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**Joint Statement by
Christof Heyns
SPECIAL RAPPORTEUR ON EXTRAJUDICIAL,
SUMMARY OR ARBITRARY EXECUTIONS
And
Maina Kiai
SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM
OF PEACEFUL ASSEMBLY AND OF ASSOCIATION**

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Honourable Chair,
Distinguished Delegates,
Ladies and Gentlemen,

It is our pleasure to address today the Human Rights Council to present our joint report on the proper management of assemblies. Assemblies in various forms play a prominent role in the world today, presenting new opportunities and challenges. A clear understanding of the applicable international human rights law and standards, and of lessons learned in the management of assemblies over time, can help to protect the legitimate interests of everyone involved – assembly participants, bystanders, monitors, and authorities.

The Human Rights Council has dedicated increasing attention to the promotion and protection of human rights in the context of assemblies. The topic was discussed at a panel event in September 2011 (A/HRC/19/40) where after, in April 2012, the Council requested a report on best practices to ensure the promotion and protection of human rights in the context of peaceful protests (A/HRC/22/28). In December 2013, a seminar on the same topic was held and a report on the seminar was published (A/HRC/25/32).

In March 2014, the Human Rights Council passed resolution 25/38, which requests “the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions to prepare, from within existing resources, a compilation of practical recommendations for the proper management of assemblies based on best practices and lessons learned and, in the preparation of the compilation, to seek the views of States, relevant United Nations agencies, in particular the Office of the High Commissioner and the United Nations Office on Drugs and Crime, intergovernmental organisations, other relevant special procedures mandate holders, national human rights institutions, non-governmental organizations and other relevant stakeholders, such as practitioners, and to submit the compilation to the Human Rights Council at its thirty-first session.”

Over the past year our mandates have been engaged in an extensive consultation process. These consultations have been conducted through questionnaire and participatory

consultation. We held four consultations with State representatives (June 2015, Geneva; August 2015, Pretoria Africa and the Middle East; August 2015, Istanbul Asia Pacific region; and October 2015, Geneva). We also held four regional consultations with civil society, national human rights institutions, regional human rights mechanisms, policing and other experts as well as UN agencies. These consultations took place in Santiago (the Americas), Pretoria (Africa and the Middle East), Istanbul (Asia Pacific region) and Geneva (Europe and Central Asia). Over 54 States, and more than 90 experts, participated in these meetings, and we received 37 responses to the questionnaire. We wish to thank all States who participated in these consultations and submitted responses to the questionnaire. We also thank those experts and others who contributed to the consultation process.

A nine-member advisory panel was also convened and has provided feedback to us at various stages of the process. We are grateful to the members of the advisory panel for their input. We also wish to thank our researchers, Kathleen Hardy and Eleanor Jenkin, for their contribution to this report.

Excellencies, this process has offered us a valuable opportunity to reflect on the broad range of rights impacted in the context of assemblies and the importance and need for further guidance on this topic. The report aims to respond to this need by providing guidance on how applicable international human rights standards may be operationalized in domestic law and practice to ensure greater protection of all the rights involved. We have organised the recommendations around ten overarching principles. Each principle contains a summary of applicable international standards and the recommendations have been developed with reference to global experience and lessons learned.

A. Joint report to the Human Rights Council

Ladies and Gentlemen,

The ability to assemble and act collectively is vital to social, and personal development, to the expression of ideas, and to fostering engaged citizenry. Assemblies have an inherently

democratic function, both in the emergence of democratic systems as well as the expression of a political opinion or belief in such systems. They are also an important instrument through which other social, economic, political, civil, and cultural rights can be expressed. In these ways, assemblies may contribute to a richer political and social discourse, more robust democracy, and more equitable development. Consequently – as this Council has previously stated – they should not be viewed as a threat, but rather as a means of dialogue in which the State should engage.

The proper management of assemblies requires the protection and enjoyment of a broad range of rights by all parties involved. These protected rights include: the rights to freedom of peaceful assembly, expression, association and belief; participation in the conduct of public affairs; the right to bodily integrity (including the right to security, the right to be free from cruel, inhuman or degrading treatment or punishment, and the right to life); and the rights to dignity, privacy, and to an effective remedy for all human rights violations.

Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to normal limitations. No assembly should thus be considered “unprotected”. Operative paragraph 20 of resolution 25/38 requested us to focus on “assemblies”, and was not confined to peaceful assemblies. As a result, both peaceful and non-peaceful assemblies are covered in the report. We also interpreted the “management” of assemblies as encompassing facilitation and enablement, and we interpreted this in a broad manner throughout the recommendations.

Excellencies, freedom of peaceful assembly is a right and not a privilege. States must respect and ensure all rights of persons participating in assemblies, without discrimination on the basis of any prohibited ground. The freedom to organize and participate in assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities, and corporate bodies. We recommend that States develop, enact and update a national action plan to guide the implementation of the practical recommendations and international standards relevant to the management of assemblies. In so doing we suggest that States seek technical assistance from the Office of the High Commissioner of Human Rights or other specialised agencies where appropriate.

Every person has the inalienable right to participate in peaceful assemblies. Assemblies should be presumed lawful, subject to the permissible limitations as set out in article 21 of the International Covenant on Civil and Political Rights. Each individual participating in an assembly holds the right. As such, acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature. The obligation on States to facilitate and protect assemblies includes simultaneous assemblies, counter-protests and spontaneous assemblies. No person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest.

Freedom of peaceful assembly is a fundamental right and should be enjoyed without restriction to the greatest extent possible. Any restrictions placed on peaceful assemblies shall comply with international human rights standards, and the onus of justifying a limitation rests with the authority. In short, the freedom is to be considered the rule, and any restriction the exception. To ensure this, the report recommends that any laws governing the imposition of restrictions are unambiguous and incorporate legality, necessity and proportionality tests. The body with authority for proposing restrictions should not be granted excessive discretion, and the criteria upon which it can impose restrictions should be publicly available and must accord with international human rights law and standards. Assembly organizers should be afforded the opportunity to make submissions, and to appeal any proposed restrictions.

The positive obligation of the State to ensure rights requires that authorities facilitate assemblies. The report recognises, among others, the following practical recommendations to assist States in fulfilling this obligation: the implementation of consistent planning approaches for all assemblies that follow a model based on assessing threat and risk, and also incorporate human rights laws and standards as well as ethics; public authorities must be able to evidence their attempts to genuinely engage with organisers and participants of assemblies; and intrusive anticipatory measures, such as pre-emptive arrest, should not be used in relation to an assembly.

Force in an assembly should not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law. The normative framework governing the use of force includes the principles of legality, precaution, necessity, proportionality, and accountability. Precaution requires that all feasible steps be taken in

planning, preparing, and conducting an operation related to an assembly to avoid the use of force, or, where unavoidable, to minimize harmful consequences. A State may be held accountable for the failure to take due precautionary measures.

The use of force by law enforcement should be exceptional and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. Necessity restricts the kind and degree of force used to the minimum necessary in the circumstances – this is a factual cause and effect assessment. The principle of proportionality sets a ceiling on the use of force based on the threat posed – this is a value judgment that balances harm and benefit.

The dispersal of an assembly carries the risk of violating the rights to freedom of expression, of peaceful assembly and the rights to bodily integrity. Dispersing an assembly also risks escalating tensions – for these reasons it should be resorted to only when strictly unavoidable. The failure to notify authorities of an assembly is not a basis for dispersal.

It is with these principles in mind that the report recommends that States ensure that law enforcement officials have the necessary equipment, training, and instructions to police assemblies wherever possible without the recourse to any use of force. Before the selection and procurement of equipment, including what is considered “less-lethal” weapons, by law enforcement agencies for use in assemblies, States should subject such equipment to a transparent and independent assessment to determine compliance with international human rights law and standards. The equipment should be assessed for accuracy, reliability, and its ability to minimize physical and psychological harm. Autonomous weapons systems (AWS), that require no meaningful human control, should be prohibited, and remotely controlled force should only ever be used with the greatest caution. We recommend that the UN High Commissioner for Human Rights convene an expert group to examine the application of the international human rights framework to “less-lethal” weapons and unmanned systems for law enforcement purposes, with a specific focus on their use in the context of assemblies.

Every person enjoys the right to observe, monitor and record assemblies. States must protect the rights of monitors, and should prohibit, by law, any interference with the recording of an

assembly (including the seizure or damage of any equipment), except that pursuant to a warrant from a judge, where the judge considers that it has probative value.

The collection of personal information in relation to an assembly – such as through communications surveillance or the deployment of undercover law enforcement officers – must not interfere impermissibly with privacy or other rights. The State should develop and implement laws and policies requiring that personal information may only be retained for a lawful, legitimate law enforcement purpose and should be destroyed after a reasonable period set out in law. Mechanisms should be put in place whereby individuals can ascertain whether, and if so, what information has been stored, and be provided with access to an effective process for making complaints.

Every person also has the right to access information related to assemblies. This is essential to enabling individuals to exercise their rights in the context of assemblies, and to ensuring accountability. States should pro-actively disseminate key information relating to the management of assemblies. Comprehensive legislation should be enacted and properly implemented to facilitate public access to information.

The report also discusses the responsibility of business enterprises to respect human rights in the context of assemblies. This requires that businesses avoid causing or contributing to adverse human rights impacts through their own activities, and address adverse human rights impacts in which they are involved. The privatization of public spaces and the increasingly prominent role played by business enterprises in the “policing” of assemblies, among others, require of States to protect individuals from interference with their rights in assemblies by business enterprises. States should also introduce protections for assembly organizers and participants from civil lawsuits brought frivolously, or with the purpose of chilling public participation. Where privately owned spaces are open to the general public and serve a similar function as public spaces, they should be treated as a public space for the purpose of the rights to freedom of assembly and expression.

The State bears an obligation to provide to those whose rights have been violated in the context of an assembly an adequate, effective and prompt remedy determined by a competent authority having the power to enforce remedies. This includes an obligation to investigate

allegations of any violations by State agents promptly and effectively, and the imposition, where appropriate of criminal or civil sanctions. The report recommends that to assist in fulfilling these responsibilities, States establish and fund non-judicial oversight mechanisms, including an effective internal investigations process and a statutory independent oversight body. States should also ensure in law and practice that law enforcement officials do not enjoy immunity from criminal or civil liability for cases of misconduct.

B. Conclusion

Ladies and Gentlemen, assemblies – in their various forms – are here to stay. Their proper management can in many cases prevent an escalation of tensions and the outbreak of violence, and facilitate the peaceful exercise of fundamental rights. It is incumbent upon State authorities to manage assemblies in a way that respects all the rights involved, including bodily integrity and freedom of expression and assembly. We believe the recommendations contained in this report provide valuable and practical guidance to States on how they might meet their responsibilities.

We strongly urge States to implement these recommendations at the national level, and we encourage international organizations, business enterprises and civil society to support these efforts. The Human Rights Council has a critical role to play in this process, by monitoring compliance with these recommendations, including through the universal periodic review and other special mechanisms, and by continuing its efforts to elaborate international legal standards with respect to assemblies.

We thank you for your attention and trust we will continue with commitment and in close cooperation with your Excellencies, to further our efforts for the protection and promotion of all human rights in the context of assemblies.
