that the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment should be guaranteed by States to all individuals under all circumstances and at all times, including in the context of the exercise of the rights to freedom of association and of peaceful assembly, as prescribed by article 4 of the Covenant. The Special Rapporteur recalls that,

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<sup>3</sup> It is worth noting that the word “peaceful” is absent from article 11 of the African Charter on Human and Peoples’ Rights.

<sup>4</sup> OSCE/Office for Democratic Institutions and Human Rights (ODIHR), *Key Guiding Principles of Freedom of Association with an Emphasis on Non-Governmental Organizations*, para. 5.

<sup>5</sup> European Court of Human Rights, *Handyside v. the United Kingdom*, application No. 5493/72, 7 December 1976, para. 49.

according to the Human Rights Committee, during a state of emergency, the rights to freedom of peaceful assembly and of association shall not be derogated since “the possibility of restricting certain Covenant rights under the terms of, for instance ... freedom of assembly is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation”.<sup>6</sup>

## 2. Environment in which these rights are exercised

20. The rights to freedom of peaceful assembly and of association are constitutionally guaranteed in most countries. In many States, specific domestic laws further govern the exercise of these rights. However, in many instances, domestic legislation in place listed grounds additional to those already prescribed by international human rights law or ambiguous. The Special Rapporteur warns against arbitrary interpretations of such grounds for restriction. He further cautions against an environment in which the enjoyment of these rights is seriously impeded.

21. The legitimate combat against terrorism, and other security considerations, has been used as a justification for the adoption of a state of emergency or other stricter rules to void the rights to freedom of peaceful assembly and of association. In many instances, emergency regulations have been used to clampdown on freedoms of peaceful assembly, of association and of expression. On different occasions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed in a report to the General Assembly that “States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism” (A/61/267, para. 53).

22. Country-specific contexts sometimes extinguish the rights to freedom of peaceful assembly and of association. In situations of armed conflict, individuals who desire to assemble and associate freely, even to address emergency needs or to call for the end of violence, may meet drastic restrictions that may amount to a strict denial of their rights.

23. The context of elections may also heavily impact on the rights to freedom of peaceful assembly and of association. This is particularly the case when assemblies are systematically prohibited or when individuals active in associations promoting transparent and fair electoral processes and defending democratic principles are subject to harassment and intimidation for their civic activism.

## B. Best practices related to the right to freedom of peaceful assembly<sup>7</sup>

### 1. Definition of a peaceful assembly

24. An “assembly” is an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes,<sup>8</sup> processions, rallies or even sits-in. Assemblies play a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing States’ public policy.

<sup>6</sup> General comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 5.

<sup>7</sup> The Special Rapporteur extensively refers to the OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly* (2007, Warsaw, second ed.), which he considers the most advanced set of good practices available at the time of drafting.

<sup>8</sup> Due to word limit, the report will not cover strikes.

25. The Special Rapporteur agrees that international human rights law only protects assemblies that are peaceful, i.e. those that are not violent, and where participants have peaceful intentions, which should be presumed.<sup>9</sup> According to the European Court of Human Rights, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”.<sup>10</sup>

## 2. The right to hold and to participate in a peaceful assembly

26. Fundamentally, the Special Rapporteur considers as a best practice the presumption in favour of holding peaceful assemblies, as stressed by the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly. Such a presumption should be “clearly and explicitly established in the law”,<sup>11</sup> enshrined either in constitutions or in laws governing peaceful assemblies (e.g. as in Armenia and Romania).

27. The Special Rapporteur stresses that the enjoyment of the right to hold and participate in peaceful assemblies entails the fulfilment by the State of its positive obligation to facilitate the exercise of this right. In this regard, he highlights the Law on Assembly in Armenia, which states that the police shall be obliged to facilitate peaceful assemblies (art. 32, para. 2). He further notes with interest the statement of the Her Majesty’s Inspectorate of Constabulary of the United Kingdom, an independent assessment institution, which stated that “the police as a service has recognized and adopted the correct starting point for policing protest as the presumption in favour of facilitating peaceful protest”.<sup>12</sup>

28. The Special Rapporteur believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (as explicitly expressed in the Spanish Constitution), but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others.<sup>13</sup> Such a notification should be subject to a proportionality assessment, not unduly bureaucratic<sup>14</sup> and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place. A notification procedure is in force in several countries, including Armenia, Austria, Canada, Cote d’Ivoire, Finland, Indonesia, Morocco, the Occupied Palestinian Territory, Portugal, Senegal, Serbia, and the United Republic of Tanzania. Prior notification should ideally be required only for large meetings or meetings which may disrupt road traffic.<sup>15</sup> In the Republic of Moldova, any assembly of fewer than 50 participants may take place without prior notification and the change from an authorization to a notification procedure fostered an increase in the number of individuals exercising their right to freedom of peaceful assembly. In this context, the Special Rapporteur regrets that the law on demonstrations recently adopted by referendum in the canton of Geneva, Switzerland, provides for a fine of up to 100,000 Swiss francs for

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<sup>9</sup> *Guidelines on Freedom of Peaceful Assembly*, p. 33.

<sup>10</sup> European Court of Human Rights, *Ziliberg v. Moldova*, application No. 61821/00 (2004).

<sup>11</sup> *Guidelines on Freedom of Peaceful Assembly*, p. 13.

<sup>12</sup> See submission by the United Kingdom in addendum 1 to the present report.

<sup>13</sup> *Guidelines on Freedom of Peaceful Assembly*, p. 63. Inter-American Commission on Human Rights, report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 para. 57.

<sup>14</sup> See submission by the OSCE-ODIHR Panel of Experts in addendum 1 to the present report.

<sup>15</sup> *Guidelines on Freedom of Peaceful Assembly*, p. 63.



anyone who, inter alia, does not request an authorization to demonstrate or does not respect the content of the authorization.<sup>16</sup>

29. Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically (e.g. as in Austria) and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer. In this context, the Special Rapporteur holds as best practice legislation allowing the holding of spontaneous assemblies, which should be exempted from prior notification. This is the case for example, in Armenia, Estonia, Germany, the Republic of Moldova and Slovenia. In this connection, the European Court of Human Rights has emphasized that “in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.<sup>17</sup>

30. In the case of simultaneous assemblies at the same place and time, the Special Rapporteur considers it good practice to allow, protect and facilitate all events, whenever possible. In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial.

31. With regard to the responsibilities of organizers, the Special Rapporteur is of the opinion that “organizers should not incur any financial charges for the provision of public services during an assembly (such as policing, medical services and other health and safety measures)”.<sup>18</sup> He is informed that, in Austria, there are no fees to be paid for the protection of assemblies.<sup>19</sup> Most importantly, “assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... [and, together with] assembly stewards, should not be made responsible for the maintenance of public order”.<sup>20</sup> The Special Rapporteur considers as a good practice, when necessary, the use of stewards appointed by the organizers of an assembly, i.e. persons who provide assistance to them by, inter alia, informing and orienting the public during the event. Stewards should be clearly identifiable and properly trained.

32. The Special Rapporteur notes the increased use of the Internet, in particular social media, and other information and communication technology, as basic tools which enable individuals to organize peaceful assemblies. However, some States have clamped down on these tools to deter or prevent citizens from exercising their right. In this connection, the Special Rapporteur refers to a recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in which he recommended, inter alia, that “all States [should] ensure that Internet access is maintained at all times, including during times of political unrest” (A/HRC/17/27, para. 79) and “any determination

<sup>16</sup> As of May 2012, the law is the subject of an appeal before the Swiss Federal Tribunal.

<sup>17</sup> European Court of Human Rights, *Bukta and Others v. Hungary*, application No. 25691/04 (2007). “Special circumstances” refer to cases when “an immediate response to a current event is warranted in the form of a demonstration”.

<sup>18</sup> See submission by the OSCE/ODIHR Panel of Experts to the addendum to the present report.

<sup>19</sup> See the submission of the Austrian national human rights institution.

<sup>20</sup> See submission by the OSCE/ODIHR Panel of Experts.

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” (para. 70).

### **3. The right to be protected from undue interference**

#### *(a) Positive obligation*

33. The Special Rapporteur stresses that States have a positive obligation to actively protect peaceful assemblies. Such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies. Such individuals include those belonging to the State apparatus or working on its behalf. The organizers and stewards of assemblies should not assume this obligation. The Special Rapporteur believes that such responsibility should always be explicitly stated in domestic legislation, as it is in, inter alia, the Republic of Moldova, Serbia and Slovenia. In Armenia, organizers may request police officials to remove provocateurs from the assembly venue (even if in practice the implementation of this provision is reportedly sometimes problematic). The Special Rapporteur holds as a good practice the establishment in Estonia of a Police Rapid Response Unit (riot police) which aims at protecting peaceful demonstrators against attacks by provocateurs and counter-demonstrators and is trained in how to separate the main provocateurs from peaceful demonstrators.

34. The Special Rapporteur expresses his utmost concern in relation to peaceful assemblies that were either not allowed or violently dispersed in a number of countries, such as in Bahrain, Belarus, China, Egypt, the Islamic Republic of Iran, Malawi, Malaysia, Sri Lanka and the Syrian Arab Republic.<sup>21</sup>

35. The right to life (art. 3 of the Universal Declaration on Human Rights and art. 6 of the Covenant on Civil and Political Rights) and the right to be free from torture or cruel, inhuman or degrading treatment or punishment (art. 5 of the Declaration and art. 7 of the Covenant) should be the overarching principles governing the policing of public assemblies, as stated by several countries. In this regard, soft law provisions – the Code of Conduct for Law Enforcement Officials (in particular articles 2 and 3) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (in particular principles 4, 9 and 13) – aim at guiding law enforcement officials when policing peaceful protests. In this connection, the Inter-American Court on Human Rights stated that the “pretext of maintenance of public security cannot be invoked to violate the right to life ... the State must ensure that, if it is necessary to resort to physical means ... members of its armed forces and its security bodies will use only those means that are indispensable to control such situations in a rational and proportional manner, and respecting the rights to life and to humane treatment”.<sup>22</sup> The Special Rapporteur on extrajudicial, summary or arbitrary executions also stated that “the only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury” (A/HRC/17/28, para. 60). With regard to the use of tear gas, the Special Rapporteur recalls that gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions. He also warns against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protestors and, indirectly, bystanders.

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<sup>21</sup> See, inter alia, reports on summaries of individual cases raised by special procedures mandate holders, and on observations on communications transmitted to Governments and replies received, as well as press releases issued by such mandate holders and high-level United Nations officials.

<sup>22</sup> Inter-American Court of Human Rights judgement, *Caracazo v. Venezuela* (2002), para. 127.

36. The Special Rapporteur also refers to the Inter-American Commission on Human Rights list of administrative controls that should be put in place at the State level to ensure use of force during public assemblies on an exceptional basis. Among others, “(a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as recourse in public demonstrations; (b) implementation of an ammunition registration and control system; (c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out”.<sup>23</sup>

37. The Special Rapporteur is opposed to the practice of “kettling” (or containment) whereby demonstrators are surrounded by law enforcement officials and not allowed to leave. He notes with satisfaction the statement of the Toronto police (Canada) which decided to abandon the practice following controversy arising from the policing of the G-20 Summit in Toronto in 2010.

38. In general, the Special Rapporteur stresses the utmost importance of genuine dialogue, including through negotiation, between law enforcement authorities and organizers in order to ensure the smooth conduct of the public assembly, as it has reportedly been the case in, inter alia, Guatemala, Hungary, Mexico and Switzerland.

(b) *Negative obligation*

39. States also have a negative obligation not to unduly interfere with the right to peaceful assembly. The Special Rapporteur holds as best practice “laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions ... Prohibition should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities.”<sup>24</sup>

40. As mentioned earlier, any restrictions imposed must be necessary and proportionate to the aim pursued. Reference to the proportionality test is found in legislation governing peaceful assemblies in a number of countries, including New Zealand and Switzerland. In addition, such restrictions must be facilitated within “sight and sound” of its object and target audience,<sup>25</sup> and “organizers of peaceful assemblies should not be coerced to follow the authorities’ suggestions if these would undermine the essence of their right to freedom of peaceful assembly”.<sup>26</sup> In this connection, he warns against the practice whereby authorities allow a demonstration to take place, but only in the outskirts of the city or in a specific square, where its impact will be muted.

41. The Special Rapporteur further concurs with the assessment of the ODIHR Panel of Experts that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”.<sup>27</sup> In this regard, the Inter-American Commission on Human Rights has indicated 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>28</sup> Furthermore, the Special Rapporteur points to a 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”.

<sup>23</sup> Report on the Situation of Human Rights Defenders in the Americas, para. 68.

<sup>24</sup> See submission by the OSCE/ODIHR Panel of Experts.

<sup>25</sup> *Guidelines on Freedom of Peaceful Assembly*, p. 59.

<sup>26</sup> See submission by the OSCE/ODIHR Panel of Experts.

<sup>27</sup> *Ibid.*

<sup>28</sup> Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, para. 193. Available from [www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm](http://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm)

42. The Special Rapporteur stresses the importance of the regulatory authorities providing assembly organizers with “timely and fulsome reasons for the imposition of any restrictions, and the possibility of an expedited appeal procedure”.<sup>29</sup> The organizers should be able to appeal before an independent and impartial court, which should take a decision promptly. In several States, the regulatory authority has the obligation to justify its decision (e.g. Senegal and Spain). In Bulgaria, the organizer of an assembly may file an appeal within three days of receipt of a decision banning an assembly; the competent administrative court shall then rule on the ban within 24 hours, and the decision of the court shall be announced immediately and is final. Similarly, in Estonia, a complaint may be filed with an administrative court, which is required to make a decision within the same or next day; the organizers may also launch a complaint with the Estonian Ombudsman.

(c) *Build and strengthen the human rights capacity of administrative and law enforcement officials*

43. It is important that States ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the right to freedom of peaceful assembly.

44. In countries where a regime of authorization is in place, the Special Rapporteur believes that administrative officials in charge of issuing authorizations should be subject to oversight on a regular basis in order to make sure that they do not arbitrarily reject requests to hold public assemblies (e.g. Slovenia). In this context, a workshop on the implementation of the law on peaceful assembly for the attention of administrative officials in charge of implementing the law was organized in Slovenia.

45. The Special Rapporteur notes with satisfaction that, in most countries which responded to the questionnaire, capacity-building activities on international human rights law, and sometimes on international humanitarian law, are provided to law enforcement, notably in police academies, and other authorities (e.g. Cote d’Ivoire, Croatia, Cuba, Estonia, Honduras, Germany, Guatemala, Iraq, Mexico, Morocco, Peru, Senegal, Spain, Switzerland, United Kingdom and Uruguay). Such trainings were delivered in cooperation, inter alia, with national human rights institutions (e.g. Denmark, Hungary, Indonesia, Iraq, Malaysia, Mexico, Nepal, New Zealand, the Occupied Palestinian Territory, Paraguay, United Republic of Tanzania and Uganda), the Office of the United Nations High Commissioner for Human Rights (e.g. Mexico and Uganda), the OSCE/ODIHR (e.g. Armenia and Bulgaria), the European Commission (e.g. Bulgaria), NGOs (e.g. Armenia, Bulgaria, Canada, Croatia, Denmark, Malaysia and Serbia), universities (e.g. Morocco and Mexico), and the International Committee of the Red Cross (Peru). The Special Rapporteur stresses the need to provide regular follow-up trainings.

46. Several good initiatives were brought to the attention of the Special Rapporteur, which should be replicated. In Burkina Faso, a seminar on “public demonstration and human rights: what strategy for a better collaboration between the different actors” was conducted by the Ministry of Justice and the Promotion of Human Rights for the benefit of security forces and NGOs. In Slovenia, training initiatives for law enforcements officials on the use of non-lethal instruments of constraint (such as batons, tear gas and water canons) when maintaining public order were delivered. In the United Kingdom, the police of several counties appointed an independent human rights lawyer to advise them on the legality and human rights implications of large-scale public order operations in relation to controversial protests.

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<sup>29</sup> See submission by the OSCE/ODIHR Panel of Experts.

47. The Special Rapporteur further considers as best practices training materials developed with a view to preventing discriminatory treatment and measures against women, minors, persons with disabilities, indigenous peoples, individuals and groups of individuals belonging to minorities and other marginalized groups (e.g. Mexico, Serbia, Slovenia and Spain).

#### 4. Monitoring peaceful assemblies

48. The Special Rapporteur refers to the report to the General Assembly of the then Special Representative of the Secretary-General on the situation of human rights defenders, who stated that “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly” (A/62/225, para. 91).<sup>30</sup> Such defenders include members of civil society organizations, journalists, “citizen journalists”, bloggers and representatives of national human rights institutions.

49. In this regard, the Special Rapporteur considers good practice the invitation of the London Metropolitan Police to Liberty, an independent human rights organization, to act as independent observers when they were policing a Trades Union Congress march in London in 2010. He also refers to the statement of the Vice-Chair of the Malaysian Human Rights Commission (SUHAKAM) made during the panel discussion on the promotion and protection of human rights in the context of peaceful protests, at the nineteenth session of the Human Rights Council (A/HRC/19/40, para. 33). The Vice-Chair highlighted, inter alia, the monitoring role played by SUHAKAM during a sensitive public demonstration, by deploying teams of observers.

50. In this connection, the Special Rapporteur supports the call of the ODIHR Panel of Experts to undertake capacity-building activities for the benefit of NGOs and human rights defenders on the ground to monitor assemblies and their policing on a systematic basis. In this context, ODIHR trained assembly monitors in Armenia, Georgia, Kazakhstan, Kyrgyzstan and Republic of Moldova, and issued the new *Handbook on Monitoring Freedom of Assembly* in September 2011.<sup>31</sup>

### C. Best practices related to the right to freedom of association

#### 1. Definition of an association

51. An “association” refers to any groups of individuals or any legal entities brought together in order to collectively act, express, promote, pursue or defend a field of common interests (see report of the Special Representative of the Secretary-General on human rights defenders, A/59/401, para. 46).

52. The word “association” refers, inter alia, to civil society organizations, clubs, cooperatives, NGOs, religious associations, political parties, trade unions, foundations or even online associations as the Internet has been instrumental, for instance, in “facilitating active citizen participation in building democratic societies” (A/HRC/17/27, para. 2). The Special Rapporteur underscores that these various types of associations are, in most cases, regulated by different types of legislations. As he has mainly received information

<sup>30</sup> A/62/225, para. 91.

<sup>31</sup> OSCE/ODIHR, 2011, Warsaw. Available from [www.osce.org/odihr/82979](http://www.osce.org/odihr/82979).

regarding allegations impacting civil society's work since the inception of his mandate, and due to the word limit, the present section of the report will primarily focus on this type of association, but will address others when relevant. This will not prevent him from focusing on other forms of associations in his future reports.

## 2. The right to form and to join an association

53. The Special Rapporteur emphasizes that the right to form and join an association is an inherent part of the right to freedom of association. It also includes the right to form and join trade unions for the protection of one's interests, as enshrined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

54. International human rights law stipulates that everyone has the rights to freedom of association. As a result, legislation that does not set any specific limitation on individuals, including children (e.g. national human rights institution of Cote d'Ivoire) and foreign nationals (e.g. Burkina Faso and the United States of America) complies with international standards. However, under international human rights law, members of the armed forces and of the police may have their right lawfully restricted. Any restrictions must, nevertheless, comply with States' international human rights obligations as blanket restrictions shall not be considered lawful. The Special Rapporteur further considers as a best practice the Armenian and Estonian legislation that require no more than two persons to establish an association. A higher number may be required to establish a union or a political party, but this number should not be set at a level that would discourage people from engaging in associations.

55. An important component of the right to freedom of association is that no one may be compelled to belong to an association (e.g. Chile, Guatemala, Portugal and Republic of Moldova). Likewise, associations should be free to choose their members and whether to be open to any membership.<sup>32</sup> This aspect is particularly relevant for unions or political parties since a direct interference in their membership may jeopardize their independence.<sup>33</sup>

56. The Special Rapporteur underlines that the right to freedom of association equally protects associations that are not registered (e.g. Canada, Republic of Moldova, Slovenia and the United States). Individuals involved in unregistered associations should indeed be free to carry out any activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions, as the Special Rapporteur regrets is the case in Algeria, Belarus, Cambodia or the Syrian Arab Republic.<sup>34</sup> This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs.

57. The European Court on Human Rights clearly ruled "that citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning".<sup>35</sup> The procedure to establish an association as a legal entity varies from one country to another, but it is vital that Government officials act in good faith, in a timely and non-selective manner. The Special Rapporteur considers as best

<sup>32</sup> *Key Guiding Principles of Freedom of Association*, para. 28.

<sup>33</sup> ILO, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth (revised) edition (Geneva, 2006), para. 723.

<sup>34</sup> See footnote 21.

<sup>35</sup> European Court of Human Rights, *Sidiropoulos and Others v. Greece*, application No. 26695/95, 10 July 1998.

practice procedures which are simple, non-onerous or even free of charge (e.g. Bulgaria) and expeditious (e.g. Japan where registration applications may be directly filled in online).

58. The Special Rapporteur is of the opinion that a “notification procedure”, rather than a “prior authorization procedure” that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by States. Under this notification procedure, associations are automatically granted legal personality as soon as the authorities are notified by the founders that an organization was created. In most countries, such notification is made through a written statement containing a number of elements of information clearly defined in the law, but this is not a precondition for the existence of an association. It is rather a submission through which the administration records the establishment of the said association. Such a notification procedure is in force in a number of countries (e.g. Cote d’Ivoire, Djibouti, Morocco, Portugal, Senegal, Switzerland and Uruguay).

59. The Special Rapporteur believes the formation of branches of associations, foreign associations or unions or networks of associations, including at the international level, should be subject to the same notification procedure.

60. Under both notification and prior authorization regimes, registration bodies must be bound to act immediately and laws should set short time limits to respond to submissions and applications respectively. The Special Rapporteur echoes a ruling of the European Court which provided that “significant delays in the registration procedure, if attributable to the Ministry of Justice, amounts to an interference with the exercise of the right of the association’s founders to freedom of association”.<sup>36</sup> During this period associations should be presumed to be operating legally until it is proven otherwise (e.g. Uruguay). Failure to provide a response within a clear and short time limit should result in a presumption that associations are operating legally (e.g. Austria).

61. Any decision rejecting the submission or application must be clearly motivated and duly communicated in writing to the applicant. Associations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an independent and impartial court. In this regard, the Special Rapporteur refers to a decision of the Freedom of Association Committee of the International Labour Organization (ILO), in which it ruled that “the absence of recourse to a judicial authority against any refusal by the Ministry to grant an authorization to establish a trade union violates the principles of freedom of association”.<sup>37</sup>

62. Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities. For instance, the Committee on the Rights of the Child, in its concluding observations on Nepal, expressed concerns over the wide-ranging restrictions, such as re-registration requirements, placed by the authorities on civil society organizations (CRC/C/15/Add.260, paras. 33 and 34).

### **3. The right to operate freely and to be protected from undue interference**

#### *(a) Positive obligation*

63. The right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment. It is crucial that individuals exercising this

<sup>36</sup> European Court of Human Rights, *Ismayilov v. Azerbaijan*, application No. 4439/04, 17 January 2008, para. 48.

<sup>37</sup> *Digest of decisions and principles*, para. 274.

right are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence, including summary or arbitrary executions, enforced or involuntary disappearances, arbitrary arrest or detention, torture or cruel, inhuman or degrading treatment or punishment, a media smear campaign, travel ban or arbitrary dismissal, notably for unionists. One or several of such violations is/are found in, e.g., Belarus, Colombia, the Democratic Republic of the Congo, Egypt, Israel, the Philippines, , Sri Lanka, Syrian Arab Republic and Zimbabwe.<sup>38</sup>

(b) *Negative obligation*

64. Furthermore, States have a negative obligation not to unduly obstruct the exercise of the right to freedom of association. Members of associations should be free to determine their statutes, structure and activities and make decisions without State interference (e.g. legislation in Bulgaria, Slovakia and Slovenia). Associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection. Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority's culture<sup>39</sup> or for changes in law, including changes in the Constitution.<sup>40</sup> The Special Rapporteur recognizes that the formation of associations embracing minority or dissenting views or beliefs may sometimes lead to tensions, but he emphasizes the duty of the State to ensure that everyone can peacefully express their views without any fear. For instance, in Lesotho, the Registrar General registered the first ever lesbian, gay, bisexual and transgender organization in the country called Matrix in November 2010 (after numerous delays).

65. Authorities must also respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights. In this connection, authorities should not be entitled to: condition any decisions and activities of the association; reverse the election of board members; condition the validity of board members' decisions on the presence of a Government representative at the board meeting or request that an internal decision be withdrawn; request associations to submit annual reports in advance; and enter an association's premises without advance notice. The Special Rapporteur recognizes the right of independent bodies to examine the associations' records as a mechanism to ensure transparency and accountability, but such a procedure should not be arbitrary and must respect the principle of non-discrimination and the right to privacy as it would otherwise put the independence of associations and the safety of their members at risk. As a best practice, the decision of the African Commission on Human and Peoples' Rights found that the right to freedom of association had been violated when the Government of Nigeria provided the Nigerian Bar Association with a new governing body and laid down that 97 of the 128 members constituting this body would be appointed by the Government (report of the Special Rapporteur on the situation of human rights defenders, A/64/226, para. 34).

(c) *Build and strengthen the human rights capacity of administrative officials*

66. The Special Rapporteur notes with satisfaction that in Slovenia the Ministry of Interior is reportedly regularly supervising the work of its administrative units and checking the legality of how the registration procedures are conducted. During the supervision, officers in charge of the procedures are offered expert help and interpretation of the law.

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<sup>38</sup> See footnote 21.

<sup>39</sup> European Court of Human Rights, *Ouranio Toxo and Others v. Greece*, application No. 74989/01, 20 October 2005, para. 40.

<sup>40</sup> European Court of Human Rights, *Zhechev v. Bulgaria*, application No. 57045/00, 21 June 2007.



#### 4. The right to access funding and resources

67. The ability for associations to access funding and resources is an integral and vital part of the right to freedom of association. The Special Rapporteur makes reference to ILO principles which underline that “provisions which give the authorities the right to restrict the freedom of a trade union to administer and utilize its funds as it wishes ... are incompatible with the principles of freedom of association”.<sup>41</sup> Numerous United Nations human rights bodies have also emphasized the principle that associations should access funding freely.<sup>42</sup>

68. Any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations. Nonetheless, the Special Rapporteur notes with concerns that, in some countries, only registered associations are eligible for funding and resources. In this context, it appears essential that rules regulating the creation of associations comply with the aforementioned identified best practices to allow any associations to access funding and resources.

69. In many countries, domestic funding is very limited or non-existent, leading associations to rely on foreign assistance to conduct their activities. The Special Rapporteur echoes the recommendations put forward by the then Special Representative of the Secretary-General on the situation of human rights defenders who affirmed 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” (A/59/401, para. 82). He believes that the same principle should apply to any associations regardless of the goals, in line with international law, they pursue. He considers as best practice legislation that does not prescribe the approval of the authorities before receiving domestic and foreign funding (e.g. Lebanon, Morocco and the United States). The barriers to foreign funding range from undue delay in approval for funding an association’s project (e.g. Bangladesh) to the requirement of obtaining a prior authorization from the authorities. Some legislation even prohibits human rights associations from receiving more than 10 per cent of their overall resources from foreign sources. In Ethiopia where this legislation is in place, out of the 127 associations advocating for human rights active before the 2009 Charities and Societies Proclamation entered into force, very few reportedly still operate.

70. States have a responsibility to address money-laundering and terrorism, but this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work. In order to ensure that associations are not abused by terrorist organizations, States should use alternative mechanisms to mitigate the risk, such as through banking laws and criminal laws that prohibit acts of terrorism. In this context, all United Nations agencies, notably those focusing on actions countering terrorism, have a key role to play and bear the moral responsibility to ensure that human rights in general, and freedom of association in particular, are not impaired by counter-terrorism and anti-money-laundering regulations. All measures adopted in this context should promote transparency and engender greater confidence in the sector, across the donor community and with the general public so that charitable funds and services reach intended legitimate beneficiaries.

<sup>41</sup> *Digest of decisions and principles*, para. 485.

<sup>42</sup> See Committee on the Elimination of Discrimination against Women, concluding observations on Lithuania, A/55/38, para. 155; Committee on the Rights of the Child, concluding observations on the Central African Republic, CRC/C/15/Add.138, paras. 22 and 23; Committee on the Elimination of Racial Discrimination on Ireland, CERD/C/IRL/CO/2, para.12.

71. As far as political parties are concerned, the Special Rapporteur considers that different rules may be applied. In any case, rules governing domestic funding and resources must be non-discriminatory and their implementation should not be arbitrary, with a view to not jeopardizing the independence of political parties and their ability to genuinely compete in elections. Foreign donations may be regulated, limited or prohibited to avoid undue influence of foreign interests in domestic political affairs.

72. The Special Rapporteur indicates the necessity for States not resort to tax pressure to discourage associations from receiving funds, notably from abroad. On a positive note, several States provide tax and other exemptions and privileges for associations (e.g. Bulgaria and Lithuania).

## **5. The right to take part in the conduct of public affairs**

73. Article 71 of the Charter of the United Nations provides that “the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”. General comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service further provides that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by article 25” (para. 26). In Lithuania, article 4 of the Law on Procedure for Drafting Laws provides that all legal and natural persons shall have the right to submit proposals on drafting of a legal act. Both individuals involved in association and the association itself must be protected by international human rights law and shall be able to participate in the State’s decision making process. This is particularly crucial for unions as the right to bargain collectively is a fundamental right, which is enshrined in ILO Convention No. 98 (1949) on Right to Organise and Collective Bargaining. In this regard, the Special Rapporteur recognizes that best practices are those that allow for genuine social dialogue with meaningful negotiation.

74. Furthermore, when State authorities intend to regulate the framework governing associations, beneficiaries of the law should be key partners of the drafting process. In Serbia, the law on association was prepared by a working group composed of representatives of the Ministry of Human and Minority Rights, and of associations. On another note, the 2011 New Zealand Disability Bill was reportedly drafted with the participation of the Disabled Persons’ Association.

## **6. Termination, suspension and dissolution of associations**

75. The right to freedom of association applies for the entire life of the association.<sup>43</sup> The suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.

76. According to ILO jurisprudence, decisions to dissolve labour organizations “should only occur in extremely serious cases; such dissolutions should only happen following a judicial decision so that the rights of defence are fully guaranteed”.<sup>44</sup> The Special Rapporteur values as best practice legislation that stipulates that such drastic measures be taken by independent and impartial courts. In the United Republic of Tanzania, the case of

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<sup>43</sup> European Court of Human Rights, *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, para. 33.

<sup>44</sup> *Digest of decisions and principles*, para. 699.

an association working on gender equality that had been deregistered by the authorities was successfully overturned by the Constitutional Court.

#### **D. The right to an effective remedy and accountability for human rights violations and abuses**

77. States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations or abuses in order to hold those responsible accountable. This not only entails guarantees that the violation be stopped, but also that it will not be repeated in the future. Specific attention must be paid to members of the groups at risk identified in paragraph 13.

78. The Special Rapporteur considers as best practice legislation which provides for criminal and disciplinary sanctions against those who interfere with or violently disperse public assemblies through excessive use of force (e.g. Bulgaria, Burkina Faso, Colombia, Cote d'Ivoire, Cuba, Estonia, Japan, Kyrgyzstan, Portugal, Republic of Moldova, Serbia and Spain). More specifically, in Colombia, according to the law, the excessive or arbitrary use of force against peaceful demonstrators constitutes a grave breach, under the disciplinary regime for the national police. Similarly, in Portugal, a decree-law foresees sanctions against authorities who hinder the right to freedom of peaceful assembly, and article 382 of Criminal Code sets the applicable sanctions in relation to the abuse of power.

79. In this connection, the Special Rapporteur stresses the importance of police officers wearing visible identification numbers on their uniforms. As noted by the Hungarian Office of the Commissioner for Fundamental Rights, during a protest that was violently repressed in the country, many police officers could not be identified because they did not wear such identification numbers.

80. National human rights institutions, which comply with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), can also play a role in receiving and investigating allegations of human rights violations and abuses (e.g. Malaysia and Portugal). The work of these institutions should be respected and facilitated by the authorities.

81. Where the rights to freedom of peaceful assembly and of association are unduly restricted, the victim(s) should have the rights to obtain redress and to fair and adequate compensation. Once again, due attention must be paid to victims belonging to the groups most at risk in this process.

### **IV. Conclusions and recommendations**

82. **The Special Rapporteur reiterates the utmost importance of the rights to freedom of peaceful assembly and of association, which are cornerstone in any democracy.**

83. **Based on the best practices identified in the foregoing paragraphs, which should be considered as minimum standards, the Special Rapporteur anticipates that the recommendations below will guide States in facilitating and protecting the rights to freedom of peaceful assembly and of association, in law and in practice.**

## **A. General recommendations**

84. The Special Rapporteur calls upon States:

(a) To recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems as they are a channel allowing for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected;

(b) To ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities, including women; youth; indigenous peoples, persons with disabilities, persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, non-nationals, as well as activists advocating economic, social, and cultural rights;

(c) To ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;

(d) To strictly and narrowly define the offence of terrorism in line with international law;

(e) To ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. Any restrictions should be subject to an independent, impartial, and prompt judicial review;

(f) To ensure no derogation is exercised to the rights to life and to be free from torture and other cruel, inhuman or degrading treatment or punishment;

(g) 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;

(h) To ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights to freedom of peaceful assembly and of association;

(i) To ensure that law enforcement authorities which violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law;

(j) To ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have to the right to an effective remedy and obtain redress;

(k) To recognize that the rights to freedom of peaceful assembly and of association can be exercised through new technologies, including through the Internet.

85. National human rights institutions complying with the Paris Principles should play a role in fostering and monitoring the implementation of the rights to freedom of peaceful assembly and of association and in receiving and investigating allegations of related human rights violations and abuses.

86. United Nations institutions, bodies and mechanisms should continue promoting and protecting the rights to freedom of peaceful assembly and of association. In particular, the Human Rights Committee should consider developing general

comments on articles 21 and 22 of the International Covenant on Civil and Political Rights. Greater attention to violations and abuses of both rights should be paid in the framework of the universal periodic review.

87. The international community should seriously consider adopting guiding principles in relation to the right to freedom of peaceful assembly, and the right to freedom of association, in consultation with all relevant stakeholders.

## **B. Specific recommendations**

### **1. Freedom of peaceful assembly**

88. A presumption in favour of holding peaceful assemblies should be established in law in a clear and explicit manner.

89. States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (Council resolution 19/35, para. 6).

90. The exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by the authorities, but at the most to a prior notification procedure, which should not be burdensome. In case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court.

91. Spontaneous assemblies should be recognized in law, and exempted from prior notification.

92. Simultaneous assemblies should be allowed, protected and facilitated, whenever possible.

93. Assembly organizers and participants should not be held responsible and liable for the violent behaviour of others.

94. States should also ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies.

### **2. Freedom of association**

95. A regime of notification to establish an association should be in force. Associations should be established after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation when denying the registration of an association. Associations should be able to challenge any rejection before an impartial and independent court.

96. Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment.

97. Associations should be free to determine their statutes, structure and activities and to make decisions without State interference.

98. Associations should enjoy the right to privacy.

99. Associations should be able to access domestic and foreign funding and resources without prior authorization.

100. **Suspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law.**

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