



Statement by Maina Kiai

**SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM
OF PEACEFUL ASSEMBLY AND OF ASSOCIATION**

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Madam Chairperson,
Ladies and gentlemen,

I am pleased to present to you my final report as the Special Rapporteur on the rights to freedom of peaceful assembly and of association. It has been an honour to appear before this august body for the past four years and to draw much-needed attention to the challenges facing those who exercise the rights to freedom of peaceful assembly and of association around the world.

My mandate was created at a time when it was increasingly clear that individuals wanted and were demanding a larger say in public affairs and in decisions that affect them. The uprisings in different parts of the globe, most prominently the colour revolutions in the former Soviet Republics and the Arab awakening are testament to this. My time in the mandate also covered a period during which the world faced a series of severe crises: growing poverty and inequality, violent extremism, financial collapse, intolerance of “the other,” climate change, and failing states, just to name a few. It was – and still is – a time when assembly and association rights were needed most, as an avenue for people to peacefully speak out, contribute their talents, share their ideas and help society work towards solving its problems.

Unfortunately, many governments have reacted to these crises by taking destructive and counterproductive measures. Instead of allowing assembly and association rights to flourish, and instead of listening to what people have to say, they have responded by closing the space for civil society voices and actions. This has created an environment in many parts of the world where it is increasingly difficult for people to come together to address common concerns. The message from this trend is clear: Many of those in power often don’t want to hear what people have to say. They don’t want to upset the status quo, even if that status quo is catapulting us towards obliteration.

In line with my mandate, I have documented these trends and challenges, and offered recommendations on how these can be addressed. But after six years I feel that I have only scratched the surface. Each week, we learn of new and insidious ways in which assembly and association rights are restricted. Each month, we see more members of civil society imprisoned, harassed, threatened and killed. Each year, the list of countries enacting new restrictions on civic freedoms grows.

Unless there is renewed commitment from the world’s leaders, away from fear and control of their own people, and toward respecting the dignity of all, the situation will remain precarious for civil society globally. Too many States continue to place unjustifiable restrictions on what are not only inherent entitlements for individuals, but also vehicles to benefit society in general, including the very governments that seek to curtail the rights. Nevertheless, I must say that the energy and determination of civil society in the face of these challenges has been tremendously inspiring. I am convinced they will prevail. And I am convinced that once we truly open ourselves to inclusive and constructive dialogue – creating a system in which diverse voices are cherished and valued rather than smothered and squashed – we will also prevail over the grave problems that dog our world today.

Madam Chairperson,

I now turn to my report, which examines the exercise of the rights to freedom of peaceful assembly and of association in the context of labour. I am concerned that assembly and association rights in the workplace continue to be undermined for a large proportion of workers, mainly because of an economic world order that relentlessly pursues ever-increasing growth and profit at all costs. Without the checks and balances of robust protection for workers' rights, this system inevitably leads to worsened conditions of work, weaker social protections, increased and frustrating inequalities, and volatile labour relations, all in the name of more profits for executives and shareholders alone.

Economic globalisation, touted as the means to boost global prosperity and end poverty, has indeed produced increased productivity and wealth. But it has also dramatically increased inequality, characterised by declining wages for ordinary workers and enormous profits for powerful shareholders and executives. There has also been a dramatic rise in the power of large national and multinational corporations. The uneven power dynamics have meant that States are increasingly unwilling or unable to regulate these business entities and their attempts to place profits ahead of the rights and dignity of workers.

The changing nature of employment relationships has led to an exponential growth in the informal economy, outside the purview of legal regulation and social protection. The growth of global supply chains that span diverse countries and regions has not been accompanied by the creation of effective worker protection mechanisms or legal accountability for the violation of assembly and association rights in the workplace. To the contrary, labour's traditional tools for asserting rights – trade unions, strikes, collective bargaining and so on – have only weakened across the globe.

The disenfranchisement of workers has hit certain groups of workers particularly hard, including women, migrants, racial, ethnic, religious and sexual minorities, rural workers and others in vulnerable situations. For these categories of workers – who are also often disenfranchised from other means of participation – the rights to freedom of peaceful assembly and association are a critical means of facilitating collective voice and action that helps level the unequal relationship with their employers and correct abuses.

Although disenfranchisement of rights is the common affliction that ties these categories of workers together, each group faces unique and often multidimensional challenges, arising from the particular contexts they find themselves in.

For migrant workers, immigration status is a significant determinant of whether and how they exercise their assembly and association rights. Undocumented migrants, by virtue of their immigration status, are most vulnerable to economic exploitation, social exclusion and political disenfranchisement. They have little recourse to remedies or realistic opportunities to bargain collectively for improved wages and working conditions. For them, the exercise of the rights to freedom of peaceful assembly and of association is indispensable to alleviating their circumstances; but they are out of reach.

Documented migrants do not necessarily fare better, especially if their legal status is tied to a visa sponsored by their employer, as is typical in the Middle East's kafala system and the United States' H2 guest-worker programs. The near total control that a migrant's

sponsor exercises over the worker's ability to reside, work or even leave the country constitutes a significant deterrent to their free exercise of assembly and association rights. Workers who complain about working conditions or attempt to exercise their rights can be fired – even for legitimately exercising their rights – and then must leave the country or face deportation. Their attempts to gain recourse are usually futile, a consequence of authorities' focus on immigration enforcement rather than claims of maltreatment of migrant workers.

Women workers also face unique challenges. There are proportionately fewer women workers in the global labour force than men, yet they are over-represented in informal, unprotected, low-wage, low status work at the far reaches of the global supply chain. Women experience discrimination in access to employment opportunities, equal pay and career mobility due to legal, social and cultural impediments that stand in the way of their advancement in the workplace. For example, in 79 countries, legal restrictions exist on the type of employment women can access. Gender based violence poses a grave deterrent to the exercise of the rights to freedom of peaceful assembly and of association for women. Women workers in a diverse range of countries experience verbal, physical or sexual abuse, sexual harassment or rape at work.

Domestic workers are situated at the intersections of gender, race, migration and informality and thus experience challenges to the exercise of peaceful assembly and association rights from multiple perspectives. Although 30 countries have now extended labour protections to domestic workers, many countries do not recognise domestic labourers as 'workers' under the law. In Ontario, Canada, Ethiopia and Jordan, domestic workers are legally exempt from trade union representation. And because they often work within the private home environment, many countries including the United Kingdom and France exclude them from the jurisdiction of labour inspectorates.

Madam Chairperson,

A range of global and regional human rights instruments articulate principles and standards that protect assembly and association rights without discrimination for workers. States are tasked with the responsibility to ensure that workers can exercise their rights effectively by respecting, protecting and facilitating these rights. States are obliged to refrain in law and practice from absolute prohibitions or arbitrary restrictions on workers' ability to form or join independent trade unions and other labour associations, or to participate in actions such as collective bargaining, strikes or demonstrations. Yet impermissible restrictions on these activities persist in many Member States, including Saudi Arabia, United Arab Emirates, and Qatar. Unjustifiable prohibitions and restrictions may be found in labour laws, but authorities, such as in the Indian state of Karnataka and in Zimbabwe, also use general laws like criminal and penal codes to restrict workers' assembly and association rights

Legislative precariousness and lack of policy harmony results in the explicit exclusion of certain categories of workers from legal protections or otherwise create gaps or conflicts in laws, policies and practices that allow rights violations to occur. For example, in the Philippines, the right to collective bargaining is theoretically recognised but the Department of Budget Management imposes limits and budgetary restrictions that undermine the right to negotiate in the public sector.

The rights to freedom of peaceful assembly and of association should be enjoyed by everyone without discrimination. As such, laws, policies or practices that directly or indirectly exclude workers based on prohibited grounds such as race, gender, immigration or residency status are impermissible under international human rights law.

States such as Peru, Cambodia and Georgia that use or allow the use of precarious and informal labour – for example short term contracts to avoid legal employment obligations such as minimum wage rates and benefits (and often to avoid unionisation) or outright exclusion from the legal framework – fail to respect workers assembly and association rights.

Many States are particularly keen to attenuate the right to strike. They exceed the narrow restrictions permitted in international law by excluding broad categories of workers, requiring excessive preconditions to holding a legal strike, allowing broad discretion to declare and suspend strikes as illegal and stoke anti-workers' rights sentiment among the public. For example, in the Republic of Korea a broader range of workers than those engaged in the ILO's definition of "essential services" are prevented from striking. And in Kazakhstan, workers in entities that provide "vital activities" may strike only if a prior arrangement for provision of necessary services is made with local authorities.

States are not the only ones engaged in the assault on the right to strike, nor is the assault confined to the national level. In 2012, the ILO Employers' Group began arguing that the right to strike protected by ILO Convention 87 did not exist at all – despite decades of conclusive international jurisprudence stating otherwise. It is gratifying that the Government Group successfully thwarted this attempt, but it is crucial that vigilance is maintained on this matter.

This same progressive outlook is much needed domestically in furtherance of States' obligation to protect workers against violations by third parties such as private sector employers and enterprises. This obligation entails taking steps to prevent, punish and provide redress for abuses through effective law, policy and adjudication. Violations by non-State actors take a variety of forms. For example, in China, Egypt, Russia and Vietnam government-aligned union federations thwart workers' attempts to form independent unions, rarely represent worker interests, often sign inferior collective bargaining agreements without worker input. In China, the All-China Federation of Trade Unions has been granted a monopoly status which suppresses workers' attempts at independent organising.

In the US state of Tennessee, authorities reportedly offered nearly \$300 million in incentives to Volkswagen for adding a production line to a factory on condition that the factory remained non-unionised. In Canton, Mississippi, the Nissan Company has aggressively worked to prevent unions from organising in a State that touts the lack of unionization as a great benefit when courting potential employers. It is instructive that Nissan reportedly operates 44 major plants throughout the world – all of them unionized, except for this one in Mississippi and another in the US south.

Numerous cases of harassment, intimidation, violence, arbitrary arrests and other violations against workers in a long list of countries bears testament to the global weakening of workers' rights to freedom of peaceful assembly and of association. The number of trade unionists, workers and activists – including journalists – working on labour

issues murdered year after year is alarming and unacceptable. The impunity that accompanies these atrocities is reprehensible, particularly where the authorities actually join forces with employers to restrict workers' rights as has happened in Nigeria, Indonesia and other countries.

Madam Chairperson,

I would like to emphasise States' responsibility to take positive measures to ensure that workers can exercise their assembly and association rights. I have heard too often of States working to undermine these rights, or purporting to remain 'neutral' or 'hands-off' in the struggle by workers to claim their rights. This ought not to be. Under international human rights law, States must intervene to pre-empt violations and provide redress where violations occur.

Let me be clear: Under international human rights law, States have a positive obligation to facilitate the enjoyment of all rights, which under Article 22 of the ICCPR and Article 8 of the ICESCR includes the right of association for the purposes of joining trades unions. There can be no neutral position on the role of the state to encourage and facilitate the formation and effective operations of trade unions if workers so wish.

Effective and accessible remedies are a key issue for workers, especially those marginalised by their immigration status, location of work places, informality of working conditions and other factors. These remedies should be available from a range of mechanisms including judicial, non-judicial and administrative institutions, such as courts, ombudsperson offices and national human rights institutions. Free court access, legal aid and other helpful information for migrants – such as is provided in Norway – should be emulated in other countries.

The role of transnational actors such as multilateral financial institutions in impeding workers' exercise of their labour rights cannot be understated. Challenges include:

- Conditions of financing that encourage States to weaken workers' rights,
- Trade and investment agreements that fail to recognise and address pervasive challenges to the full exercise of assembly and association rights by workers, or that encourage legal reforms but are poorly enforced
- Lack of transparency and labour participation in the negotiations around trade agreements such as the Trans-Pacific Partnership Free Trade Agreement (TPP) and the Transatlantic Trade and Investment Partnership (TTIP)
- Trade agreements that do not provide equal opportunity for all affected parties to protect their interests, for example by allowing corporations the right to challenge laws and policies that harm their investments without a corresponding right to labour and other civil society groups to protect their rights.

I am convinced Madame Chairperson, that initiatives such as corporate social responsibility and social audits, though serving a purpose, are not the ultimate solution to promoting assembly and association rights in the workplace. They are voluntary and non-binding; they do not foster consultation with workers and communities; they have little impact on decision-making and sometimes altogether ignore the rights to freedom of

peaceful assembly and of association. Corporate social responsibility initiatives are not a substitute for legally binding, robust enforcement of rights. As such I continue to support the efforts for an international human rights instrument that creates binding obligations for national and transnational corporations.

Madame Chairperson,

The global attack on labour rights that I have just described has made it disturbingly clear that the old ways of defending workers' rights are no longer working. Our world and its globalized economy are changing at a lightning pace, and it is critical that the tools we use to protect to labour rights adapt just as quickly.

Labour rights **are** human rights. It is time for states and the human rights community to place labour rights at the core of their work. The ability to exercise these rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.

In the report, I make a number of recommendations to States, business entities, civil society and international organisations. However, these recommendations are only useful if they are implemented and I would urge that the relevant actors to take steps to do so.

In conclusion Madam Chairperson,

It has been a singular honour to hold this mandate for the last 5 and a half years. It has been a journey of learning, with tremendous challenges. But it has also been an inspiring journey, made possible by the wonderful support I have received from many interlocutors and supporters, drawn from across the world whose commitment to the freedom of assembly and association is tireless. My core team of Jeff Vize, Waruguru Kaguongo, Guillaume Pfeiffle, Heidy Rombouts, John Foley, Thibaut Guillet, and Phyliss Alomba deserve special mention.

Finally, I would like to extend my gratitude to the Member States of the United Nations, for their engagement and support over this time, and in particular those Governments that reached out to me with advice, and financial support, as well as those who opened their doors to allow me to do country and academic visits.

I wish you the best in your future work and look forward to fruitful discussions.

I thank you.