**UN General Assembly Thematic Report October 2015: “Getting down to business - a comparative survey of enabling environments for businesses and associations”**

**Expert Consultation – 13-14 May 2015**

**Concept Note**

1. Introduction and background

At first glance, the business and civil society sectors may seem strange bedfellows for a comparative study. In the mind of the public and policymakers, these two entities appear distinct, warranting separate rules and treatment. The basis for this treatment seems to boil down to one dividing point: One exists to make a profit; the other is non-profit.

But beyond their dissimilar profit motives, are businesses and associations really that different?

Both are non-state actors, potential employers, providers of goods and services, magnets for investment, and possible platforms for mobilizing people and influencing policy. Both are crucial to economic and political development, both domestically and internationally. And both have potential to enhance the protection and promotion of human rights.

Despite these sweeping similarities, the UN Special Rapporteur on the rights of freedom of assembly and association, Mr. Maina Kiai has observed over the past four years that many governments do, in fact, single out CSOs for special treatment – not all of it good.

The reasons for this difference in treatment are not always clear, and are often suspicious on their face. In some countries, for example, a business can be registered in a matter of hours, while NGO registration can take months. In others, it is forbidden to start a new association with the same broadly-defined “purpose” as a pre-existing association; no such regulation exists for businesses. Public events may be comparatively easy for businesses to organize when compared to social or political rallies organized by civil society. And around the world, businesses – particularly large ones – frequently have superior access to the halls of power when compared to CSOs.

Sometimes the disparity even slips into government policies on aid money: A growing number of States have placed severe restrictions on foreign donations to civil society, effectively outlawing the practice. There appear to be comparatively few such restrictions for businesses seeking foreign investments. And in some jurisdictions, it may even be easier for a profit-making entity to receive foreign investment than it is for non-profit CSOs to receive donations.

For his next report to the UN General Assembly (October 2015), the Special Rapporteur will explore the disparate treatment by governments’ and the international community of businesses and CSOs.

The report will survey law, practice and perception in a number of jurisdictions around the world, with a focus on identifying how CSOs and businesses are treated differently as legal entities, for better or for worse. It will aim at providing a comparative survey of the enabling environment for both businesses and CSOs worldwide.

Specific thematic areas to be examined in the report will include: (1) barriers/ease of entry; (2) barriers/ease of activities in general; (3) barriers/ease to expressive activities; (4) barriers/ease to solicit, receive and utilize resources; (5) barriers/ease to assembly rights; (6) barriers/ease in accessing international contacts and national decision makers.

The report will address a number of issues in order to identify whether (and where) there is disparate treatment between the for-profit and non-profit sectors including: does legislation favor one type of entity over the other, and should it do so? Is the problem one of practice, where enforcement and application of laws is uneven? Or is it an issue of perception – a generally difficult and menacing environment that discourages growth and development of either sector? The report will also examine the reasons for these disparities and analyze how they impact the rights to freedom of peaceful assembly and of association.

As part of the research process, the Special Rapporteur will solicit input from civil society, governments, multilateral organizations and businesses, asking about their respective experiences on the ground. How do regulations work in practice? Are there restrictions in practice that may not captured by looking only at the law? Do governments informally favor one sector over another?

The Special Rapporteur is convening this expert consultation as part of this process for soliciting views and information on all of the above points. This concept note presents preliminary thoughts on the key issues for discussion.

1. Issues for discussion
* Introduction & framing the scope of the report:
	+ Identify the **scope of each sector** (for-profit and non-profit) covered in the report. Businesses are not just multilateral corporations, just as CSOs are not limited to large international NGOs.
		- There is clearly disparate treatment among for-profit entities, and among different types of non-profits. What sort of examination should this receive in the report?
		- Where do **hybrids** fall, such as business associations and social enterprises?
	+ Defining the standard: What does the **ideal “level playing field”** look like?
		- Is it fair to compare associations and businesses?
		- Are there **legitimate areas** where associations and businesses should be treated differently? Why?
		- Are there **illegitimate areas** where associations and businesses should be treated differently? Why are the differences not justifiable?
	+ What does the ideal “level playing field” look like and how do we get there?
	+ Understanding the role of the **rights to freedom of peaceful assembly and of association** (FOAA) for each sector. Do they apply equally? Does the purpose of the entity make a difference in applying FOAA rights? Should it?
	+ **Other key players** and their roles and responsibilities: Governments, multilateral organizations and donors (government and private).
* Specific thematic areas to compare, in law, practice and perception:
	+ **Ease of entry**: Registration/Incorporation laws; timeframe to get registration/incorporation; minimum requirements to form; criminalization of unregistered activities; causes of deregistration
	+ **Barriers to conducting activities**: Specific laws targeting CSOs and/or businesses for (e.g., for money laundering, terrorism, etc.); audit and oversight requirements; limits on freedom and independence; harassment and reprisals; limits/regulation on type or location of work (including disparate treatment within each sector);
	+ **Ability to solicit, receive and utilize resources**: Tax laws; restrictions on “foreign funding” vs. “foreign investment”; restrictions on “domestic donations” vs. “domestic investment”;
		- Also, how do the policies of foreign donors encourage or discourage discrimination against CSOs? Do some make it easier for businesses to receive aid than CSOs?
	+ **Barriers to and ease of exercising assembly rights**: Relative ease of holding public events vs. rallies/protests; cooperation or opposition from authorities during such events; permits/notification requirements
	+ **Access to and influence with power, both domestically and internationally**: Regulatory ministry; exchange of personnel between the sector and that ministry; input into legislation and policymaking; formal and informal working groups/alliances/etc.; government measures to support each sector; rules for political contributions and lobbying (e.g., UK lobbying bill); multilaterals’ access policies
* Analysis: Why are there differences in treatment?
	+ Theories for disparate treatment, focusing on differences that are perceived as not justifiable, between:
		- For-profit and non-profit entities
		- Different types of non-profit entities
		- Different types of for-profit entities
	+ How did these distinctions evolve and come to be? What keeps them in place? Why do they violate (or not violate) FOAA rights?
	+ How to achieve the “**level playing field**”
* Recommendations
	+ Legal framework
		- Freedom of association
		- Freedom of peaceful assembly
	+ Practice
		- Freedom of association
		- Freedom of peaceful assembly