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Statement by Maina Kiai

**Special Rapporteur on the rights to freedom of peaceful assembly and of
association**

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Madame President,

Distinguished delegates,

Ladies and gentlemen,

It is an honour and privilege for me to present my first reports before this august body as the first Special Rapporteur on the promotion and protection of the rights to freedom of peaceful assembly and of association.

The rights to freedom of peaceful assembly and of association are essential components of democracy. They protect the rights of all individuals, including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists or even migrants, to assemble peacefully and associate freely.

These rights were for too long neglected in international human rights law. However, the events that have occurred in numerous Arab countries, and elsewhere, since December 2010 have proved how these rights are important for people to express their aspirations and to influence policy decision makers.

In this respect, I would like to applaud Human Rights Council resolution 19/35 by which the Council requests the High Commissioner to prepare a report on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests. To maximize our inputs to this resolution, my mandate, together with the mandates of the Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders, have committed ourselves to present a joint statement to the High Commissioner and the Human Rights Council.

I would also like to express once again my appreciation to the Human Rights Council for holding a fruitful panel discussion on human rights in the context of peaceful protests during the 18th session of the Council. These developments show that there is no turning back for the international community which has now taken a courageous and strong stand with regard to these rights.

Since the inception of my mandate, I have received a wealth of information coming from all continents of the world. I have sent more than 120 communications and issued 17 press statements on various issues brought to my attention. Observations on the communications sent have been prepared, and these are presented before you as an addendum to my main report. I remain at the disposal of all Governments to support them in addressing the concerns raised.

In this regard, I wish to especially thank the Government of Georgia for its cooperation during my first country visit. I also wish to express my appreciation to those Governments who extended invitations to my mandate, namely Azerbaijan, Guatemala, Honduras, the Kyrgyz Republic, the Maldives, Tunisia and the United Kingdom. I regret that the Syrian Arab Republic, after having extended an invitation to me, has yet to respond to my proposal of dates for when to carry out this mission. I call on other States to consider a positive reply to my requests.

Thematic report

Madame President,

As you know, HRC resolution 15/21, which established my mandate, also requested me to identify best practices related to the rights to freedom of peaceful assembly and of association. I would like to thank those who contributed to my thematic report by responding to the questionnaire I sent in November last year. The compilation of responses to this questionnaire can be found in addendum 1 of my report. I would also like to thank the organizers of the regional consultations I had in Tbilisi (Georgia) and in Cairo (Egypt), which further contributed to gathering relevant inputs in the preparation of this report.

Best practices not only reflect what is required by international human rights law, but also include principles that go beyond these legally binding obligations.

I will enter into the details of my findings, but I hope that the best practices identified in this report will further guide States not only in relation to legal reforms needed to comply with international human rights law, but also measures required to implement the law, as I am keenly aware that challenges remain in turning these rights into reality. Given the limited time available, I will only share with you a few key elements of my report.

Common principles

One of the central elements of the rights to freedom of peaceful assembly and of association is that “everyone is entitled to these rights”. This means that all individuals, 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, shall enjoy these rights. This applies inter alia equally to women and men, youth, persons with disabilities, persons belonging to minority groups or holding ‘unpopular or controversial’ opinions (A/62/225) or other groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, as well as non-nationals. As a result, no one must be criminalized for the sole exercise of the rights to freedom of peaceful assembly and of association, nor

should he or she be subject to any discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals.

International human rights law allows for restrictions of these rights, but under strict provisions. Resolution 15/21, which echoes articles 21 and 22 of the International Covenant on Civil and Protection Rights, makes clear that “the exercise of the rights to freedom of peaceful assembly and of association 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”. **This clearly means that freedom is to be considered the rule and limitations the exception.** So any limitation must be necessary in a democratic society and respect the principles of pluralism, tolerance and broadmindedness.

The rights to freedom of peaceful assembly and of association can be exercised through new technologies including through the Internet.

Special attention should be paid to the protection and promotion of the rights to freedom of peaceful assembly and of association of women, minors, persons with disabilities, indigenous peoples, individuals and groups of individuals belonging to minorities and other marginalized groups.

It is also important to highlight that, while the rights to freedom of peaceful assembly and of association are interrelated and interdependent, they are in reality two separate rights, which are in most cases governed by two different types of legislation. As a result, I have treated these two rights separately in my report.

Free Assembly

At this stage, I wish to emphasize the following two important obligations related to the right to peaceful assembly, which lie on those exercising this right and on States:

1. Those exercising this right have an important duty to remain peaceful. This is a crucial element. The peaceful aspect of an assembly lies in the peaceful intention of organizers and participants. Therefore the use of violence perpetrated by a small group of individuals should not lead to an automatic categorization as “violent” an otherwise peaceful assembly.
2. It is astonishing how often States have violated the right of individuals to assemble peacefully by violating their rights to life and to be free from torture, rights which allow no limitation. This is a critical component of the right to peaceful assembly.

Any excessive use of force and subsequent human rights violations and abuses need to be promptly and thoroughly investigated. Victims should have the right to an effective remedy and to obtain redress; and those responsible of violations should be held accountable for such violations.

Importantly, as I stated before, participating in peaceful protests is an alternative to violence and armed force as a means of expression and change which we should support. It must thus be protected, and protected robustly. I urge States to respect and protect equally those that express divergent, unpopular or dissenting opinions as they do with those that are pro-Government.

Based on the best practices identified in the report, I propose the following set of recommendations in relation to the exercise of the right to freedom of peaceful assembly:

- A presumption in favour of holding peaceful assemblies should be established in law in a clear and explicit manner.
- 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).
- 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.
- Spontaneous assemblies should be recognized in law, and exempted from prior notification.
- Simultaneous assemblies should be allowed, protected and facilitated, whenever possible.
- States have a positive obligation to actively protect peaceful assemblies. This 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. Assembly organizers and peaceful participants should not be held responsible and liable for the violent behaviour of others.
- States should also ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies.

Free Association

This covers cooperatives, NGOs, religious associations, political parties, trade unions, foundations and also online associations.

Individuals have the right to associate without forming a legal entity. For associations to attain the status of a legal entity there is a distinction between what is generally called a 'prior authorization procedure' and a 'notification procedure'. The latter, which does not require associations to obtain any authorization from the authorities, is in force in a number of countries and respects international human rights law, and I wish to commend those countries that adopt notification as opposed to authorization.

Another integral and vital part of the right to freedom of association is the ability of associations to access funding and resources. Without the ability to access funding, from sources local, regional or international, this right becomes void. It is disheartening how excuses such as sovereignty or the fight against terrorism have been used to limit access to funding.

Similarly, based on the best practices identified in the report, I propose the following set of recommendations in relation to the exercise of the right to freedom of association:

- Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment.
- A simple regime of notification to establish an association as a legal entity is preferable to a registration system.
- Where founders choose to register an association for practical purposes, such as opening bank accounts, this process should be similarly simple, easily accessible, non-discriminatory, and inexpensive 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.
- Associations should be free to determine their statutes, structure and activities and to make decisions without State interference.
- Associations should enjoy the right to privacy.
- Associations should be able to access domestic and foreign funding and resources without prior authorization, just as businesses and States themselves do.
- 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.

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 conducive

to dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected.

I understand that the rights to freedom of peaceful assembly and of association may be welcomed with reserve by those States that fear dissent. Dissenting views are what makes our world so rich and fulfilling. Any human being is unique and has unique experiences to bring to the community: at home, at school, at work, in social or political activities.

As a result, I would like to encourage regional human rights mechanisms to develop, or to continue developing, standards that could contribute to reinforcing these two rights.

I would finally like to further encourage United Nations institutions and bodies to continue promoting and protecting the rights to freedom of peaceful assembly and of association, across the world and within themselves as well. I call upon Human Rights Council Member States to pay greater attention to violations and abuses of the two rights in the framework of the Universal Periodic Review, and I will recommend the Human Rights Committee to seriously consider developing general comments on articles 21 and 22 of the ICCPR.

Georgia mission report

Madame President,

Distinguished delegates,

I would like to turn now to my recent visit to Georgia.

Last February I had the opportunity to visit the country as part of my activities as Special Rapporteur. I am grateful to the Government for the invitation and for securing a rich schedule of meetings with senior representatives. I also had extensive meetings with non-governmental organizations, trade unions and members of a number of political parties.

Today I will only focus on some of the most important issues — that I believe are still at stake.

Georgia has gone a long way since the “Rose revolution”. There have been significant improvements in many aspects of public life, which have certainly pushed the country forward in terms of development and democratization. However, these should not be taken for granted. The country is at a critical point where it can take further steps to improve on its human rights record, or slide backwards.

During my mission, I became alarmed by the manner in which the Georgian legislature amended the Law on Political Unions of Citizens in December 2011. I understand that a new version of the law was adopted in May 2012 and that consultation with civil society has been on-going. This must be recognized positively.

However, I remain concerned that a unit in the Chamber of Control has broad powers to inspect anyone's state of financial accounts if there is a suspicion of illicit political party financing. While it may look like a legitimate endeavour, I am concerned that the Chamber of Control could target persons for political reasons, including activists, human rights defenders, trade unionists and members of opposition.

I would like to reiterate the following:

- Laws on freedom of association should be as clear and concise as possible, and should offer adequate safeguards to avoid human rights violations; vague and ambiguous provisions may undermine protection of individuals exercising their rights.
- Laws specifically crafted to control the activities of a single individual are not in line with international standards on freedom of expression, association and peaceful assembly.

As the country moves towards an important electoral period, it is essential that the Government ensures that all persons are entitled to their civil and political rights, and further builds on the good work that has been done over the last ten years in expanding development and democracy. Central to this is ensuring a level playing field for political parties to compete as equally as possible.

Before I conclude, Madame President, I would like to touch upon the violence that occurred in Georgia during the protests of 26 May 2011. After having held extensive discussions with all stakeholders during my mission, I can confirm that stark differences continue to exist in the narratives of the accounts of what happened on that night. Although these might appear as isolated events, they should not be taken lightly. An independent, impartial and credible investigation should be conducted into these events without further delay. Considering the role that peaceful protests played in shaping the development of democratic processes in Georgia, there is an expectation that the right to peaceful assembly will be respected in future, as it was recently in a massive assembly in Tbilisi last month.

In my mission report I place emphasis on what I call "a climate of fear and intimidation" against those who might wish to challenge the Government. I believe that it is incumbent on the authorities to ensure that appropriate and early action is taken to prevent acts of harassment and intimidation from escalating into violence or reprisals, and that fundamental freedoms, as the ones my mandate pays attention to,

continue to be protected. With elections planned for this and the coming year, it is crucial that such action is taken, as a matter of urgency.

Madame President,

I look forward to a fruitful discussion, and I thank you for your attention.