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Mr. Chairperson,

Ladies and gentlemen,

I am honoured to present my latest report to the General Assembly, in which I examine the disparity in the environments that States create for businesses on the one hand, and for civil society on the other. In my research, I found that businesses generally operate in better environments, largely because States, multilateral organizations and other key actors make great efforts to create such environments.

Unfortunately, these same actors often make comparatively little effort to improve the environment for civil society. In light of this disparity, I conclude that in most cases, States and other actors would better promote and protect the rights to freedom of peaceful assembly and of association if they elevated their treatment of associations to a similar level as their treatment of businesses. Both sectors, after all, are equally deserving of promotion by the State, and both contribute enormously to the overall wellbeing of a nation.

Mr. Chairperson,

I invite you to imagine that you are an aspiring entrepreneur starting a hotel business. In many countries, you would need to register your new business. Suppose the local government officials tell you that in order to accomplish this, the National Assembly has to enact a law for that purpose. If you overcome this hurdle, officials then inform you that they will register your company – but only if no other company is involved in the hotel business. But, for the sake of argument, let us imagine that your company will be the first in the country to venture into running hotels and so you are able to register. The market is vast and untapped, and you need foreign investment to expand your capacity. The government tells you that you can only seek, receive and use foreign investment up to 10% of your annual operating budget. Undoubtedly, this would essentially kill off your business.

This may appear to be an absurd scenario in the private sector, as no government would restrict businesses to this extent. Yet, this is the reality for civil society organisations, such as non-governmental associations, charities and non-profit associations. The restrictions that I just described are currently the law of the land in Nicaragua, Oman and Ethiopia, respectively. And in these same countries, businesses are allowed much room to operate. There is no compelling reason why the civil society sector should have to operate in such a hostile environment, when it is possible for States to do much more to facilitate and promote a more enabling environment, like they do for businesses.

Mr. Chairperson,

Despite their different profit motives, civil society and business share a broad range of similarities as Non-State Actors. Entities in both sectors are a way for individuals to associate; they provide employment, goods and services; are magnets for investment and also platforms for mobilizing and influencing policies. Why then do businesses receive more favourable treatment than civil society associations generally? Why, for example, can a business entity register in mere hours in Rwanda, while starting an association in the same country can take months? Why should associations that often represent people’s pressing concerns have less access to authorities and policy-makers? The reason lies partly in the inordinate emphasis governments place on businesses being the key drivers of the economy. This lopsided view fails to recognise that a prosperous economy is to a significant extent dependent on a robust, vocal and critical civil society sector.

In my report, I identify five areas that are essential for an enabling environment, in which businesses receive more favourable treatment than associations, without reasonable justification. These areas are:

1. Entry procedures and dissolution processes;
2. Regulation of operations;
3. Access to resources;
4. Political influence and access to power;
5. Conducting peaceful assemblies.

Each of these key areas constitutes an essential component of the exercise of the rights to freedom of peaceful assembly and of association. Any limitations imposed in these areas must be prescribed by law, be necessary in a democratic society in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and be proportionate to the aim pursued.

The lengths to which States go to make it harder for civil society associations to exist is telling of their negative perceptions of the sector. Thus, authorities often want to retain control of entry into the sector. In the Cayman Islands for example, associations are established at the sole discretion of the Governor, while a for-profit entity may register by simply filing a memorandum of incorporation. Registration is immediate upon filing. In Malaysia certain associations can be dissolved solely on the decision of the head regulator. By contrast, businesses in Malaysia can only be dissolved by court order. In Ecuador, Egypt and Honduras, associations face long registration wait-times and high registration fees. Businesses are not subject to similarly cumbersome requirements.

Barriers to operation are inordinately high in places like Rwanda, where some associations face a 20 per cent limit on overhead costs, a level of government interference that is unthinkable in the commercial sector. Associations in Ethiopia working on “the advancement of human and democratic rights” can only receive a maximum of 10 percent of their funding from foreign sources or are otherwise termed “foreign associations” and are barred from working in this area. Note that the Ethiopian government itself receives 40 per cent of its budget—including for human and democratic rights-- as foreign aid. Governments rarely impose such wide-ranging restrictions on the activities or operations of businesses.

The involvement of associations in so called ‘political activity’ is prohibited or severely limited in countries such as Canada and Senegal. Businesses in those countries face fewer restrictions in this regard. The net effect is that businesses have more leeway than associations to influence the political landscape, while civil society is denied the same opportunities to have their voices heard in the political sphere.

Both businesses and civil society have a responsibility to comply with the law in their financial and other dealings. But there appears no justification for more complex, onerous or intrusive reporting and audit requirements for associations, as is the case in Cambodia, Canada and Malaysia. There is no justification for this differentiation since there is not a single piece of objective, empirical data demonstrating that associations are not any more likely than businesses to engage in financial crime. This is simply a fiction, propagated by those who feel threatened by the prospect of people organizing outside of the dominance and control of the State.

Likewise, there is no data to suggest that associations are any more prone to funding terrorism or extremism than businesses; yet this has not stopped some States – including Kazakhstan, Kosovo, Pakistan, and the United States – from disproportionately targeting and punishing associations for real or perceived links to such crimes.

It is virtually unheard of that governments would infiltrate businesses or impose surveillance on the private sectors within their jurisdictions, in order to spy on their activities. Yet, in Brazil and the United Kingdom, NGOs and social movements routinely face such scrutiny. In fact, States often collude with businesses to limit the influence of the civil society, particularly when lucrative commercial activities are at stake. In Colombia, the Lao People’s Democratic Republic, the Philippines and many other countries, groups and individuals who protest against large business interests face the severest of restrictions on their assembly and association rights. They are threatened, prosecuted, attacked, harassed and sometimes even killed.

In a similar vein, my report also documents the repression of trade unions that work to ensure equitable treatment of workers against business interests in Bangladesh, Colombia and Guatemala.

Mr. Chairperson,

Restricting the ability to access and use resources – human, financial and material – is a particularly pervasive strategy amongst States that wish to strangle civil society. These same States usually approach the funding of businesses in a completely differently manner. Commercial investment, including from foreign sources, is actively encouraged, and governments often bend over backwards to create an attractive financing climate that benefits the private sector – sometimes to the detriment of civil society. For example, India recently began taking measures to encourage foreign investment in some sectors, while almost simultaneously tightening the enforcement of requirements that associations seek prior permission before receiving funds from abroad. Foreign funding restrictions also disproportionately affect associations in Egypt, Ethiopia, and the Russian Federation to name some of the more well-known cases.

I must emphasise that where states provide funding incentives for associations, including through positive measures such as tax exemptions, these should not be seen as an opportunity to exercise excessive oversight or control of civil society organisations. The process of qualifying for such privileges should be simple, transparent and impartial, and incentives should not be doled out on the basis of the government’s judgement of an organization’s goals or purpose, as long as that purpose complies with international law.

I also note that such benefits are hardly unique to the non-profit sector. Many States offer significant incentives to businesses, such as special economic zones, tax holidays, tax exemptions, free trade areas, special loans, taxpayer-funded bailouts and more. These benefits are typically distributed without significant administrative burdens, and they are not used as justification for excessive interference in the affairs of businesses.

Governments commonly consider businesses as natural allies of power. Associations, especially those who ‘speak truth to power’, find themselves side-lined and without political leverage or influence on public policy. Again, the erroneous rationale is that the business sector stimulates economic growth and job creation – overlooking civil society’s own significant contribution to economic growth and job creation. The enthusiasm with which governments support the private sector is evidenced by the increased merging of trade interests with foreign affairs; the support abroad that governments offer to companies domiciled in their jurisdiction; and the increasing access the private sector has to law-making procedures and trade treaty negotiations. It can also be seen by looking at how many trade and investment conferences are attended by heads of state: Some 40 heads of State attended the most recent World Economic Forum in Davos; similar global events for civil society typically get zero. Civil society, including trade unions, does not receive as much attention, despite the fact that economic and trade issues are just as relevant to the sector.

Unlike other areas that I have just touched on, laws relating to gatherings and assemblies do not typically distinguish between participants or organisers, who may include individuals and entities from the both the business and civil society sector. Despite this, authorities are more likely to interfere with assemblies organised by associations. In many cases, restrictions will be placed on assemblies that challenge power, and these will often be the ones organised by civil society rather than the private sector. For example, authorities go to great lengths to protect assemblies convened by corporate entities while at the same time cracking down on civil society protestors against these very events, as happened in Azerbaijan during the 2015 European Games. In the area of natural resource exploitation, the shooting to death of over 30 miners in South Africa by police during a workers’ strike in 2012 is an egregious example of such preferential treatment. Similarly, authorities have been known to interfere with civil society organisations’ internal meetings held at private venues – for example in Rwanda, but similar interference with private business entities is rare.

Mr. Chairperson,

The business and civil society sectors are vast and varied. My brief report is not meant to be a comprehensive comparison of all governments’ treatment of every portion of each sector. Nevertheless, it reveals a concrete, systematic and often unjustifiable differentiation in treatment of the two sectors. I believe that the best remedy for this problem is for States to adopt the principle of what I describe in my report as “sectoral equity.”

Sectoral equity is not about treating businesses and associations identically. Rather, it implies a fair, transparent and impartial approach in which the regulation of each sector is grounded in international law, standards and norms. Sectoral equity demands a principled approach to the treatment of entities in the two sectors. This means that regulatory decisions affecting the sectors are based not on discretion, but upon objective criteria that takes arbitrariness out of the process.

The numerous examples in my report make it clear that there are rarely legal or technical barriers to elevating treatment of civil society to the same level of business. If a company can register free of charge in a few hours, as is the case in Rwanda, why should it take several months to register an NGO? It is clearly not a question of capacity. It is simply a question of political will.

Importantly, I believe that the business community’s interests would be greatly served by the adoption of the concept of sectoral equity. This is for one simple reason: The presence of a robust, vocal and critical civil society sector guarantees, almost without exception, that a State also possesses a good business environment. The rule of law is stronger, transparency is greater and markets are less tainted by corruption. In other words, when civil society does well, business does well too. This is not a fanciful hypothesis or wishful thinking. It is an undeniable fact.

We often see States and others spend billions of dollars on so-called stimulus plans for businesses. I view sectoral equity as a kind of stimulus plan for civil society: elevating the treatment of civil society would yield significant economic, social and political dividends – and not just for civil society itself. The rising tide, as they say, would lift all boats. And the best part about this stimulus plan is that it costs nothing. It only takes political will. It is time for all of us to work together towards this goal.

I thus call upon States to explicitly adopt sectoral equity as a guiding principle in their treatment of the business and civil society sectors. This means that States should recognise that civil society is just as valuable to the economy and the labour market as businesses and therefore just as deserving of proactive measures to create an enabling environment. In fact, critical civil society is crucial in helping the state and citizens identify those political, economic, social and other policies that cause harm to society.

Similarly, any efforts to incentivise businesses should incorporate broad respect for fundamental human rights including the rights to freedom of peaceful assembly and of association. Other actors, such as multilateral institutions and bilateral donors, have a responsibility to ensure that their policies do not exacerbate the disadvantages of civil society. They should use the tools at their disposal, including bilateral aid, to encourage sectoral equity.

And finally, I call upon businesses and civil society themselves to recognise the broad convergence of interests in areas of government transparency and the rule of law, and work together to enhance these goals.

In conclusion Mr. Chairperson,

I hope that by highlighting differences in the treatment of civil society and businesses, and illustrating that many of these distinctions are unnecessary and unjustifiable, States and other actors will pay adequate attention to measures that can be taken to increase civic space.

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

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