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PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

## **Mandate of the Special Rapporteur on the rights of peaceful assembly and of association**

9 November 2016

Honorable President Paulo Dimas de Belis Mascaretti,

I am writing to you in my capacity as the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association as established by Human Rights Council resolution 15/21 of 6 October 2010, 24/5 of 8 October 2013 and 32/32 of 18 July 2016.

I was informed about the recent decision – and its subsequent stay – in the civil public action case *No. 1016019-17.2014.8.26.0053, Public Defender of the State of São Paulo versus the State of São Paulo*, dealing with constitutional safeguards with regard to the right to freedom of peaceful assembly. This right is not only protected under the Constitution of Brazil, but also by article 21 of the International Covenant on Civil and Political Rights (ratified by Brazil in 1992), and by article 15 of the American Convention on Human Rights (ratified by Brazil in 1992).

I was disappointed to learn that the local court judge's decision was suspended. Indeed, I had drafted a letter welcoming the approach taken by the court to ask the responsible authorities to develop a police plan for action at demonstrations. Unfortunately, the decision was suspended before the letter could be dispatched. I am writing nonetheless to articulate why I believe the initial decision was so important – and potentially useful – for the management of demonstrations in Brazil.

In my capacity as Special Rapporteur, I often observe that demonstration action plans are lacking or incomplete, albeit critical in ensuring respect for the right to peaceful assembly. The local court's recent decision was exceptional in that it *did* focus on certain elements necessary to ensure that police management of assemblies conforms international law, standards and principles. Some examples are that dispersal orders can only be given in exceptional circumstances and following clear communication by the authorities, the use of firearms and rubber bullets have no place in the general management of crowds and that officers need to be clearly identifiable.

While I have general reservations on the role to play by Military Police instead of civil authorities in the management of assemblies in Brazil, I believe that a plan of action would indeed substantially improve the management of assemblies and in that way better protect public interests, security and facilitate police activities.

In relation to the case, I wish to share an important document that will greatly assist all parties involved in detailing such a plan. The *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the*

*Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66)* provides a compilation of practical recommendations. In March 2014 through resolution 25/38, the Human Rights Council tasked me and Mr. Christof Heyns, the Special Rapporteur on extrajudicial, summary or arbitrary executions at that time to present such report to in March 2016.

This report aims to provide guidance to situations as the one presented before your court with practical advice on how applicable international human rights standards may be operationalized in domestic law and practice. The recommendations therein contained are organized around ten overarching principles, and in each section are preceded by a summary of applicable international standards. I warmly invite you to share this valuable document to all parties involved so they can benefit from it – whether or not the court ultimately mandates the creation of a plan of action.

My office also developed a practical tool to monitor the implementation of the recommendations. It can be found at <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx> and at <http://freeassembly.net/all-reports/toolkit-reports>. This tool may undoubtedly serve the longer-term process of improving the management of assemblies and promoting respect for the right to freedom of peaceful assembly in the State of São Paulo and throughout Brazil.

I will continue to observe further developments in the case and stand ready for any further assistance to all parties involved where judged useful.

Sincere regards,



Maina Kiai

Rapporteur spécial sur le droit de réunion pacifique et la liberté d'association



His Excellency Desembargador Paulo Dimas de Bellis Mascaretti  
President Tribunal de Justiça de São Paulo  
Praça da Sé, s/nº Cep 01018-010  
São Paulo (SP)  
Brazil

cc: Judge Valentino Aparecido de Andrade, 10th Public Finance Court, State of São Paulo  
Brazil

**Annex 1.** Statement of Identity UN Special Rapporteur Maina Kiai.

**Annex 2.** UN Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, UN Doc. A/HRC/31/66 (see separate file).

## Annex I

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

#### **Statement of Identity United Nations Special Rapporteur**

1. Maina Kiai is the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association.
2. Special Rapporteurs are part of the special procedures mechanism of the Human Rights Council, made up of independent human rights experts with the mandate to report and advise on human rights from a thematic or country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As at October 1, 2015, there were 41 thematic and 14 country mandates.
3. The mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association was established by Human Rights Council resolution 15/21 in October 2010. The mandate was renewed for three years by Human Rights Council resolution 24/5 adopted in September 2013, and another three years by Human Rights Council Resolution 32/32 in 2016. Maina Kiai took up his duties as the first Special Rapporteur on the rights to freedom of peaceful assembly and of association on May 1, 2011.
4. The Special Rapporteur examines, monitors, advises and publicly reports on the freedoms of assembly and association worldwide. He does this by receiving individual complaints, conducting country visits, issuing thematic reports, providing technical assistance to governments, and engaging in public outreach and promotional activities – all with the ultimate goal of promoting and protecting the rights to freedom of peaceful assembly and of association worldwide. It is against this background and within this mandate that the Special Rapporteur seeks to contribute to this case where the right to freedom of peaceful assembly is at stake.
5. Any submission by the Special Rapporteur shall be provided on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with his independence, shall neither be sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

