

SPEAKING NOTES BY MAINA KIAL, UN SPECIAL RAPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

BUSAN, SOUTH KOREA

Thank you very much for inviting me and giving me an opportunity to speak with you at this opening session of the Busan Global Civil Society Forum. I would like to extend special thanks to the principle organizers: Better Aid, Open Forum, and Korea Civil Society Forum on International Development Cooperation.

Also, I would like to recognize the tremendous efforts by a number of civil society groups who have worked over the last 3 years (since the meeting in Accra in September 2008) to enhance civil society engagement in international debates on aid effectiveness.

Countries and donors made an important commitment at the 3rd High Level Forum in Accra 3 years ago. Civil society groups were finally recognized as independent development actors in their own right. The Accra Agenda for Action clearly states that both donor and recipient countries should deepen engagement with CSOs and provide an enabling environment that maximizes their contributions.

Civil society is indeed a key actor and partner in the development of any country. In my own country, Kenya, you see civil society groups providing education in slums and rural areas, building capacity of farmers, facilitating access to health care facilities, etc. They also play an important role in building active citizenry that would help democratic development of the country. This dual role for CSOs, as service providers on the one hand, and monitors, checks and advocacy organizations, on the other hand, is crucial to the achievement of human rights in the context of rights as universal, indivisible, interdependent and necessary for the achievement of full human development.

The recent events in the Middle East and North Africa region emphasize this duality in stark terms. Development as a concept needs to be formulated in holistic terms with due emphasis on democratic rights and freedoms to ensure equity and accountability. It is clear that the Arab Spring had roots in both demands for “traditional development” as well as for freedom and the linking up of the two was crucial in drawing out the millions of people that took to the streets to claim their inalienable rights. Guaranteed progress towards the realization of economic, social and cultural rights needs high levels of accountability and transparency which are underpinned by civil and political freedoms.

Indeed, the recent history of our host country, Korea, also emphasizes the link between development and freedom and there is no doubt that Korea would not be where it is today without the concerted efforts of CSOs, working in a dualistic approach.

However, the commitment to protecting CSOs has been repeatedly broken by governments across the world. In addition to many traditional ways to restrict civil society's activities, such as intimidation and arbitrary arrests, there has been a wide proliferation of legal and policy restrictions on civil society groups to prevent them from participating in activities related to the disbursement, utilization and monitoring of aid. And often you will find that where states do not deliver on their development agendas and agreements to their citizens—through corruption, ineptitude or greed--the democratic space is always narrow and thin.

Democratic institutions and the existence of the freedoms of expression, association and assembly are vital to holistic and meaningful development as they alone can ensure proper collation of development statistics, equitable focus on the vulnerable and marginalized and optimum utilization of development funds.

Over the last few years, the Task Team on CSO Development Effectiveness and Enabling Environment, co-chaired by Sweden (Sida), Mali (Office of the President), and the Canadian Council for International Cooperation (CCIC, representing the Open Forum for CSO Development Effectiveness), has developed a very important document with key messages to the Fourth High-Level Forum.

One message that I would like to draw your attention to is that the Task Team is calling the donors and recipient countries to "provide, promote and monitor an enabling environment for CSOs that maximizes their contribution to development."

Specifically, it is calling on states to commit to and promote "an enabling environment for CSOs as independent development actors, both in law and practice, at minimum in keeping with existing commitments in international and regional instruments⁸ that guarantee fundamental rights. These include: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding, and the state's duty to protect civil society space.

An enabling environment for civil society can be created through enhancing a dialogue between civil society and governments. This HLF provides an opportunity for such a dialogue, and I urge us all to use this dialogue as effectively as possible, for the alternatives are often messier, harder, and very costly, as the Arab Spring again teaches us.

The enabling environment can also be created through a participatory process of drafting a law governing/regulating the civil society sector. Beneficiaries of the law should be KEY to the

drafting process or it will only serve to cause conflicts, and worse limits the benefits to the ordinary citizens it is meant to serve.

So , and I want to emphasize this, governments need to ensure the protection of several main international principles: freedom of association, freedom of expression, freedom of assembly, the rights of civil society groups to seek and secure funding, and the state's duty to protect these freedoms and rights.

But there are also duties that we in the CSO world need to incorporate in our work and advocacy. Just as we call on governments to be more transparent and use a rights based approach to development and assistance, we as CSO must also do the same. In all the work we do for the poor and ordinary people, we must and should be led by human rights principles from the beginning to the end.

That means we have to be transparent in our work and in our finances. That means we need to be inclusive, mindful of the needs of the weak and marginalized, emphasize diversity in our staffing, locations and beneficiaries, and be accountable not just to donors but more so the people we work with and for. But this call for more transparency and accountability must not be used as an excuse by governments to attack and restrict the work of CSOs.

And that means we must be creative and flexible in what we do, knowing that what worked 10 years ago, may not work as well today. The tactics and strategies we used even 5 years ago may be irrelevant with changing dynamics. For this we need to be as organic as possible, listening to those we work with and letting them set some of the agendas for us.

And I want to send a similar message to donors. Since 2005, donors, while generally increasing the levels of aid—and we must salute them for that—have seemed to prefer to fund governments, and international governmental bodies such as UNDP, at the expense of NGOs. This should not be an either/or question. But clearly donors need a more strategic and flexible engagement with CSOs that promotes their work and their role as development actors in their own right, without making it more difficult, time consuming and bureaucratic for the CSOs to access funding.

This is especially so in fragile and poor countries where governance is iffy, and on pro-democracy work. Often in these countries changing circumstances, often negative ones, mean that CSO priorities should change. Priorities change quickly with circumstances and when donors are caught up in cycles that are fixed, CSOs find it difficult to respond. This is what happened in Kenya in 2007/8 when the country almost descended into civil war and but for a few donors able and willing to re-allocate their funding quickly to support CSOs on the frontline, I dare say that perhaps civil war would have broken out.

I hope that the High-Level Forum, starting in 3 days, will consider those key messages developed by the Task Team through consultation with various stakeholders over the last few years.

Finally let me state that in my role as UN SR, I see myself as your tool to enhance your work, support your demands for increased space, and generally monitor what states and non-states actors are doing with respect to the Freedoms of Assembly and of Association. Please use me. Please harass me. Please inundate me with your complaints, issues and input. They are all welcome.

And in this respect, my office in Geneva should, by now, have posted on the UN OCHCR website some questionnaires regarding the law, practice and reality of freedom of assembly and association. Please look at it, and please fill in it. This is an important tool in not only understanding best practices, but also worst ones, and I will be including the response in my report to the UN HRC in June next year.

Finally, finally, let me wish you good and fruitful deliberations in this forum and in the next one. I am keen to see the resolutions of this meeting and will do what I can to follow them up.

Thank you.

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