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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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Mr. President,

Distinguished delegates,

Ladies and gentlemen,

I am privileged to present my third report before the Human Rights Council. In this report, I emphasise the challenges facing various groups that are often relegated to the margins of society, both in their daily lives and in the exercise of their rights to freedom of peaceful assembly and of association.

Before I go into the details of the report, I want to note with appreciation the panel discussion on the promotion and protection of civil society space held at the 25th session of the Human Rights Council on 11 March 2014. The rights to freedom of peaceful assembly and of association are important elements of the broader concept of enabling civil society space. It was gratifying to see that the panel was unified in acknowledging the role that an empowered civil society plays in deepening and strengthening democracy.

I also take note of the resolution on the promotion and protection of human rights in the context of peaceful protests, adopted by the Council, requesting my mandate and that of the Special Rapporteur on extrajudicial, summary or arbitrary executions to prepare a compilation of practical recommendations for the proper management of assemblies based on best practices and lessons learnt. We will be consulting with all stakeholders, including States, in this endeavour.

Since my last report here, I have been invited to, and attended, several events organised by States, international and regional human rights mechanisms, and civil society organisations. I regret I was not able to honour all invitations due to time constraints. I sent out a total of two hundred and seven (207) communications between 1 March 2013 and 28 February 2014. I issued nineteen (19) press statements in this period. Observations on the communications sent have been prepared and these are presented as Addendum 1 to my main report. I would like to emphasise that I remain at the disposal of all Governments to assist them in addressing the concerns raised.

I undertook an official visit to Rwanda in January this year and I will briefly present my findings. I am grateful to the Governments of Kazakhstan, Malawi and Oman for extending invitations. I hope to honour them soon.

The exercise of the rights to freedom of peaceful assembly and of association has not, overall, improved significantly since I presented my last report to the Council. It is worrying to see that States are increasingly resorting to harassment, intimidation, criminalisation and outright physical assault on members of civil society who speak out in opposition of governments and their policies. Governments are still placing barriers to the ease with which civil society may form organisations; they are restricting crucial access to resources, in particular foreign funding; and they are hindering the continued operation of organisations that do not express views or hold opinions considered favourable by those in power.

However, there are some bright spots. My mandate is undertaking a project together with the Community of Democracies to focus on key challenges that civil society organizations face in accessing resources, through a series of dialogues in the five geographic regions. The goal of the regional dialogues is to identify challenges, disseminate information about them, and produce recommendations and strategies which can help in overcoming them.

Similarly, the work of numerous human rights defenders and activists who risk their lives daily to defend civil society's space cannot be understated. Without the commitment and sustained efforts of these individuals and groups, often working in difficult environments, we would make little impact in the protection and promotion of human rights in general.

I must also commend the African Commission on Human and Peoples' Rights for the recent resolution 275 of May 2014 on lesbian, gay, bisexual, transgender and intersex (LGBTI) people which hopefully will inspire this Council to adopt an even more positive resolution as a follow-up to resolution 17/19.

Mr. President, I will now turn to my thematic report.

I would like to sincerely thank all those who contributed to the development of this report through various avenues, including meetings, conferences and other interactions. In particular, I acknowledge the wealth of information gathered at the expert meetings convened by my mandate in December 2013 in Geneva, and Singapore and El Salvador in February 2014.

This report examines the situation of a non-exhaustive list of marginalised groups - persons with disabilities; youth; women; LGBTI people; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals including refugees, asylum seekers and migrant workers. Groups most at risk include those targeted

because of their work with marginalised groups, such as human rights defenders, trade unionists and environmental activists.

It is crucial to state that it matters not whether we approve or support the activities of these marginalized groups at risk. The test of international law is that as long as their activities are non-violent, non-discriminatory, non-xenophobic and do not incite others to violence, they must be protected and facilitated.

I start from the premise that the marginalisation experienced by the groups is the result of deliberate acts or omissions by State and non-State actors, rather than conditions inherent to the groups themselves. This places responsibility on States as the primary duty-bearers to protect and promote the rights of these 'most at risk' and marginalised groups.

International human rights law is clear in its definition of discrimination and categorical in stating that non-discrimination and the achievement of equality are the foundational principles on which human rights standards rest. International human rights law also recognises that individuals belonging to marginalised groups fully possess the right to freely associate and assemble peacefully. In fact, such groups – which are often excluded from more mainstream political participation – have an even greater need for alternative means to participate in the public sphere. Peaceful assemblies and associations are crucial herein. In ratifying international human rights instruments, States have placed upon themselves the responsibility to ensure that these rights are respected, protected and fulfilled at the national level.

Nevertheless, as I elaborate in my report, there are too many instances where laws - meant to regulate the freedoms of peaceful assembly and of association or general legal provisions - contain explicitly discriminatory provisions that restrict or entirely prohibit certain groups or individuals from exercising their rights to assemble and associate.

Laws regulating the freedom of peaceful assembly from countries such as Malaysia, Myanmar, Nigeria and the Russian Federation explicitly exclude certain groups from organising or participating in public gatherings. Non-citizens, youth and LGBTI individuals, for example, are in some countries entirely stripped of the right to peacefully assemble, depriving them of an important channel to express their views in an organized and non-violent manner.

Then there are those laws—which appear neutral on their face—that restrict these rights, but in reality, disproportionately affect certain marginalised groups negatively. For

instance, laws that ban the wearing of face covering during assemblies in Egypt could be used to discriminate against women who wear the niqab preventing them from participating in public assemblies. Laws that fail to make reasonable accommodation for the needs of persons with disabilities place an extra burden on people with disabilities who wish to participate in public assemblies. Emergency laws applied in Myanmar's Rakhine state prevent groups of five or more people from gathering in public areas. The law is however selectively applied to prevent Rohingya Muslims (but not Buddhists) from participating in public assemblies, including gathering in religious venues to pray and celebrate religious festivals. The youth, who predominate in the use of social media, are particularly affected by laws that curtail access to information and communications technologies.

Various practices also threaten and impede the exercise of assembly rights by marginalised groups and those most at risk. For example, women in many parts of the world are subjected to police violence, harassment and judicial intimidation when they exercise their rights to peacefully assemble. I have received complaints in this regard from Cambodia, Cuba, India, Sri Lanka, and Zimbabwe.

Surveillance tactics which can legitimately be used to prevent criminal activity are often employed selectively against groups engaged in peaceful assemblies, for example in Canada in relation to indigenous peoples, and in the United Kingdom of Great Britain and Northern Ireland against peaceful protest groups.

Inaction by authorities to protect the rights of marginalised groups to freely assemble has a chilling effect on groups that would otherwise exercise this right, such as members of the Dalit community in India and female demonstrators in Egypt. A host of other actions have the same chilling effect, such as the expulsion of students from universities in Chile for participating in peaceful protests; the arrest of Tibetan students protesting for their cultural rights in China; threats of revocation of residency, refugee or asylum status for non-nationals if they are charged with assembly-related offences.

Mr. President, the situation is not any better in relation to the right to freedom of association.

I note in the report that on one hand, States are not doing enough to ensure that everyone can form and join associations. For example, migrant workers are often prohibited from joining or forming trade unions in Singapore and Bolivia, and children in Costa Rica and Turkey face restrictions in forming or joining certain associations. On the other hand, in the face of increasing racism and xenophobia, States are not doing

enough to prohibit and criminalise the formation of associations that promote racism and discrimination.

Laws regulating the freedom of association may disproportionately affect marginalised groups in various ways. For example, requiring the use of mainstream or dominant languages without exception may prevent minorities or indigenous peoples from registering associations if they cannot understand the relevant documentation; granting broad discretion to officials who regulate associations leaves groups working in politically sensitive areas vulnerable to arbitrary decisions, including the rejection of registration or closure.

Practices and circumstances that may initially seem innocuous may also discriminate against certain groups. For example, requiring that registration documents be submitted in the capital may place undue logistical and financial burdens on a minority or indigenous association located in a distant locale. And a government office with limited accessibility may make it more difficult for persons with disabilities to register an association.

I wish to reiterate that in principle, a voluntary registration regime that permits unregistered associations to operate should be the goal of all States. Laws regulating civil society should not be aimed at controlling civil society's operations or actions, for the essence of civil society is independence of government. Likewise, States should not place undue restrictions on associations' ability to seek, receive and utilize resources, whether domestic, foreign or international. This is, in fact, a growing problem: laws that provide restrictions on funding and intrusive oversight by authorities have been used to target groups and individuals seen as threatening the State in Ethiopia, Russian Federation and Ecuador, amongst others.

States have a legitimate obligation to regulate areas such as counter-terrorism, criminal procedure and penal sanctions, immigration and information and communications technology. However, in too many situations, States are taking advantage of this responsibility to target the activities of marginalised groups and those most at risk. Authorities in some States have used counter-terrorism legislation in a dubious manner against minority groups and indigenous peoples' associations advocating for community rights. Members of associations engaged in the defence of human rights, environmental rights, anti-corruption advocacy and other accountability initiatives have been charged with criminal offences such as slander and disturbing public order. Indigenous peoples and pastoralist communities are confronted with immigration laws that may inadvertently serve to restrict their rights to move inside their traditional lands, which in turn affects their rights to assemble and associate.

Even where legislation is enabling, State and non-State actors perpetuate practices that impede the enjoyment of the right to freedom of association. Employment practices such as isolation and gender-based violence prevent migrant workers from forming associations, as do threats of revocation of refugee or asylum status in respect of non-nationals. Patriarchal attitudes and societal stereotypes affect women, minority groups as well as persons with disabilities by casting them in narrowly defined roles that portray them as incapable of participating in public life on an equal footing with other groups.

In concluding the report, I call on States to take concrete measures to ensure that the rights to freedom of peaceful assembly and of association are fully protected and facilitated, recognising that these rights provide a vehicle for groups most at risk to be heard.

Mr. President, I will now briefly touch on my official mission to Rwanda.

I wish to thank the Government of Rwanda, the first in Africa, for inviting my mandate and the exemplary co-operation extended to me during the official visit carried out in January. I met with a number of interlocutors in Government and outside of Government and had productive discussions with all of them. I am grateful for their collaboration.

In the twenty years since the genocide in 1994, Rwanda has recorded tremendous reconstruction and growth in virtually all aspects of its national life. There have been significant efforts to rebuild government institutions, physical infrastructure, human resources and social services. I commend the people and Government of Rwanda for their determination and commitment in ensuring that they have come so far since the genocide. They are rightly proud of their achievements.

I appreciate that a prerequisite for these positive developments is the need for reconciliation and reassurance against the recurrence of genocide, including by criminalising and punishing actions that result in or amount to genocide. I note the efforts that the Government of Rwanda and various institutions have made towards maintaining a peaceful, secure and stable country. Nevertheless, I am concerned that the approach adopted by Rwanda to achieve reconciliation and reconstruction is undermined by the extremely limited space afforded to critical and dissenting voices in society.

Several interlocutors emphasised that Rwanda favours a political order based on so-called “consensus.” But this consensus is led by the ruling party and, as a result,

discourages public criticism and dissent. Similarly, some offenses contained in Rwanda's criminal code – which are ostensibly designed to prevent and punish genocide are so broadly framed that they can – and indeed have been – used to stifle even the most moderate and peaceful dissent. . An honest, robust and civil debate on the genocide, on the one hand, and the surrounding armed conflicts, on the other, is imperative. But such a debate is only possible in an atmosphere where people feel free to express their views without fear of reprisal even when those views are not popular. A more accommodating political order and a more precise legal framework will go a long way to creating such an environment.

It is against this backdrop that challenges to the rights to freedom of peaceful assembly and association arise. In relation to peaceful assembly, the law sets out a prior authorisation regime with penal sanctions for failure to notify authorities or holding a public meeting despite refusal by authorities. In practice, only assemblies favoured by authorities are permitted to take place. Peaceful protests voicing dissent and criticising Government policies are reportedly not allowed. Members of the opposition group FDU-Ikingi, who wore t-shirts and badges expressing support for their leader Victoire Ingabire outside the court at her trial, were arrested and charged with holding an illegal assembly. Similarly, students protesting the reduction of state loans for those in public universities have been arrested and charged with holding illegal demonstrations. Police responses to public gatherings demonstrate a public order approach rather than a rights-based approach. The latter recognises a presumption in favour of peaceful assemblies and requires law enforcement authorities to facilitate all peaceful assemblies.

I wish to reiterate that peaceful assemblies, including demonstrations and protests, should be encouraged by States. It is in fact, to the State's advantage to gauge citizens' views, including disagreement, by peaceful means, rather than through more confrontational and non-peaceful alternatives.

Turning to freedom of association, I note that Rwanda's Constitution guarantees this right without prior authorisation. Nevertheless, I was informed of the difficulties that political parties in particular face in obtaining registration. The law provides a cumbersome process by which founders of a new political party are required to present a number of documents, including evidence of at least 200 members spread across the country, with a minimum of five people from each of Rwanda's 30 districts. Leaders of unregistered political parties have been arrested, charged and imprisoned on various offences, including "spreading rumours" and denying the genocide. I received reports, for example, of police arresting would-be opposition members for talking about politics in a bar. Other patrons were also reportedly arrested for not reporting the incident.

When we add in the financial and logistical burdens of holding multiple general assemblies throughout the country, it is clear how challenging it is to start a political party in Rwanda.

Non-governmental organisations must be registered under the law. The registration process is bureaucratic, requiring a variety of documents, some of which depend on consent by authorities in districts where the NGOs operate. Legal personality is not automatic upon registration and entails an additional process. International NGOs are required to show evidence of funding for up to five years; otherwise they are forced to seek annual registration. They are also required to identify the nature of activities they wish to engage in and create an action plan. These documents must be presented to the local authorities of all districts where the organisation intends to work, and they must also seek letters of approval from ministries under which the subject matter of their activities fall.

I urge the Government of Rwanda to review these onerous requirements on the registration of NGOs, particularly taking note of the difference in approach towards registration of private sector companies, which take a commendable six hours, or less, to register.

The performance of the Rwanda Governance Board (RGB), the authority charged with registering political parties and local NGOs, came under severe criticism from many interlocutors. It was felt that the RGB unduly interfered with the functioning of NGOs to the extent of endorsing and even encouraging leadership changes. I see no justification for the RGB to involve itself in the internal workings of NGOs and I encourage a review of this institution's role, with the goal of relegating it to performing purely regulatory functions, similar to its private sector counterpart.

In conclusion, I have every confidence in the people and the Government of Rwanda and their determination to overcome the unique challenges they face in moving their country forward on the path to a stronger democracy. The effective exercise of the rights to freedom of peaceful assembly and of association is a necessary feature of such a democracy.

Mr. President,

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