

Check against delivery

Statement by Maina Kiai

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

29th session of the Human Rights Council

Agenda item 3

17 June 2015

Geneva

Mr. President,

I am pleased to engage with the Human Rights Council on issues pertaining to the rights to freedom of peaceful assembly and of association.

I regret that since my last report here, there has been little improvement in the freedom to exercise these rights. On the one hand, political and economic crises have forced recourse to peaceful assemblies in many countries, in the absence of other effective avenues for addressing populations' concerns. On the other hand, authorities have increasingly sought to stifle expressions of criticism and opposition by cracking down, often with unnecessary force, on peaceful protests; arresting, prosecuting and imprisoning activists; raiding protest camps; harassing and intimidating human rights defenders; enacting restrictive legislation on associations; and interfering with the operations of civil society organizations.

This intolerance is reflected in countries in the global North, and the global South and should be a matter of concern to this Council.

Nevertheless, I remain optimistic because of the incredible courage and determination of activists and ordinary people who refuse to be cowed or defeated, even if it means paying with their lives.

In the past year, I have sent 186 communications and issued 29 press releases. These are publicly available as part of my report on Observations on Communications. I have also reached out to diverse audiences and communities by participating in events organized by states, international and regional bodies and by civil society.

I welcome the efforts of the African Commission on Human and Peoples' Rights and the Organization of Security and Cooperation in Europe (OSCE) and the Council of Europe for their landmark reports and guidelines on the freedom of association and assembly released this year.

I wish to thank the Governments of Oman and Kazakhstan for their collaboration during my official visits in September 2014 and January 2015, respectively. I also wish to express my appreciation to those Governments who have extended invitations to my mandate, most recently Hungary, Kenya, The Republic of Korea, the Maldives and Turkey. I hope to agree on suitable dates as soon as possible and I am pleased to be visiting Chile in September in my first official visit to the Americas.

Mr. President,

This year, I have chosen to focus on the exercise of the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation. These resources are often found in populated areas or areas that are traditionally and culturally significant for inhabitants. However, attempts to exploit these resources without the concurrence of the affected populations have led to a high number of social conflicts, as communities are deprived of effective alternative means of voicing their concerns. And in many cases, Governments are more receptive to corporations' positions than the needs and concerns of affected communities.

The rights to freedom of peaceful assembly and of association are an important means to ensure that those affected by natural resource exploitation can express their views. These rights are instrumental in opening up spaces to engage with all stakeholders in a context that is dominated by Governments and corporations, characterized by secrecy and withholding of information, and

lacking in adequate mechanisms for inclusive dialogue. Moreover, these rights help foster increased transparency and accountability in the exploitation of resources and inclusive engagement throughout the decision-making chain.

The international legal framework binds States to respect and protect human rights. In natural resource exploitation, corporations play an outsized role in the decision-making processes. But they are not subject to legally binding human rights obligations.

The Guiding Principles on Business and Human Rights which this Council endorsed in 2011 and other voluntary standards that seek to regulate corporate behaviour have not had much success in reducing violations in the context of natural resource exploitation.

It is time to address this issue more robustly. I believe that as corporations get more powerful in an increasingly globalized world, they must not escape responsibility to safeguard human rights.

I therefore endorse the idea of a legally binding instrument for all corporations, no matter their size or geographical scope. I am aware that some would rather strengthen compliance with the Guiding Principles than have a binding treaty. But this should not be an either/or matter: Both should be pursued to protect human rights.

Mr. President,

My report identifies both negative and positive trajectories in the actions and omissions of States and corporations.

I would like to express my gratitude to all States and civil society organizations that responded to the questionnaire developed to inform this report. I particularly appreciate the responses of States

illustrating the measures they are taking to ensure that the views of those affected by natural resource exploitation are reflected in decision-making. I regret that I did not receive any responses from the business community.

I was heartened to learn, for instance, that Colombia and Costa Rica incorporate human rights guarantees in public policy and in legal norms regulating commercial agreements respectively. Further, Austria and Romania ensure community participation in impact assessment processes, and Armenia has put in place measures to ensure public access to environmental information.

Nevertheless, individuals and associations who express opposition to natural resource exploitation processes are vilified as ‘anti-development’, ‘unpatriotic’, and even as ‘enemies of the State’. Authorities endeavour to silence them through a variety of means including criminal prosecution, civil suits for trespass and defamation, purposely instituted to intimidate activists by burdening them with litigation costs and damages they would be unable to pay.

Some examples: In April this year, the Government of India froze the accounts of Greenpeace, principally for challenging the Government’s economic development plans. Protestors in Chile are often charged with offences that carry severe penalties including sabotage, terrorism, and sedition. Leaders of peaceful protest movements in Colombia, Philippines and Thailand, including among indigenous peoples’ communities, are subjected to egregious violations of their rights, such as disappearances and killings.

Very few cases of harassment, intimidation and other attacks on activists are fully and impartially investigated and remedied. There is a disparity between cases against activists and outspoken critics of natural resource exploitation projects, and the number of perpetrators of human rights violations who find themselves facing charges. The victims of human rights abuses

have little recourse to remedies whether in their home States or in the States where corporations are domiciled-States of Origin.

I am of the view that States of Origin have obligations to ensure that corporations domiciled in their jurisdictions do not engage in actions that may violate rights in countries where they carry out their operations. The right to freedom of peaceful assembly is about the ability to express opinions, even if those opinions are unpopular or in opposition to Government policies. The increasing harassment, stigmatization and criminalization of environmental, land rights and other activists is therefore of grave concern.

States, like Oman, have enacted laws designating areas where natural resource exploitation takes place as vital to national security thus excluding them from peaceful protest activity. In Tasmania, Australia, business premises are declared off limits to protestors.

The right to freedom of association is similarly under attack. Associations are targeted when their work is perceived to make it harder for authorities and corporations to pursue natural resource exploitation. Requirements for associations to register make informal groupings of affected individuals 'illegal' or may exclude unregistered groups from participating in consultations. Restrictive laws such as Executive Decree 16 in Ecuador provide opportunity for authorities to shut down organizations they perceive as a threat. Access to resources, such as foreign funding to organizations working on natural resource issues, is severely curtailed in Azerbaijan and India. Trade union activities may be restricted making it difficult for workers to unionize, collectively bargain and strike.

In concluding the report, I urge for increased transparency and accountability by both States and corporations engaged in natural resource exploitation. Importantly, I emphasize the significance

of civil society as a key actor in the context of natural resource exploitation. The rights to freedom of peaceful assembly and of association are instrumental in achieving sustainable and mutually beneficial exploitation of natural resources.

Mr. President,

I now turn to the country visits to Oman and Kazakhstan.

OMAN

Oman has made tremendous strides in developing its economy, building infrastructure, broadening access to education, healthcare and basic services. There is relative cohesion and stability amidst a diversity of cultures and nationalities especially considering Oman's geopolitical location. However, there remain significant challenges,.

The Basic Law of Oman guarantees the right to peaceful assembly only to Omani citizens. In addition, laws relating to the holding of peaceful assemblies do not clearly and explicitly establish a presumption in favour of such assemblies. The Penal Code contains offences that could be used to punish legitimate peaceful gatherings, such as 'disturbing public tranquillity' or 'using a noisy device' or 'obstructing public roads'.

Broadly worded provisions give excessive discretion to authorities and create uncertainty about what actions would attract penalties. Laws and practices that empower authorities, for instance, to hack emails and social media accounts; and repeated summons to meet with intelligence

officers who have detailed information on activists' movements, not only infringe the right to privacy, they also 'chill' social interaction and political activity.

My interactions with civil society activists convinced me that although the Government has a legitimate duty to maintain peace and stability, the means through which this is pursued does not conform to international law standards. Activists recounted reports of kidnapping, secret and prolonged interrogations, and arbitrary detentions-sometimes incommunicado- all designed to intimidate and silence critical voices. Peaceful assemblies were dispersed without explanation and proprietors of establishments used for meetings such as coffee shops, hotels and Internet cafes are prevailed upon not to host events that are perceived to be discussing political issues especially those deemed critical of the Government.

The right to freedom of association, though guaranteed by the Basic Law for everyone in Oman, fares no better. The 1972 Law on Associations as amended makes it virtually impossible to establish a legal association without Government consent, cooperation and control. The Law requires mandatory registration of associations; restricts the types of associations, their objectives and geographical location; bans political parties; affords unbridled discretion to authorities responsible for registration processes; and mandates intrusive interventions by Government officials in the operation of associations. I was happy to hear from the authorities that the law is being reviewed and I reiterate my availability for any technical assistance that the Government may require.

Although I was assured by authorities that associations were not denied registration if they met the requirements of the law, I am concerned that registration is refused for organizations deemed to be duplicating the work of other associations. Authorities may also restructure an association to 'promote efficiency'. These actions constitute an unjustifiable limitation of rights.

After my departure, I was dismayed by the alleged reprisals against some civil society members who met with me during the mission and who engaged with my mandate. Acts of intimidation against individuals who cooperate with UN mechanisms are not acceptable. I also regret that the Government of Oman in its response to my report did not engage with the substantive issues of concern that I raised. I am disappointed that the authorities did not take my observations in the spirit in which they are offered, that of constructive dialogue. Nevertheless, I hope that the recommendations contained in the report will be positively considered as they are intended to help Oman achieve compliance with international human rights standards.

KAZAKHSTAN

Mr. President,

I had the privilege of conducting a country visit to Kazakhstan early this year, and I thank the Government and the people of Kazakhstan for their co-operation throughout the visit. I was struck by the immense progress the country has made in the 24 years of independence. I have no doubt that Kazakhstan has the full potential to meet the ambitious international objectives it has set for itself, including joining the top 30 developed countries by 2050.

As a preliminary matter, I would like to express my dissatisfaction with the Government's response to an incident detailed in my report concerning the covert surveillance of civil society representatives with whom I met. The Government's explanation that the incident was unrelated to my visit and concerns the criminal prosecution of illegal sale of drugs is unconvincing. It does not explain how taking photographs of my driver and the civil society activists I met with would

be relevant to such a criminal investigation. I urge the Government to continue to ensure that no reprisals are visited on anyone for their co-operation with me during my visit.

My key observations revolve around the very limited space that exists in general for associations of various kinds to express dissent. Political parties, trade unions, public associations and religious organizations are all subject to mandatory registration through processes that are burdensome, lengthy and with uncertain outcomes. Various associations have repeatedly been denied registration.

Although the 1996 Law on political parties as amended in 2009 reflects some improvements, I would encourage the authorities to bring it in line with international standards. Of particular concern is the Executive's role in registering political parties, entities that will ultimately compete with the ruling party for power, rather than by an independent body that will ensure transparency and accountability in the registration process.

Trade unions are denied the right to freely form and join labour organizations of their choice, by requiring mandatory affiliation to regional or sectorial federations. The right to strike is banned for some sectors and where allowed, is limited by the mandatory preliminary mediation procedures.

Certain legal provisions related to the operation of public associations are cause for concern. The "illegal interference of public associations in the State's affairs" or the subjection of "leaders" of public associations to a category of aggravated offences are vague provisions of law that are liable to be used to target individuals or organizations that express dissenting views.

The right to peacefully assemble, although guaranteed by the Constitution, is severely diminished in practice, which effectively transforms the right into a privilege. Prior authorization

is required and assemblies can only be held in designated locations, some of which are far and remote. The essence of an assembly is to freely express views within sight and sound of a particular audience, and this should not be dictated or directed by authorities. I urge the Government of Kazakhstan to review its legislation to comply with international human rights standards as recommended by the Human Rights Committee, and in line with commitments made by authorities during Kazakhstan's Universal Periodic Review process.

In conclusion, I was encouraged by the Government's positive engagement throughout my visit, and the responsiveness to concerns that I raised. It is in this same spirit of constructive dialogue that I reiterate my recommendation for a wide-ranging investigation to determine the events of 16 December 2011 in Zhanaozen. This is a prerequisite for a proper accountability process to take place, and subsequently the healing of the deep wounds that are still evident from discussions with survivors and victims of the tragic incident.

I am optimistic that Kazakhstan has the capacity to construct the prosperous and egalitarian society they aspire to. The ability of everyone to exercise the rights to freedom of peaceful assembly and of association is a necessary stepping-stone to achieving these laudable goals.

Mr. President,

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