

EXPERT CONSULTATION ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION OF
GROUPS MOST AT RISK

GENEVA, 9 DECEMBER 2013

CONCEPT NOTE

A. Introduction

The rights to freedom of peaceful assembly and of association (FoAA rights) serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. This is especially true for certain groups that in many countries are ordinarily at the margins of society and at greater risk of having their rights violated. The rights to FoAA provide an avenue for vulnerable and marginalized groups most at risk of attacks or reprisals when exercising or seeking to exercise their FOAA rights (“groups most at risk”) to individually and as collectives pursue a wide variety of interests, including those designed to elevate their status and address the factors that lead to their vulnerability.

The Special Rapporteur intends in his report to the Human Rights Council, to be presented in June 2014, to focus on the particular concerns of a selection of groups most at risk with a view to emphasizing the essential role of the rights to FoAA in countering discrimination and exclusion of these groups, and empowering them in their struggle to advance their respective causes.

This concept note identifies a preliminary list of groups and issues for discussion by participants at the one-day expert consultation organized by the Special Rapporteur to be held on 9 December 2013 in Geneva. In preparation for the consultation, participants are requested to take some time prior to the meeting to collect and submit information as listed in part C of this concept note as this information will form the basis of discussions at the meeting.

B. Issues for discussion:

- (a) Scope of the report: There is a variety of groups that are deprived their rights to FoAA. Some of the groups are traditionally considered to be vulnerable or marginalized or at risk, while others are not. The nature of vulnerability, marginalization and risk differs from group to group. For some groups, vulnerabilities intersect, exacerbating their situation. The report will need to:
- Clarify definitions: What is meant by ‘vulnerable’ and ‘marginalized’, whether this includes the traditional meaning or the report intends to convey a different meaning;
 - Identify the categories to be covered by the report and why; suggested categories include youth, women, LGBT individuals and groups, indigenous peoples, members of minority groups, non-nationals including refugees, asylum seekers and migrant workers, and persons with disabilities. Some groups most at risk are excluded from the report; there is a need to provide an objective and reasonable argument for their exclusion.
 - Determine whether to include individuals and groups of individuals that are members of these categories and groups *and/or* individuals and associations that advocate for members of these categories.

(b) Conceptual analysis: The report will explore linkages between vulnerability and the right to freedom of peaceful assembly and of association, e.g.:

- The basis of heightened risk– i.e., the causes of vulnerability or marginalization;
- How violations of the rights to freedom of peaceful assembly and of association exacerbate vulnerabilities and marginalization; how vulnerability and marginalization intersect with the (in)ability to exercise the rights to freedom of peaceful assembly and of association.

1. Youth

The UN describes “youth” as “a period of transition from the dependence of childhood to adulthood’s independence and awareness of our interdependence as members of a community. Youth is a more fluid category than a fixed age-group”.¹ Nevertheless, in terms of age, the UN applies the term “youth” to persons between the ages of 15-24, but recognizes that States hold varied definitions. Article 1 of the Convention on the Rights of the Child defines a child as a human being below the age of 18 unless under the law applicable to the child, majority is reached earlier. Article 15 of the Convention on the Rights of the Child recognises the child’s right to freedom of association and to freedom of peaceful assembly.

Similar to other vulnerable or marginalized groups, restrictions on youths’ exercise their FoAA rights should be seen at least in part in the context of societal attitudes about their role in society and their ability to actively contribute to societal goals which shape the acceptance of youth voices and substantive participation in issues that affect them.

In many countries, youths constitute a large proportion of the population. Where they are politically active, youths are often at the center of efforts to overturn the status quo by participating in demonstrations, protests, and taking active roles in political associations as well as other types of associations. The revolutions in countries like Iran and Egypt are illustrative of this. Similarly demonstrations against education/university reforms (e.g. Chile and Canada) also attest to the active role that students demand in decisions that affect them. It is not surprising therefore that where repressive regimes are in power, youths are perceived as a considerable threat to the existing state of affairs and are therefore the target of reprisals.

Issues to discuss include:

- Description of “youth” for purposes of the Special Rapporteur’s report;
- Rationales for youth marginalization/vulnerability to the exercise of rights to FoAA;
- Categories of youth and contexts in which their rights to freedom of peaceful assembly and association often restricted? E.g. political participation (youth activists), education (students), formation of youth associations, etc.;
- Particular importance of new information and communication technologies and the youth’s exercise of rights to FoAA;
- Strategies to ensure effective exercise by youth of rights to FoAA.

¹ UNESCO <http://www.unesco.org/new/en/social-and-human-sciences/themes/youth/youth-definition/>

2. Women

The marginalization of and heightened risk of violations of women should be broadly understood in the context of patriarchal attitudes and assumptions on the roles and responsibilities of women in society in many countries. In this context, the ability of women generally to effectively exercise their rights may be negatively impacted. Beyond this, discrimination on the basis of sex may overlap with other discrimination based on other identities such as race, nationality, etc. to increase susceptibility to violations of the rights to FoAA.

Some of the pressing concerns around women's right to freedom of peaceful assembly relate to their ability to participate in public gatherings without the threat or fear of sexual or physical harassment or assault, arbitrary arrests, etc. The cases of Egypt, Turkey and Zimbabwe are instructive.

Regarding the right to freedom of association, some categories of women face disproportionate barriers in the exercise of the rights to freedom of association, e.g. women workers generally, but also sub-categories such as rural women workers and other women workers unable to form or join workers associations. For example, workers in rural areas generally face various obstacles to forming and joining trade unions or other associations including legal provisions that exclude agricultural workers from unionizing, burdensome membership requirements, prior authorization to form or join trade unions, lack of protection against anti-union discrimination and interference to name a few. Because of the prevailing attitudes on the social status of women, obstacles may be placed in the way of women exercising their rights to associate for example, if membership to a trade union or co-operative or other association is dependent on ownership or control of land, few women would be able to meet this requirement. Even where women are entitled by to own land they may find it difficult to enforce those laws.

Similarly, women are often under-represented in political party membership generally and political party leadership which presents challenges to their ability to participate in public affairs on an equal footing with men. The first thematic report of the UN Working Group on the issue of discrimination against women in law and in practice focuses on the achievements and challenges of women's equal, full and effective participation in public life, recognizing the rights to FoAA as integral to this goal.²

Issues for discussion include:

- Women (including specific groups of women) who face particular constraints in exercising or seeking to exercise their rights to FOAA, and their specific concerns;
- Principles that should apply in facilitating women's participation in peaceful assembly and freedom of association, making linkages to broader attitudes towards/treatment of women in society as relevant;

² A/HRC/23/50

- Specific steps that States should take to ensure that women can exercise without discrimination (or on an equal footing with men) their rights to freedom of peaceful assembly and of association effectively including protection (such as in relation to peaceful assembly), facilitation, prosecution?
- Specific concerns in relation to violation of the rights e.g., right to privacy in the case of sexual harassment/assault, conduct of investigations, specific protection needs, etc.

3. Lesbian, Gay, Bisexual, and Transgender persons

In its landmark resolution 17/19, the Human Rights Council “[e]xpress[ed] grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity”.³

In many countries, those advocating for Lesbian, Gay, Bisexual and Transgender (LGBT) rights have faced numerous challenges and violations when exercising or seeking to exercise their FoAA rights. These range from stigmatization, intimidation, undue restrictions, physical/sexual assault, arbitrary arrest and detention, and summary executions. LGBT activists have been killed and LGBT associations have been raided by security forces; pride parades have been unduly denied permission to take place, or counter-demonstrations have dissuaded LGBT assemblies from taking place; and Member States have also passed legislation which criminalizes the work of LGBT activists.

As stressed by the Special Rapporteur on the situation of human rights defenders, “[a] common accusation directed in particular at those working on women’s rights, gender issues, and LGBT rights, is the assertion that these defenders are somehow advocating or attempting to import “foreign” or “Western” values which contradict national or regional culture. State agents or representatives are often alleged to be responsible for such stigmatization” (para. 85, A/HRC/16/44).

Issues for discussion include:

- Full rationale behind heightened risk for LGBT activists when exercising of rights to FoAA;
- Principles/good practices that should apply in facilitating LGBT activists’ exercise of their rights to FoAA;
- Measures/good practices taken to ensure a safe and conducive environment for LGBT activists, including specific protection needs.

4. Indigenous peoples

Indigenous peoples’ preservation of their identity and culture rests to a great extent on the ability to maintain both individual rights and collective rights. Thus the international legal norms developed to protect their rights emphasize the themes of self-determination/autonomy, recognition as distinct

³ A/HRC/RES/17/19, PP4.

peoples, free, prior and informed consent and non-discrimination. The rights to FoAA are integral to the ability of indigenous peoples to maintain their identity and culture.

Some of the challenges experienced by indigenous peoples in the exercise of their rights to assemble and associate relate to the presence of their members across national borders and their ability to use their lands and natural resources.

Issues for discussion include:

- Rationales for indigenous peoples marginalization/vulnerability to the exercise of rights to FoAA;
- The content of rights to FoAA of indigenous peoples in terms of facilitation and protection in light of the international norms developed to preserve their identity and culture and their specific protection needs?
- Protection of the rights to FoAA of indigenous peoples vis-à-vis rights of third parties and the legitimate interests of States.

5. Minorities

Minorities have been described as “[a] group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”.⁴ The UN Declaration on Minorities relates to national or ethnic, cultural, religious and linguistic minorities, although other groups may claim this status.

In general, minorities have four broad areas of concern: 1) protection from violence against members of the minority including genocide; 2) protection and promotion of their cultural identity, their collective identity and protection against forced assimilation; 3) nondiscrimination and equality and; 4) guarantee of effective participation in public life.⁵ Whereas the exercise of the rights to FoAA may vary in strength and content for each of these groups of minorities, these rights are essential to the achieving the protection of minority interests.

Challenges to minorities are the result of their inability to influence laws, policy or practice towards protecting their interests due to their non-dominant position and often their relatively small populations. Thus, members of religious minorities may be prevented from gathering to hold religious observances and other manifestations of their religious beliefs; national or ethnic minorities (individually or collectively) may face barriers in participating in public life due to racial discrimination; and similar obstacles may confront linguistic minorities who are unable to communicate in the majority language.

⁴ E/CN.4/Sub.2/384/Rev.1, para. 568.

⁵ Report of the independent expert on minority issues A/65/287 (August 2010) para. 3.

Issues for discussion include:

- Rationales for minorities' marginalization/vulnerability to the exercise of rights to FoAA;
- Common justifications for limiting the rights to FoAA for minorities and extent to which they comply with international human rights standards e.g. counter-terrorism measures;
- Similarities and differences in constraints on the exercise of rights to FoAA for particular categories of minorities;
- Specific protection/facilitation needs and specific concrete measures to address these needs.

6. Refugees, migrants and other non-nationals/stateless persons

As with other groups most at risk, non-nationals often lack capacity or opportunity to express their views and have their opinions given due consideration when decisions affecting them are taken by State authorities. The rights to FoAA are important for the groups to make themselves heard. Challenges to non-nationals exercising their rights to FoAA stem from perceptions about their status in the society vis-à-vis nationals, mainly regarding their entitlement to certain human rights on an equal basis as nationals.

For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families does not explicitly ensure the rights to FoAA, but all migrants workers may join unions and associations although the Convention does not expressly protect their right for all migrant workers to form them (art. 26). According to article 40 documented migrant workers and members of their families have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

The Refugee Convention provides that in respect of “non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances” (art 15).

Issues for discussion include:

- Rationales for non-nationals/stateless persons marginalization/vulnerability to the exercise of rights to FoAA;
- Extent to which categories of non-nationals can exercise the rights to FoAA and related State obligations e.g. documented/undocumented migrants, refugees/asylum seekers;
- Common justifications for limiting the rights to FoAA for non-nationals and extent to which they comply with international human rights standards e.g. counter-terrorism measures;
- Specific protection/facilitation needs and suggested concrete measures to address these needs.

7. Persons with disabilities (PWDs)

Persons with disabilities are described to “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.⁶

The Convention on the Rights of People with Disabilities (CPRD) does not explicitly protect the rights of PWDs to freedom of peaceful assembly and of association. However, article 29 protects the rights of persons with disabilities to participate in political and public life on an equal basis with others. Article 12 sets the stage for a paradigm shift in the way persons with disabilities, particularly those with mental or cognitive disabilities, are perceived, which makes them “active subjects” with the right to equal recognition everywhere as persons before the law. By emphasizing that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, the focus is turned on providing adequate support for these individuals to exercise their rights rather than retraction of the opportunities to make their own choices.

Issues for discussion include:

- Extent to which the prevailing standards of limited autonomy and restricted legal capacity for persons with disability impact on their rights to FoAA;
- Good/best practices in relation to the rights to FoAA of persons with disabilities;
- Normative standards or interpretations of the CPRD that would enhance the exercise of legal capacity for persons with disabilities;
- Specific needs to facilitate and protect their right to freedom of peaceful assembly?

C. Preparation for meeting:

In order to make the most of the limited time during the consultation, the Special Rapporteur requests participants to prepare in advance for the meeting on the following issues:

- a. Identify patterns, common themes around constraints, e.g. criminalization, stigmatization, etc. (indicate whether the constraints are in legislation, policy or practice);
- b. Provide illustrative examples of violations that fall under these patterns or themes, including identifying specific countries where these violations occur;
- c. Suggest a norm or principle related to FoAA that would respond to the constraints identified above;
- d. Suggest concrete action/measures that States (or other actors) should undertake to prevent or remedy the violations identified above.

For ease of reference:

⁶ Convention on the Rights of Persons with Disabilities, article 1.

<p>Pattern/type of constraint</p> <p><i>(please identify patterns of restrictions – to freedom of peaceful assembly and of association - in law or in practice that affect your group e.g. stigmatization, exclusion, reprisals, etc.)</i></p>	<p>Example/country</p> <p><i>(Please provide concrete examples of how the patterns of restrictions are manifested and identify the country from which you draw the example. Where the restriction is in the legislation or policy, provide the details of the legislation or policy if possible)</i></p>	<p>Principle(s)</p> <p><i>(Please suggest an overarching principle that would address the particular patterns of constraints you have identified as affecting your group)</i></p>	<p>Recommendation(s)</p> <p><i>(Please suggest strategies or concrete measures by States or other actors that would address constraints)</i></p>
<p>EXAMPLE:</p> <p>Violence/use of force against religious minorities, preventing them from assembling for religious practice and worship.</p>	<p>EXAMPLE:</p> <p>In Bahrain, the Shia community faces violent dispersal by law enforcement officials in order to break up peaceful religious processions. Dispersal was pursuant to an emergency law that prohibits religious processions.</p>	<p>EXAMPLE:</p> <p>Emergency laws should not be used to unjustifiably restrict the right to peacefully assemble; religious minorities are entitled to peacefully assemble to the same extent as majority religious groups in the country.</p>	<p>EXAMPLE:</p> <p>States should amend emergency laws to allow peaceful assembly in accordance with international human rights standards.</p>