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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*

Note by the Secretariat

The Secretariat has the honour to transmit the fifth thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, prepared pursuant to Human Rights Council resolutions 15/21 and 24/5. In sections I and II of the report, the Special Rapporteur provides an overview of the activities that he carried out between 1 March 2015 and 28 February 2016. In section III, he addresses the phenomenon of fundamentalism and its impact on the exercise of the rights to freedom of peaceful assembly and of association. In section IV, he examines the positive role that assembly and association rights can play in preventing the spread of extremism and radicalization. The Special Rapporteur outlines his conclusions and his recommendations to various stakeholders in section V.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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I. Introduction

1. The present report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is being submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5. The first section covers activities carried out between 1 March 2015 and 28 February 2016. The second addresses the role of fundamentalism, in its broadest possible sense, in contributing to violation of the rights to freedom of peaceful assembly and of association. In the third section, the Special Rapporteur examines the role that undue restrictions on the rights to freedom of peaceful assembly and of association play in contributing to the rise of fundamentalist belief systems and of radicalization. The report ends with recommendations to various stakeholders.

2. To prepare the report, the Special Rapporteur convened an expert consultation in Florence, Italy, on 10 and 11 December 2015, hosted by Robert F. Kennedy Human Rights Europe. He also benefited from the submissions of civil society entities and others in response to a call for information on his website.¹ He is grateful to everyone who contributed to the report. In accordance with Council resolution 15/21, he also took into account relevant elements of work available within the Council and the United Nations system.²

II. Activities

A. Communications

3. The Special Rapporteur sent a total of 158 communications to 70 States between 1 March 2015 and 29 February 2016. His observations on communications addressed to States and on the replies received are contained in an addendum (A/HRC/32/36/Add.3).

B. Country visits

4. The Special Rapporteur visited Chile from 21 to 30 September 2015 (see A/HRC/32/36/Add.1) and the Republic of Korea from 20 to 29 January 2016 (see A/HRC/32/36/Add.2). He also visited the United Kingdom of Great Britain and Northern Ireland from 18 to 21 April 2016, following up on his visit to the country in 2013 (the report will be presented to the Council at its thirty-fifth session). He thanks all three Governments for their excellent cooperation in regard to the visits. During the reporting period, the Special Rapporteur renewed the pending requests to Ecuador, Guatemala, Maldives and Sri Lanka. He also made additional requests to Honduras and Hungary.³ He is grateful to the United States of America and to Turkey for agreeing to visits in July 2016 and January 2017 respectively. He hopes to visit Azerbaijan in September 2016.

¹ See <http://freeassembly.net/discussions/fundamentalism/>.

² Country situations mentioned below include cases that have been the subject of previous communications sent to governments, of press releases and reports issued by special procedure mandate holders and high-level United Nations officials, and of reports from Member States, multilateral institutions and civil society organizations.

³ For more information on country visits, see www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx.

C. Participation in various events

5. The Special Rapporteur took part in the following events, among many others:⁴
- (a) Global Forum of the International Center for Not-for-Profit Law, Stockholm, 10-12 May 2015;
 - (b) Expert consultation on the report of the Special Rapporteur to the sixty-ninth session of the General Assembly, organized by the World Movement for Democracy and held in Stockholm (13 and 14 May 2015);
 - (c) Meetings with the Secretary-General of the Organization of American States, the Chair of the Permanent Council, permanent representatives to the Organization and members of the Inter-American Commission on Human Rights, in Washington, D.C. (28 July 2015);
 - (d) Academic visit to Kazakhstan, following up on the official visit undertaken in January 2015 (22-24 August 2015);
 - (e) Eighth Global Assembly of the World Movement for Democracy, Seoul, 1-4 November 2015;
 - (f) Academic visit to Cambodia (7-9 November 2015);
 - (g) Regional dialogues with civil society and governments from the Latin American and Caribbean region (Santiago, 27 and 28 April 2015) and the Asia-Pacific region (Seoul, 5 November 2015 and 20 January 2016), organized by the Community of Democracies;
 - (h) Consultations with civil society, governments and other stakeholders in Santiago (29 April 2015), Istanbul (27 August 2015) and Geneva (23 and 24 October 2015) to assist in preparing joint practical recommendations on the proper management of assemblies (see A/HRC/31/66), together with the Special Rapporteur on extrajudicial, summary or arbitrary executions;
 - (i) Seventeenth European Union-NGO Human Rights Forum, in Brussels (3 and 4 December 2015).

III. Fundamentalism and its impact on the rights to freedom of peaceful assembly and of association

A. Introduction

6. Since the turn of the millennium, there has been a perceived rise in expressions of fundamentalism in many contexts across the world. Despite the frequent use of the term, “fundamentalism” remains a word that is rarely defined with any specificity. The origin of the term, and most dictionary definitions, centre on strict adherence to a specific set of religious principles.⁵ This definition — conjuring up images of religiously motivated terrorists and sectarian warfare, among others — is perhaps the one that comes to mind first for most people.

⁴ More information on the Special Rapporteur’s activities during 2015 is available in his annual activity report at <http://freeassembly.net/reports/2015-year-in-review/>.

⁵ See www.oxforddictionaries.com/definition/english/fundamentalism.

7. Fundamentalism can encompass much more than religion, however, and the Special Rapporteur takes a much broader view of the term here. He believes that fundamentalism can and should be defined more expansively, to include any movement — not simply religious ones — that advocates strict and literal adherence to a set of basic beliefs or principles.⁶ Adherence to the principles of free market capitalism, for example, has spawned what has been called “market fundamentalism”. And the unbending belief in the superiority of one ethnic group, race, tribe or nationality can lead to what might be called “nationalist fundamentalism”. These non-religious forms of fundamentalism may not always be labelled as such, but the Special Rapporteur believes that they all share key similarities, first and foremost that they are based upon a set of strict, inflexible beliefs that are impervious to criticism or deviation.

8. The Special Rapporteur is not concerned with fundamentalist viewpoints per se, but rather with fundamentalism in action: concrete, specific violations of the rights to freedom of peaceful assembly and of association that are motivated by these viewpoints. Mere voluntary adherence to a fundamentalist belief system is not a human rights violation in and of itself. The right to hold opinions and the right to freedom of thought, conscience and religion are protected by articles 18 and 19 of the International Covenant on Civil and Political Rights.

9. The danger arises when holders of these beliefs seek to impose them in a way that controls, restricts or deters the exercise of the rights of others who may have different views or backgrounds, thereby threatening the values of pluralism and broadmindedness, which are central to democracy. The tipping point, according to the Special Rapporteur, is when fundamentalist views form the basis for violations of the rights to freedom of peaceful assembly and of association.

10. The present report can be viewed as following on from the Special Rapporteur’s 2014 report to the Council on threats against groups most at risk when exercising assembly and association rights (see A/HRC/26/29). That report focused on the groups whose rights were being violated, which included persons with disabilities; women; lesbian, gay, bisexual, transgender and intersex people; and others. The follow-on report focuses on the other half of the equation: who are the perpetrators of these abuses, what are the ideologies that drive them, and what are the State’s obligations to respect, protect and fulfil the rights to freedom of peaceful assembly and of association in this context?

B. State and non-State actors: the interplay between fundamentalism and power

11. Fundamentalism can motivate violations of assembly and association rights by both State and non-State actors, though the distinction between each type of perpetrator is not always obvious. What is clear, however, is that fundamentalism — whether State-sponsored or not — poses the greatest threat to the rights to freedom of peaceful assembly and of association when it becomes closely allied with power; that is, when it is adopted or even tacitly approved by some entity with the authority or means to impose, directly or indirectly, involuntary adherence to fundamentalist values.

12. These institutions can take a number of forms: the State, smaller government and governance entities, militia groups, political parties, religious groups and structures, and more. Indeed, fundamentalist ideologies are often used as a tool of power by these institutions. The leaders of these groups may sometimes not even personally subscribe to

⁶ See www.merriam-webster.com/dictionary/fundamentalism.

the ideology at issue but may see it as an effective way to secure obedience and gain political, social or economic advantage.

13. Perhaps the most straightforward type of violation in this regard is unduly limiting assembly and association rights via the enforcement of State-sponsored fundamentalist policies. Examples include the banning of opposing political parties by authoritarian one-party States, or the forbidding by States of certain religious faiths or beliefs.

14. Non-State actors (including natural and legal persons and groups or associations) similarly may take advantage of a weak State apparatus or work together with State agents. Some may form associations whose sole purpose is to advance ideologies favoured by the State in order to crowd out space for independent organizations.

15. In other cases, violations may arise due to the inability or unwillingness of the State to respond to the actions of non-State actors. The State's failure to protect participants in a peaceful rally against violent, fundamentalist counter-protesters, for example, constitutes a violation of the right to freedom of peaceful assembly. It does not matter if the State does not officially promote the counter-protesters' ideology; it has a positive duty to protect those exercising their right to peaceful assembly, even if they are promoting unpopular positions. Similarly, States may violate their duty to protect by failing to investigate allegations of rights violations and to hold the perpetrators accountable, by ignoring retaliation against victims of violations and by failing to ensure the protection of rights for certain groups.

16. In other cases still, abuses may come purely at the hands of non-State actors, with the role of State actors being less obvious. This is seen, for example, when private parties publicize messages of ethnic or national superiority or when community leaders impose their cultural values at the expense of those held by other groups.

C. Legal framework

17. The values of pluralism, tolerance and broadmindedness are at the core of any successful and stable democratic State. Indeed, the European Court of Human Rights has stated that there can be no democracy without pluralism.⁷ The Special Rapporteur has previously noted (see A/HRC/26/29, para. 31) that the rights to freedom of peaceful assembly and of association are so fundamental in part because of their crucial role in promoting pluralism. They provide a platform for all people — including those at the margins — in any society to mobilize, organize, and work towards change in a peaceful manner.

18. The values of pluralism and tolerance also lie at the heart of the International Covenant on Civil and Political Rights. Article 2 (1) requires each State party “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Furthermore, article 20 (2) prohibits advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

19. International human rights law places the primary obligation for the respect, protection and fulfilment of rights on the State. In the context of fundamentalism, this obligation may appear to be somewhat distorted owing to the fact that some human rights abuses come at the hands of non-State actors. But the obligation of States to protect and

⁷ *Handyside v. United Kingdom*, para. 49.

facilitate peaceful assembly and association rights includes a duty to ensure that private individuals do not violate these rights. To discharge their duties in that respect, States should, among other things, enact robust national laws that stipulate clearly the rights and responsibilities of all, create independent and effective enforcement and adjudicatory mechanisms, and ensure effective remedies for violations of rights.

20. The obligation to protect is recognized in international human rights law instruments as well as by international and regional human rights bodies. For example, States parties to the International Convention on the Elimination of All Forms of Racial Discrimination are required to take action against all propaganda and all organizations that are based on ideas or theories of racial or ethnic superiority. The measures include declaring illegal and prohibiting such organizations and activities that promote and incite racial discrimination. This provision obligates States to take action directly against non-State actors that promote or incite racial discrimination.

21. The Human Rights Committee has stated that the positive obligations of States parties “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights”.⁸ States parties’ failure to take appropriate measures or exercise due diligence to prevent, punish, investigate or redress the harm caused by non-State actors may constitute a violation of the International Covenant on Civil and Political Rights.⁹ The Committee on the Elimination of Discrimination against Women has affirmed that “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.¹⁰ The Inter-American Court of Human Rights has found similarly.¹¹

22. International human rights law is understood to act as a restraint to State power. Human rights law therefore does not directly address the responsibility of non-State actors, although international instruments address non-State actors’ duty to promote and observe human rights. Nevertheless, the expanding power and influence of non-State actors is encouraging the exploration of ways to hold them legally accountable for actions that violate human rights (A/HRC/29/25, paras. 23-25). In the absence of consensus and institutions to hold non-State actors liable for human rights violations at the global level, the State remains the primary duty-bearer, capable of responding to abuses by non-State actors.

23. What does this mean for non-State actors who by reason of fundamentalism infringe on the rights of others to freedom of peaceful assembly and of association? Whatever the debates about the human rights obligations of non-State actors, the Special Rapporteur is firm in his belief that, as a practical matter, the actions of non-State actors — whether natural or legal persons — may result in the violation of rights. This eventuality must be addressed.

24. A broad approach to understanding “fundamentalism” is important in order to clarify possible violations and understand State responsibilities. For example, the designation and

⁸ See Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8.

⁹ *Ibid.*

¹⁰ See Committee on the Elimination of Discrimination against Women general recommendation No. 19 (1992) on violence against women, para. 9. See also Committee against Torture general comment No. 2 (2008) on the implementation of article 2 by States parties, para. 18.

¹¹ *Velásquez Rodríguez* case, Judgment, Inter-American Court of Human Rights, series C, No. 4 (1988), para. 172.

privileging of a State religion or ideology may serve to encourage intolerance of other religions by non-State actors. A one-party political system is virtually guaranteed to entrench intolerance — both State-sponsored and private — of other political ideologies. Extreme nationalist rhetoric that is echoed by political figures in leadership positions may result in attacks on migrant populations and civil society organizations working on migrant issues.

25. States' positive duty to "protect" by proactively taking measures to prevent violations includes refraining from acquiescing to or enabling violations, and promoting an environment where all groups are guaranteed equal rights, regardless of the popularity of their views.

26. In the following sections, the Special Rapporteur provides examples of how fundamentalism can spur intolerance that leads to violations of assembly and association rights, and highlights the responsibilities of States and non-State actors to prevent and remedy the violations. For ease of reference, four overarching categories are used:

- (a) Market fundamentalism
- (b) Political fundamentalism
- (c) Religious fundamentalism
- (d) Cultural and nationalist fundamentalisms

D. Market fundamentalism

27. Free market fundamentalism (also referred to in this report as "market fundamentalism") can be described broadly as the belief that free market economic policies are infallible, and consequently are the best way to solve economic and social problems. It is tied closely with the belief that maximum production of economic wealth is inherently good for society and its members, and that the health of the economy should be paramount and prioritized over other societal interests. It therefore can lead to the imposition of a set of rules whereby side effects or alternative economic approaches are not taken into account.¹²

28. For market fundamentalists, interference with the market — particularly government regulation — is viewed as an inefficiency that reduces the economy's ability to produce wealth, and should be avoided in pursuit of the freest markets. The belief that outside regulation is harmful to economies, and by extension to society as a whole, can be rigid, with extreme adherents advocating for little to no intervention at all.

29. Free market fundamentalism is rooted in academic economic theories, which are often cited as empirical evidence in favour of imposing laissez-faire economic policies. The reliability of these theories is a controversial subject, notably because economics is a social science that concerns itself with the messy and diverse subject of human behaviour and human-created systems, and studies demonstrating the opposite are equally available. The dominance of free market principles has become especially pronounced since communism

¹² The Special Rapporteur acknowledges that there are other and equally problematic types of economic fundamentalism, such as the communist-style command economy structure in which production, prices and incomes are determined centrally by the government. Dramatic examples of the dangers of this type of fundamentalism can be seen in Cuba, the Democratic People's Republic of Korea and the Bolivarian Republic of Venezuela, among others, where exercising assembly and association rights in the context of economic issues is fraught with often insurmountable obstacles. The Special Rapporteur has chosen to focus on free market fundamentalism, however, because of its relative dominance today.

collapsed, which was seen by many as proof that liberal economies were more successful and sustainable. This has led to an era of limited questioning about the positive and negative impacts of the free market approach, a situation which has helped enable market fundamentalism.

30. The Special Rapporteur does not report on the accuracy of these theories or of competing ideas. Rather, he is concerned about situations where adherents to free market principles become so dogmatic that they infringe upon the assembly and association rights of those who hold competing views.

31. Free markets have undoubtedly contributed to producing great amounts of monetary wealth and impressive technological advancements. Yet the pursuit of this wealth in some cases has also contributed to environmental destruction, growing income inequality and the erosion of protections for workers. It is important that people on both sides of this argument be given equal freedom and facilitation to air their views in a peaceful manner. As the Special Rapporteur has repeatedly emphasized, States should also not favour businesses over civil society reflexively, but instead should adopt a policy of “sectoral equity” — a fair, transparent and impartial approach in which the regulation of each sector is grounded in international law, standards and norms (see A/70/266).

32. Despite this, the Special Rapporteur has observed many instances where State laws and practices favour — whether through action or inaction — the free market fundamentalist approach.

33. Some countries, for example, have linked natural resource exploitation with national security interests, limiting the assembly and association rights around such activities in the process. While governments may have a legitimate interest in protecting areas dedicated to natural resource exploitation, they must be extremely cautious to ensure that restrictions in these areas are necessary and proportionate in a democratic society in order to be justifiable under international human rights law. Peaceful opposition to natural resource exploitation projects — whether in the form of protests or community groups — may be economically “inefficient” and difficult for States and businesses to balance against profit motives. But States have a duty under international law to allow and promote space for such opposition. In addition, national, political, economic or government interest is not synonymous with national security or public order (see A/HRC/31/66, para. 31).

34. The Anti-Terrorism Act of 2015, of Canada, has been criticized for expanding the definition of national security to include “the economic or financial stability of Canada”.¹³ Under this definition, a peaceful protest by environmentalists blockading a logging road could potentially be labelled a threat to national security. While economic activity is important, it is not one of the grounds enumerated in the International Covenant on Civil and Political Rights for permissible restriction of peaceful assembly and association rights. States tread a dangerous path when they prioritize the freedom of the market over the freedom of human beings. The economic rights of investors should never trump fundamental human rights in the Covenant.

35. Similarly, the Australian State of Tasmania has enacted the Workplaces (Protection from Protestors) Act 2014, which makes it a criminal offence to participate in a protest that may obstruct or prevent a business activity or access to business premises (see also A/HRC/28/85, case AUS 3/2014). At the time of writing, the State of Western Australia

¹³ See <https://bccla.org/2015/03/8-things-you-need-to-know-about-bill-c-51/>. See also A/HRC/30/27, case CAN 1/2015.

was considering similar legislation. The Special Rapporteur has urged the State Parliament to vote against the law.¹⁴

36. Free market fundamentalism in the United States of America has led to a systematic rollback of the right to freedom of association for workers in several jurisdictions, particularly in the 26 States that have enacted so-called “right to work” legislation. The laws forbid unions from negotiating contracts that require all workers represented by a union to pay dues. Proponents of the laws frame their purpose in free market terms, saying that employees should “decide for themselves whether or not to join or financially support a union”.¹⁵ But at the same time, United States law requires unions to represent all employees in a bargaining unit. Thus, the effect of the “right to work” laws is to give non-dues-paying workers a free ride: they reap the benefits that the union has negotiated without having to pay the costs. This can weaken unions over the long run, and the Special Rapporteur views these laws as legislative obstacles intentionally designed to discourage people from exercising their right to freedom of association in the workplace.

37. The free market fundamentalist ideology opposes the very existence of trade unions in general, with one author arguing that they are viewed as “monopolist agents manipulating the price of labour to the advantage of some (a minority) and to the disadvantage of others (the majority, including non-unionized workers and consumers)”.¹⁶ The Special Rapporteur views anti-unionism as an inherently troubling aspect of free market fundamentalism, as the right to organize in the workplace is protected by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and through various conventions of the International Labour Organization.

38. The free market fundamentalist approach has, over time, influenced government policy and practice in a way that has harmed workers’ association rights. In the United States, for example, State officials in Tennessee reportedly offered nearly \$300 million in incentives to Volkswagen if it added a new production line to a factory in Chattanooga, but made the investment contingent on the plant remaining non-unionized.¹⁷ The governor and other State officials made public statements against unionization efforts¹⁸ and workers ultimately voted against organizing. This is contrary to the principle that human rights cannot be renounced. On the international stage, a coalition of employers’ associations embarked upon a multi-year campaign within the International Labour Organization — and publicly¹⁹ — aimed at striking down jurisprudence upholding the right to strike.²⁰

39. Free market fundamentalist views also lie at the heart of most international trade treaties, such as the Trans-Pacific Partnership, which was signed by 12 Pacific Rim States in February 2016. Certain provisions of the treaty which is not yet in force, show a clear bias towards favouring the economic interests of businesses over the assembly and association rights of non-investors. The Trans-Pacific Partnership’s investor-State dispute settlement mechanism, for example, gives corporations the right to challenge State laws and policies that harm their investments.²¹ These challenges would take place before a panel of

¹⁴ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17047&LangID=E.

¹⁵ See www.nrtw.org/rtws.htm.

¹⁶ Steve Hughes and Nigel Haworth, *The International Labour Organization (ILO): Coming in from the Cold* (Routledge, 2010).

¹⁷ See <http://uaw.org/uaw-withdraws-volkswagen-election-objections/>.

¹⁸ See <http://thinkprogress.org/economy/2014/02/24/3321591/uaw-nlrb-interference/>.

¹⁹ See www.phnompenhpost.com/national/groups-tell-ilo-retract-%E2%80%99right-strike%E2%80%99-claim.

²⁰ See www.ituc-csi.org/IMG/html/newsletter_ilo.html.

²¹ See <https://ustr.gov/sites/default/files/TPP-Final-Text-Dispute-Settlement.pdf>.

arbitrators, outside the country's ordinary court system,²² and could be used to attack laws protecting workers' rights, the environment, and the rights to peacefully assemble or associate. The Trans-Pacific Partnership has no equivalent mechanism for individuals or civil society organizations to directly challenge corporations or States for human rights abuses.²³

40. The Special Rapporteur is dismayed at the lack of genuine civil society participation surrounding trade agreements and economic issues in general. He and others²⁴ have noted previously that the right to freedom of association should be viewed as "an essential adjunct" to the related fundamental right to participate in public affairs.²⁵ Thus it is not enough for States to simply allow associations to exist; they must seek to actively engage with civil society and to create conditions in which the sector can flourish and play a significant role in public life. The Special Rapporteur views the right to freedom of peaceful assembly as playing a similar role as a vehicle for enjoyment of the right to participate in public affairs.

41. Taking a more inclusive approach to civil society engagement is not just about States abiding by their international human rights obligations. It also brings practical benefits to society by providing an outlet for people to constructively and peacefully contribute on issues that affect their lives.

E. Political fundamentalism

42. The term "political fundamentalism" is used here to refer to the elevation of a particular political ideology or party or State leader above others, to the extent that those holding competing ideas are limited in their ability to express competing views. He sees this phenomenon as most common in formal or de facto one-party States, where the dominance of one political grouping is enshrined in law or in practice. These groupings may be based on a political philosophy, or rooted in alliances of individuals who collaborate to co-opt the State apparatus for their own personal benefit. Other manifestations include absolute monarchies, autocracies or similar structures, where power is formally concentrated in the hands of one individual or a small group.

43. The Special Rapporteur considers such political systems to be a type of fundamentalism because they require dogmatic adherence to official party platforms or allegiance to a particular leader. The expression of peaceful dissent or competing ideas in such systems can be severely punished, with obedience being demanded to the dominant political dogma. The exercise of the rights to freedom of peaceful assembly and of association, which typically function as democratic vehicles to express peaceful dissent and constructive criticism of the government, is often severely limited. Regrettably, the membership of the United Nations includes a long list of States plagued by varying degrees of political fundamentalism. The Special Rapporteur does not seek to provide a comprehensive list of those States, but rather gives examples that highlight how this type of fundamentalism affects assembly and association rights.

44. One of the world's most extreme examples of political fundamentalism can be found in the Democratic People's Republic of Korea. The Workers' Party of Korea, founded by

²² See <http://aftinet.org.au/cms/isds-sue-governments-tpp-2013>.

²³ For more on the Trans-Pacific Partnership, see www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17005&LangID=E.

²⁴ See the Human Rights Committee's general comment No. 25 (1996), para. 26; and A/HRC/20/27, para. 73.

²⁵ International Covenant on Civil and Political Rights, art. 25.

Kim Il-sung and presided over since by his direct descendants, has ruled for nearly 70 years. Opposition political parties are not permitted to exist and challenges to the ruling party are not tolerated. According to the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, "the police and security forces of the Democratic People's Republic of Korea systematically employ violence and punishments that amount to gross human rights violations in order to create a climate of fear that pre-empts any challenge to the current system of government and to the ideology underpinning it. The institutions and officials involved are not held accountable. Impunity reigns" (see A/HRC/25/63, para. 56). It is estimated that between 80,000 and 120,000 political prisoners are currently detained (*ibid.*, para. 61). The Human Rights Council has expressed its "grave concern at the detailed findings made by the commission of inquiry in its report, including the denial of the right to freedom of thought, conscience and religion, and of the rights to freedom of opinion, expression and association".²⁶

45. The Constitution of the Republic of Cuba states that the Communist Party is the superior leading force of the society and the State, organizing and guiding common efforts, effectively eliminating the ability of those with competing ideologies to engage seriously in public life. The rights to freedom of peaceful assembly and of association are guaranteed by the Constitution, but in practice these rights cannot be used to peacefully criticize the ruling party or its policies. For instance, in 2012 a group of protestors were reportedly arrested and physically assaulted by the police when they were peacefully demonstrating in Havana against hunger and poverty in the country (see A/HRC/20/30, case CUB 5/2011). Technically, the existence of other political parties was legalized in 1992, but none of these groups performs the function of a true opposition party due to the constitutional dominance of the Communist Party and restrictions on campaigning and the conduct of political activities.

46. The enforcement of one-party political structures in Eritrea (see A/HRC/29/42, para. 34), Viet Nam (see A/HRC/27/72, cases VNM4/2014 and VNM 5/2014) and the Lao People's Democratic Republic (see A/HRC/26/21, case LAO 2/2013) also pose grave challenges to the enjoyment of assembly and association rights.

47. Similar repression of the rights to freedom of peaceful assembly and of association has taken place in autocracies where all political power is concentrated in the hands of a single person or family and is often passed on hereditarily. Saudi Arabia, for example, bans political parties,²⁷ criminalizes acts such as "breaking allegiance to the ruler" and "attempting to discredit the Kingdom of Saudi Arabia", and has frequently detained, imprisoned and otherwise harassed activists and organizations critical of the Government (see A/HRC/29/50, case SAU 14/2014; A/HRC/28/85, case SAU 11/2014; and A/HRC/27/72, case SAU 5/2014).

48. The Special Rapporteur has previously noted that in Oman, an absolute monarchy, the right to freedom to form associations is "virtually non-existent", with the law requiring government consent, cooperation and control in order for a lawful association to be established (see A/HRC/29/25/Add.1, para 37). Political parties are banned, participants in peaceful assemblies and/or unregistered associations (see A/HRC/29/50, cases OMN 5/2014 and OMN 1/2015) are regularly targeted for harassment by the State, and at least one advocate for democratic reforms — Said Jadad — was imprisoned after he met with the Special Rapporteur during the latter's official visit to the country in 2014.²⁸

²⁶ See Council resolution 31/18, para. 1.

²⁷ See <https://freedomhouse.org/report/freedom-world/2015/saudi-arabia>.

²⁸ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15525&LangID=E.

49. Bahrain, formally organized as a constitutional monarchy, has embarked on an extensive crackdown on dissent since a large protest movement began calling for greater political freedom, among other things, in 2011. The Special Rapporteur remains particularly concerned about the imprisonment of opposition leader Sheikh Ali Salman²⁹ and the harassment and detention of human rights defenders involved in organizations defending human rights, including Nabeel Rajab (see A/HRC/28/85, case BHR 13/2014), Abdulhadi Al-Khawaja (see A/HRC/19/44, case BHR 18/2011), Zainab Al-Khawaja,³⁰ Abduljalil Al-Singace (see A/HRC/18/51, case BHR 4/2011) and others (see A/HRC/28/85, cases BHR 10/2014 and BHR 12/2014).

50. The Constitution of the People's Republic of China formally establishes a multiparty State, but stipulates that the system must be "led by the Communist Party of China".³¹ Dissent against party orthodoxy is nonetheless severely punished, as illustrated starkly by the crackdown on the peaceful pro-democracy protests in February 2011 in several parts of the country — protests inspired by the Tunisian "Jasmine Revolution". Demonstrators had been calling on the authorities to end the one-party regime; many were arrested and charged with "inciting subversion of State power" (see A/HRC/18/51, case CHN 5/2011).

51. The Special Rapporteur also takes note of multiparty States in which governments impose excessive restrictions, in law and in practice, over the assembly and association rights of those not aligned with the ruling party, who oppose those parties' policies or who advocate for social changes. Many of these States have been governed by the same party or individual for decades, including Cambodia (see A/HRC/26/21, cases KHM 2/2014 and KHM 1/2014), Kazakhstan (see A/HRC/29/25/Add.2), Rwanda (see A/HRC/26/29/Add.2) and Zimbabwe (see A/HRC/25/74, case ZWE 3/2013; and A/HRC/26/21, case ZWE 1/2014). Even in more robust multiparty democracies, dominant parties may sometimes leverage their law-making or executive authority to restrict the assembly and association rights of those who oppose their policies. The Special Rapporteur has observed examples of this in Canada (see A/70/266, para. 59), Malaysia (see A/HRC/29/50, cases MYS 1/2015 and MYS 8/2014) and the United Kingdom.³²

52. The Special Rapporteur emphasizes that the right to freedom of association includes the right to form political parties vying for power and other associations with goals that may be perceived as "political". Likewise, the right to freedom of peaceful assembly includes the right to engage in political demonstrations. Indeed, one of the core purposes of these rights is to preserve people's ability to peacefully express their grievances with political leaders. He abhors the increasingly common trend of conflating the interests of the State with the interests of the ruling political party, and believes that this approach to governance is incompatible with the principles of democracy, international human rights law and the spirit of the United Nations.

F. Religious fundamentalism

53. There is no shortage of attention given to religious fundamentalism today, particularly the issue of religiously motivated terrorism. The Special Rapporteur is greatly alarmed by the rise of extremism and terrorism by groups that mobilize religious ideologies, such as Islamic State in Iraq and the Levant, Boko Haram and others, and views this as among the most troubling problems facing the world today.

²⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15541&LangID=E.

³⁰ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15460&LangID=E.

³¹ See www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm.

³² See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19854&LangID=E.

54. As an initial matter, however, the Special Rapporteur emphasizes that no single religious group has a monopoly on fundamentalism. In 2015, a Christian fundamentalist in Colorado, United States of America, attacked a family planning clinic run by the not-for-profit association Planned Parenthood; three people were killed.³³ In recent years, Hindu fundamentalists in India have been responsible for a wave of violence against Muslims and Christians, some of which was motivated by the fact that the latter eat beef³⁴ (cows are considered sacred in Hinduism). Meanwhile, in Israel and the State of Palestine, Jewish fundamentalists have carried out repeated attacks against Muslims, frequently targeting mosques.³⁵

55. These examples of violence are deeply troubling illustrations of how religious fundamentalism of all types can harm the rights to freedom of peaceful assembly and of association. But the Special Rapporteur takes a much broader view of religious fundamentalism, and considers it to encompass more than violent, extremist actions or terrorism. Violations connected to terrorism or other extremist acts are relatively rare when compared to less dramatic, everyday abuses. Moreover, the causes and effects of terrorism have been extensively covered in other contexts; as such, they are not the Special Rapporteur's focus in this section.

56. The Special Rapporteur is gravely concerned about States that place excessive restrictions on people's ability to practise the religion of their choice, or that pressure people to abstain from practising a religion altogether. Such restrictions clearly impact on enjoyment of article 18 of the International Covenant on Civil and Political Rights, which protects the right to freedom of thought, conscience and religion. But restrictions on the ability to form religious associations and/or to join religious gatherings also directly implicate the rights to freedom of peaceful assembly and of association. In the Special Rapporteur's view, States cannot claim to uphold assembly and association rights when they criminalize freedom of religious (or irreligious) expression and thought. The right to believe and express thoughts freely is a precondition for the exercise of the rights to freedom of peaceful assembly and of association; the latter rights simply allow like-minded people to express themselves collectively.

57. Saudi Arabia places severe restrictions on the practice of religions other than the Wahhabi variant of Sunni Islam. According to one civil society report, "public non-Muslim places of worship are not allowed, and the right of non-Muslims to practise their religion in private is not fully protected".³⁶ Blasphemy (deviation from the State's form of Islam) and apostasy (renunciation of Islam) are criminalized, with the latter carrying the death penalty; these crimes and others have been used against activists who criticize State policy (see A/HRC/32/53, case SAU 11/2015). It is also considered a criminal act of terrorism for an individual or association to call for atheist thought in any form, or to call into question the fundamentals of the Islamic religion.³⁷ It is worth noting in this context that a 2012 Gallup poll found that 5 per cent of the population of Saudi Arabia identifies as atheist, while another 19 per cent identifies as "not religious".³⁸

³³ See <http://thinkprogress.org/justice/2015/12/01/3727084/yes-the-planned-parenthood-shooter-was-a-christian-terrorist/>.

³⁴ See www.dalitcry.org/dalits/Hindu-American-Perspective-On-Beef.htm#.V0hN22YmXgf.

³⁵ See A/HRC/25/74, case ISR 7/2013; see also www.adl.org/israel-international/israel-middle-east/content/backgroundersarticles/price-tag-attacks.html.

³⁶ International Humanist and Ethical Union, "The freedom of thought report 2015", pp. 367-372. Available from <http://freethoughtreport.com/download-the-report/>.

³⁷ See <https://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights>.

³⁸ See www.winmr.com/web/files/news/14/file/14.pdf.

58. The Constitution of the Islamic Republic of Iran recognizes only four religious categories: Muslims, Zoroastrians, Jews and Christians. Those of other faiths are effectively denied the rights to freedom of peaceful assembly and of association in a religious context. Discrimination against those of the Baha'i faith is particularly significant, and members of the community are regularly prohibited from engaging in peaceful assembly.³⁹ The Special Rapporteur has received reports of harassment against officially recognized Christian denominations as well (see A/HRC/25/74, case IRN 8/2013).

59. The list of countries with similar discrimination against minority religions and atheists is too long to recount here. According to a 2015 civil society report,⁴⁰ atheism is effectively illegal in 19 countries, and is punishable by death in 13 of those. "Blasphemy" and similar criticisms against religion are a criminal offence in 55 countries. The Special Rapporteur has grave concerns about the implications of such laws on the rights to freedom of peaceful assembly and of association.

60. A relatively large number of Member States declare an official State religion, though this in itself does not necessarily lead to fundamentalism or to undue restrictions on assembly and association rights. In countries where there is an official State religion, the Special Rapporteur believes that strong legal protections for minority faiths are critical, and that no special privileges should be granted to followers of the State religion. Unfortunately, this is not always the case.

61. In Malaysia, Islam is the official religion, and the Constitution protects the right of non-Muslims to "profess and practice" his or her religion. However, the Special Rapporteur has received complaints that organizations that promote more liberal interpretations of Islam have been harassed by the Government, notably by the Wilayah Persekutuan Religious Council (a religious policing institute administered within the Prime Minister's department).⁴¹

62. Religious fundamentalism often has a disproportionate impact upon the assembly and association rights of women. In Latin America, for instance, associations fighting for reproductive rights have faced strong resistance from the Catholic Church and evangelical Christians, who strictly oppose abortion and family planning.⁴² The Special Rapporteur in the field of cultural rights has extensively documented the negative impact that Islamic fundamentalism can have on women's enjoyment of assembly and association rights in a number of countries.⁴³

63. The Special Rapporteur on the rights to freedom of peaceful assembly and of association is also concerned when ostensibly secular States leverage fundamentalist religious teachings to restrict the assembly and association rights of certain groups. Nigeria (see A/HRC/26/21, case NGA 1/2014) and Uganda (see A/HRC/26/21, case UGA 1/2014), for example, have seized upon majority Christian opposition to homosexuality to impose draconian laws that severely restrict the assembly and association rights of lesbian, gay, bisexual, transgender and intersex individuals and groups (see, for example, A/HRC/25/74, case NGA 4/2013; and A/HRC/22/67, case UGA 5/2012).

³⁹ International Humanist and Ethical Union, "The freedom of thought report 2015", p. 304.

⁴⁰ International Humanist and Ethical Union, "The freedom of thought report 2015".

⁴¹ See, for example, the submissions to the Special Rapporteur from Komuniti Muslim Universal (Malaysia) and Muslims for Progressive Values (United States of America).

⁴² See www.reproductiverights.org/sites/crr.civicactions.net/files/documents/IAD9794%20Repro%20Rights_web.pdf.

⁴³ Karima Bennoune, *Your Fatwa Does Not Apply Here* (W.W. Norton & Company, 2013).

64. Religious fundamentalism by non-State actors — and the State’s active or tacit encouragement of this — frequently results in violations of the rights to freedom of peaceful assembly and of association. Some prominent Buddhist monks⁴⁴ in Myanmar, a Buddhist-majority country, have stirred vicious anger and violence against the Rohingya people, a Muslim minority group that is not recognized by the Government as a distinct ethnic group. The Government has reportedly done little in response, leading to repeated outbreaks of violence targeting Rohingya. Moreover, following riots between Rohingya and Buddhists in Rakhine State, the Government imposed Emergency Act 144 in June 2012, which prevented groups of five or more people from gathering in public areas. The ban was reportedly only enforced against Rohingya. The Special Rapporteur welcomes reports that the state of emergency was lifted in March 2016, but stresses that such blanket bans, especially when enforced against a specific group only, violate the right to freedom of peaceful assembly.

65. The Special Rapporteur emphasizes that States have a responsibility to protect the peaceful assembly and association rights of all people, even if they hold unpopular views or practise a minority faith. This responsibility includes the duty to protect individuals and groups from attacks by non-State actors, and to ensure accountability when such attacks occur.

66. Finally, the Special Rapporteur notes that anti-religious fundamentalism can be as harmful to assembly and association rights as religious fundamentalism. In Viet Nam, freedom of religion is nominally protected by the Constitution, but the Special Rapporteur has received reports that the State harasses unofficial groups that do not submit to regulations imposing intrusive government control over their operations (see A/HRC/27/72, case VNM 7/2014). The Special Rapporteur on freedom of religion or belief noted, after his 2014 visit to the country, the “tight control” over official religious communities, and “constant surveillance, intimidation, harassment and persecution” of unrecognized communities (see A/HRC/28/66/Add.2). In the Russian Federation, the authorities closed down the local religious organizations of the Jehovah’s Witnesses on the ground that it was an “extremist organization” (see A/HRC/31/79, case RUS 6/2015).

67. The Special Rapporteur believes that anti-religious fundamentalism is often the result of authoritarian tendencies, that is, a manifestation of a government’s fear that people will look to alternative sources of authority other than the State. He notes that governments that ally themselves with dominant religions may do so for similar reasons: such pairings allow leaders to leverage the authority of the faith for their own political interest, even if in private they are not religious. In this sense, fundamentalism is often merely a smokescreen; in reality, it is a vehicle for power.

G. Cultural and nationalist fundamentalisms

68. Cultural fundamentalism has been described as the belief that certain cultures, languages or traditions are “better” than others.⁴⁵ Cultural and national identities are often conflated into notions of cultural and nationalist fundamentalism, for example in the context of immigration. As such, this section covers cultural and nationalist fundamentalisms as largely overlapping concepts.

⁴⁴ See www.burmapartnership.org/2014/07/burma-must-find-a-path-to-a-more-tolerant-society/.

⁴⁵ United Nations Educational, Scientific and Cultural Organization and National Institute for Educational Policy Research of Japan, “An international symposium commemorating the 50th anniversary of Japan’s participation in UNESCO: Message to the children of the twenty-first century”, p.64. Available from <http://unesdoc.unesco.org/images/0012/001260/126048e.pdf>.

69. Cultural and nationalist fundamentalisms are sometimes distinguished from racism and xenophobia conceptually (because the characteristic in focus is culture or nationality rather than race or skin colour) and rhetorically (to avoid violating international human rights law). The elevation of a particular (national) culture as superior may not in of itself constitute discrimination in the same way that differentiation on the basis of race does. Nevertheless, the Special Rapporteur stresses the dangers that cultural and nationalist fundamentalisms pose to the enjoyment of the rights to freedom of peaceful assembly and of association.

70. Anti-immigration sentiments, often based on cultural and nationalist ideologies, have strengthened the popularity of many right-wing political parties, especially in Europe. Nationalist parties in countries such as Austria, Denmark, Hungary and Switzerland, among others, have attracted significant support in recent elections.⁴⁶ The Special Rapporteur is extremely concerned that the acceptance and adoption by political actors of attitudes of cultural or national superiority has triggered a process of gradually legitimizing racism and xenophobia. This can have devastating consequences, as history has proved time and again. He stresses that States are obliged to take measures to guard against such an eventuality.

71. Political support for cultural or nationalist fundamentalism is not always overt. The discrimination against the Rohingya in Myanmar, described above, although apparently based on religious differences, also carries political nationalist overtones which have led to, among other things, denial of citizenship for many Rohingya in Rakhine State. The Special Rapporteur on the situation of human rights in Myanmar has observed with concern calls made by religious leaders and politicians to incitement and hatred against minorities. This includes the involvement of nationalist groups in inciting discrimination against and exclusion of the Rohingya, a video on the Internet of a party leader calling for the killing of the Rohingya, the lack of government condemnation of these discriminatory statements, and the imprisonment of an individual for speech discouraging the use of Buddhism as a tool for nationalist extremism (see A/70/412, paras. 30 and 31).

72. Cultural fundamentalist and nationalist groups may express these ideologies through protests and rallies. One example is the group Patriotic Europeans against the Islamization of the West (Pegida), in Germany, which believes that State immigration policies are enabling erosion of the culture of Germany. Rallies by such nationalist groups often attract counter-demonstrators who assemble in support of tolerance and diversity, and the management of such assemblies and counter-assemblies is of concern. Opposing assemblies are likely to provoke tensions that increase the potential for violence and therefore also increase the need for even-handed management and facilitation by law enforcement officials. In relation to assemblies in the United Kingdom by the English Defence League, which opposes perceived Islamism, the police have been criticized for employing tactics that dissuaded would-be counter-demonstrators from participating in assemblies. This has led to a perception of bias against the Muslim community, because members of the English Defence League were not subject to similar restrictions.⁴⁷ The Special Rapporteur stresses that State handling of demonstrations and counter-demonstrations in these contexts should ensure that each group can exercise its rights without undue interference by the authorities or by opposing rally participants (see A/HRC/31/66, para. 24).

73. Whereas cultural and nationalist fundamentalisms in some countries manifest themselves through the exclusion of individuals who do not conform to the “national

⁴⁶ See www.bbc.com/news/world-europe-36150807.

⁴⁷ Netpol, “Report on the policing of the English Defence League and counter protests in Leicester on 4th February 2012”. Available from <https://netpol.org/wp-content/uploads/2012/12/Report-on-the-Policing-of-the-EDL-and-Counter-Protests-in-Leicester2012.pdf>.

culture”, other countries seek to assimilate by imposing the dominant or national culture on minority ethnic groups.

74. The Special Rapporteur is concerned about reports of restrictions on the free exercise of religion as a part of cultural life and on the use and teaching of minority languages, history and culture, and about the mandatory use of Chinese in the Tibet and Xinjiang Uighur Autonomous Regions. Furthermore, peaceful demonstrations in the Tibet Autonomous Region against these measures are met with excessive force and arbitrary arrests of demonstrators. Gatherings of individuals, including for religious activities, are frequently impeded by the authorities.⁴⁸

75. In relation to Indonesia, the Special Rapporteur has received reports that the authorities’ enforcement of the nationalist “unitary State” ideology extends to the repression of demonstrations by ethnic West Papuans.⁴⁹ He stresses that the State has the responsibility to protect and facilitate protests that advocate political and cultural views that differ from, and even oppose, those espoused by the Government.

76. Caste-based systems found in some countries in South Asia, the Middle East, Africa and the Asia-Pacific region are considered to be discrimination on the basis of descent,⁵⁰ but are also illustrative of cultural fundamentalism that violates the rights of those considered to be of inferior status. Caste-based systems are hereditary in nature, and they determine labour and occupation status, which is confined to menial and so-called “polluting” jobs. Caste systems also include untouchability practices based on the belief that contact with individuals from lower castes is “polluting”, and discourage or prohibit intercaste interactions such as marriages, eating together and sharing goods and services (see A/HRC/31/56, para. 28).

77. In India, discrimination against individuals of lower caste — Dalits — manifests itself in various ways, including a lack of access to justice, threats to life, and gender-based violence against women and girls. Protests by Dalits are often met with violence and excessive use of force by high-caste individuals and law enforcement officials. Also, Dalit activists are detained and prosecuted on serious charges such as terrorism.⁵¹ At the multilateral level, India has placed impediments to accreditation by the Committee on Non-Governmental Organizations (a standing committee of the Economic and Social Council) of the International Dalit Solidarity Network, an international non-governmental organization that focuses on caste-based discrimination and other forms of discrimination based on work and descent (see A/69/365, para. 74).

78. In Mauritania, the Haratine community is considered the “slave caste” and a large proportion are victims of slavery and slavery-like practices (see A/HRC/31/56, para. 39). Anti-slavery activists and organizations reportedly face repression for their activities from the Government, including harassment, intimidation and arbitrary arrests.⁵² Members of the Initiative for the Resurgence of the Abolitionist Movement and of the non-governmental organization (NGO) Éducation et Travail pour le Progrès des Droits de l’Homme (KAWTAL) were arrested in November 2014 while participating in a campaign against slavery that included rallies, public meetings and lectures. Several activists were

⁴⁸ See A/HRC/22/67, case CHN 8/2012; and A/HRC/22/47/Add.4, paras. 90-95.

⁴⁹ Submissions by the International Coalition for Papua, Tapol and Franciscans International.

⁵⁰ Caste systems are found in various countries, including India, Japan, Madagascar, Mauritania, Nepal, Senegal, Sri Lanka and Yemen (see A/HRC/31/56, paras. 31-45).

⁵¹ Human Rights Watch and Center for Human Rights and Global Justice, “Hidden apartheid”, pp. 78 and 79. Available from https://www.hrw.org/sites/default/files/reports/india0207webwcover_0.pdf.

⁵² Submission by Freedom Now.

imprisoned in 2015 following conviction on charges that included taking part in an unauthorized assembly, rebellion and resisting arrest (see A/HRC/29/25/Add.3, p. 97).

79. As with the other expressions of fundamentalism described above, the Special Rapporteur considers that individuals, groups or authorities that employ or acquiesce to the use of cultural and national superiority arguments often seek to exercise power over minority populations. He therefore urges promotion and protection of diversity and tolerance, as a means to ensure effective exercise of the rights to freedom of peaceful assembly and of association, to strengthen social cohesion and democratic governance and to prevent conflict.

IV. The role of assembly and association rights in the context of rising extremism and radicalization

80. As detailed above, the Special Rapporteur interprets fundamentalism as a broad phenomenon that can just as often express a majority view as a minority one. He frames extremism as something altogether different: the advocacy of extreme or radical measures, such as violent overthrow of a government, violence and terrorism. Extremists frequently hold fundamentalist views and act in the name of those views, but the two phenomena are not always linked. The Special Rapporteur is deeply concerned about the growth of extremism in the world today and believes that it is a major contributing factor in the ongoing global crackdown on democratic freedoms, including the rights to freedom of peaceful assembly and of association.⁵³

81. People have an instinctive need to take part in the societies in which they live — to have some control over their destinies, to voice their discontents and to improve their lives. This need has only been magnified in our age of abundant information, where people are even more acutely aware of the injustices that plague our world. People today are more connected, more informed of their rights, and probably more emboldened to seize those rights than at any other time in history. They have a vision for the world that they live in and they want to take part in it. The Special Rapporteur believes that this desire to engage and improve is fundamentally positive, and is one of the important driving factors in human progress. But in order for this desire to be productive and peaceful, people must be given the right tools.

82. The rights to freedom of peaceful assembly and of association are precisely those tools. They allow people to come together to share their experiences, to challenge the status quo, and to identify and solve problems. They allow us to build stable, peaceful, inclusive and prosperous societies sustainably. Assembly and association rights are also platforms for the exercise and promotion of other civil, cultural, economic, political and social rights (see A/HRC/23/39). Shutting down a humanitarian NGO, for example, is not only an affront to those who operate the NGO; it also hurts those who benefit from the NGO's work.

83. Unfortunately, the tools of peaceful assembly and association are being taken away at an unprecedented rate across the world today. Data from one civil society organization indicate that between 2004 and 2010, more than 50 countries either considered or adopted measures for restricting civil society.⁵⁴ Another study found that 96 countries had recently

⁵³ The Secretary-General's recent report on countering violent extremism concurs, citing poor governance and violations of human rights and of the rule of law as drivers of extremism. See A/70/674, paras. 24-31.

⁵⁴ See www.icnl.org/research/journal/vol17ss1/Rutzen.pdf.

taken steps to inhibit NGOs from operating at full capacity.⁵⁵ States across the globe, meanwhile, are using the fight against extremism as an excuse to restrict fundamental human rights, when they should be expanding them.

84. The Special Rapporteur himself has extensively documented the trend, looking at the growing restrictions on civil society's ability to access resources (see A/HRC/23/39), restrictions on assembly and association rights in the context of elections (see A/68/299), States' propensity to favour businesses over non-profit organizations (see A/70/266) and restrictions on people's ability to engage in regard to natural resource exploitation (see A/HRC/29/25). The effect of this growing wave of restrictions is that people now have less space to peacefully engage in regard to decisions that profoundly affect their lives.

85. Denying people space for peaceful, legal and constructive engagement does not make their feelings of anger, despair and dissatisfaction go away. To the contrary, it simply pushes these feelings underground, where they can fester and turn violent. Extremism thrives in such environments, because it is the only option left.

86. This is what happened in the Syrian Arab Republic, Libya and elsewhere. Opposition and dissent were long repressed, impeding the growth and maturity of peaceful, constructive civil society organizations. Instead, when the governments of those countries were destabilized, extremist groups — including from outside the country — were the best prepared to step in and fill the power vacuum. These scenarios are the product of a system that gave no space for peaceful civic engagement. In Tunisia, by contrast, civil society was more developed than in most other places in the Arab world. It has been indispensable to the relative, albeit uneasy, stability, and won a Nobel Peace Prize for its contributions.⁵⁶

87. States that claim to be fighting terrorism yet at the same time restrict civil society are playing with fire. The existence of a robust civil society and respect for human rights in general are critical in combatting extremism, and in channelling dissent and frustrations in a legitimate way through the system. In a democratic environment, civil society gives States a legitimate and open partner to work with and expresses people's views in an public and transparent way. The exercise of peaceful assembly and association rights encourages freer discussion between ordinary people, which can build relationships, increase social cohesion and encourage tolerance. All of this helps to foster moderation and counter extremist tendencies and will yield more sustainable results than short-term suppression.

88. The Special Rapporteur agrees with the United Nations High Commissioner for Human Rights that Member States must move away from a "hard security" approach, focusing instead on human rights and on "promoting resilience" in communities, so that people "feel they have space to freely express themselves and fully participate in political life and public affairs".⁵⁷

89. The Special Rapporteur is disturbed by the apparent consensus among some States that assembly and association rights are dangerous, cause chaos or even foster extremism and terrorism.⁵⁸ He categorically rejects this view and stresses that limiting these rights will not contain the spread of extremism. It is the suppression of peaceful assembly and

⁵⁵ See www.civicus.org/index.php/en/media-centre-129/reports-and-publications/socs2015.

⁵⁶ See https://www.nobelprize.org/nobel_prizes/peace/laureates/2015/press.html.

⁵⁷ See www.ohchr.org/EN/NewsEvents/Pages/ViolentExtremism.aspx?platform=hootsuite.

⁵⁸ See A/HRC/29/50, case ETH 2/2015; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16966&LangID=E; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16709&LangID=E; and <https://www.cambodiadaily.com/news/government-releases-video-warning-excessive-rights-use-113193/>.

association rights that is dangerous, especially in the medium and long term. He urges Member States not to propagate the rhetoric of fear in the fight against extremism. The rights to freedom of peaceful assembly and of association do not inherently encourage extremism, chaos or violence. They are, in fact, the best antidotes we have against all of these ills.

V. Conclusion and recommendations

90. **Fundamentalism is one of the overriding preoccupations of our time, but the Special Rapporteur believes that our understanding of this phenomenon remains clouded. Fundamentalism is not simply about terrorism, extremism or even religion. It is, at bottom, a mindset based on intolerance of difference — whether religious, secular, political, cultural, economic or otherwise. Such mindsets do not, in and of themselves, constitute violations of the rights to freedom of peaceful assembly and of association, or of other rights. But they can form the ideological basis for such violations. In the worst cases, they can also motivate extremist actions.**

91. **The Special Rapporteur emphasizes that the rights to freedom of peaceful assembly and of association are due to everyone without distinction. This includes both those who hold fundamentalist views and those who hold differing views. The rights to freedom of peaceful assembly and of association play a key role in promoting tolerance, broadmindedness, diversity and pluralism. States must walk a fine line in balancing the rights of various groups and must ensure that one group is not favoured, either in policy or in practice. Such rights must therefore not only be protected but also facilitated.**

92. **In this regard, the Special Rapporteur reiterates recommendations made in previous reports to the extent that they are applicable to this context, and makes the following recommendations to States:**

- (a) **Ratify all relevant international human rights instruments that protect the rights to freedom of peaceful assembly and of association;**
- (b) **Take all measures necessary to ensure that discrimination on prohibited grounds under international human rights law is eliminated, including in legislation or in practice, whether perpetrated by the State or by non-State actors;**
- (c) **Take positive measures to ensure that all individuals belonging to groups at risk of being targeted by fundamentalists have the ability to exercise their rights effectively, including the rights to freedom of peaceful assembly and of association;**
- (d) **Ensure that no individual is criminalized for exercising his or her rights to freedom of peaceful assembly and of association, nor is subjected to threats or use of violence, harassment, persecution, intimidation or reprisals;**
- (e) **Ensure that administrative and law enforcement officials are adequately trained to respect and protect the rights of individuals who may be at risk of being targeted by fundamentalist groups while exercising their rights to freedom of peaceful assembly and of association, in particular in relation to their specific protection needs;**
- (f) **Ensure that law enforcement authorities who violate the rights of individuals belonging to groups at risk of being targeted by fundamentalist groups are held personally and fully accountable by an independent and democratic oversight body and by the courts of law;**

(g) Establish or strengthen oversight mechanisms, for example through parliament or human rights institutions, to identify and deal with fundamentalist practices that restrict assembly and association rights;

(h) Use ordinary provisions of the Criminal Code to prosecute extremist or terrorist acts and refrain from enacting legislation that specifically targets religious activities, religious organizations, civil society, human rights defenders and activists;

(i) Become less restrictive in regulating civil society and the rights to freedom of peaceful assembly and of association, and recall that democracy, tolerance and inclusiveness are among the most reliable indicators for long-term security, prosperity and moderation.

93. The Special Rapporteur again encourages the Human Rights Committee to consider adopting general comments on articles 21 and 22 of the International Covenant on Civil and Political Rights, with a particular focus on the challenges posed by fundamentalism and groups at risk of being targeted by fundamentalists.

94. The Special Rapporteur encourages States and civil society groups to create and expand initiatives to educate people, particularly youth, on the importance of pluralism, tolerance and diversity in democratic societies.

95. The Special Rapporteur recommends that civil society strengthen research, monitoring and documentation of violations of peaceful assembly and association rights in the context of fundamentalism.

96. Religious leaders in particular must make greater efforts to foster dialogue and tolerance between their followers, with other religious communities and with non-religious communities. They should unequivocally condemn the use of violence and make it clear that those who use or advocate violence are not legitimately acting in the name of their faith.

97. Finally, the Special Rapporteur recommends that States, civil society organizations, multilateral institutions and other donors increase funding for the promotion of democracy, particularly for local organizations and activists. The Special Rapporteur views the strengthening of democracy as the best long-term strategy for countering extremism, as people are less likely to act upon extreme or violent views when they feel that they have a stake in their society.
