Statement by Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association
66th session of the General Assembly
Agenda item 69

29 October 2013
New York
Mr Chairman,

Distinguished delegates,

Ladies and gentlemen,

It is an honour for me to present my first report before the United Nations General Assembly. I have now held the position of Special Rapporteur for two and a half years and in that time I have had the privilege to meet with members of civil society from all walks of life, state delegates, members of international and regional organisations, and representatives from the private sector. From these interactions, I cannot stress enough the crucial role that the rights to freedom of peaceful assembly and of association play in the advancement of the goals enshrined in the Charter of the United Nations.

My mandate forms part of the UN Member States’ response to increased suppression and exclusion of civil society voices at the national, regional and international level. Since 2011, a year marked by a historical turn of events in the Arab region and beyond, I have gathered a wealth of information, including experiences and testimonies of victims of violations of their rights to freedom of assembly and association, in all parts of the world. I have also produced substantive legal and policy analysis on various aspects of these rights, which I have shared with the Human Rights Council. Since it is my first appearance before this body, it is my pleasure to invite you all to the side-event I am convening tomorrow from 1.15 to 2.30pm, which will present the work I have undertaken since I took up my functions.

Mr Chairman,

I now turn to the present report in which I focus on the rights to freedom of peaceful assembly and of association in the context of elections.

Democratic governance requires systems through which people can participate in the conduct of public affairs. The Universal Declaration of Human Rights provides that the will of the people shall be the basis of the authority of government and shall be expressed in periodic and genuine elections. Therefore, the electoral process is a major avenue for participating in governance. But simply holding an election is not enough: the quality of the process has a significant impact on the legitimacy of the outcome.

In my report, I recognise that the rights to freedom of peaceful assembly and association are particularly susceptible to violations, whether before, during or after elections, because of the high tension environment in which such elections often take place. Regardless of when they take place, unjustifiable restrictions on these rights are reprehensible as they hinder the ability of
people to mobilize and support their choice of candidate, law, policy, ideology or whatever issue is at stake.

Mr Chairman,

The ability to peacefully assemble in the context of elections cannot be overstated. The nature of elections is such that we should expect voices representing all points of the spectrum. I firmly believe that peaceful protests are an alternative to violence and armed force as a means of expression and change, and should not only be tolerated, but encouraged.

I have received numerous complaints from individuals and groups concerning the excessive force used by law enforcement officials in dispersing protests that advocate for electoral reform or challenge election results. In these incidents, e.g. in Guinea and in Iran, hundreds of peaceful demonstrators have been killed and many more injured, while others have been arrested and detained, like in Azerbaijan and in Venezuela. States have criminalised the participation in and organisation of peaceful assemblies under various guises such as crimes of outrage against the constitutional order (Ethiopia), participating in illegal gatherings (Bahrain), or mass disorder (Russian Federation). The prospect of being charged with politically motivated criminal offences serves to discourage those willing or intending to attend peaceful assemblies connected to elections. It is deplorable that in some instances, organisers have been threatened with prosecution or legal claims arising from the unlawful conduct of others.

States employ other strategies to deter demonstrators from organising or attending peaceful assemblies, including attacks, derogatory comments, stigmatisation and undue restrictions on groups at risk, including sexual assaults on women; preventive detention of demonstrators and defenders monitoring elections; and unequal treatment and facilitation of assemblies that are critical of the incumbent government, advocate for a unpopular causes, or are organised by unpopular groups. All these constitute violations of the rights of peaceful demonstrators and should not be tolerated.

Peaceful assemblies should be subject at most to prior notification, mainly for large gatherings that will cause a substantial degree of disruption, and not the issuance of a permit. Elections are not the time to unduly restrict the right to freedom of peaceful assembly, for example by imposing blanket bans or placing undue restrictions on assemblies. In fact, in the context of elections, the threshold for imposing restrictions should be higher than usual and more difficult to meet.

Unimpeded access to information and communication technologies (ICT), such as the Internet and social media, should also be guaranteed.
Mr Chairman,

Turning to the right to freedom of association, I discuss separately, principles and standards relating to political parties and civil society organisations.

Political parties are central to people’s participation in the conduct of public affairs. I consider them to be “associations” albeit specialised ones that may be regulated by separate legislation. As such, the principles and minimum standards elaborated in my first thematic report on best practices generally apply to the regulation of political parties. The key distinguishing characteristic of political parties is their ability to present candidates for elections, and to subsequently form governments should they win.

I am very concerned about the heightened risks that political leaders and supporters, particularly from the opposition, face in times of elections. In many countries, those who voice or have voiced dissent are subject to harassment, arbitrary arrest and imprisonment such as in Belarus and Egypt.

Importantly, everyone has the right to form or join a political party, and no one should be compelled to belong to one. Prior requirements to establish a political party should not be inordinately burdensome or discriminatory. A presumption in favour of the formation of political parties means that adverse decisions should be strictly justified in accordance with the standards of “proportionality” and “necessity in a democratic society”.

Access to funding for associations is also an integral element of the right to freedom of association. Access to funds can serve as an enormous enabler for political parties to achieve their goals, but funding may also have perverse effects on democratic potential. It is for this latter reason that reasonable limitations on campaign expenditure may be justifiable in some cases.

Pluralism is the hallmark of democracy. The essence of political parties as vehicles of participation in elections is their ability to mobilise, aggregate and amplify a plurality of ideas, even if these are unpopular with the authorities or the public in general. Free expression, including the right to seek, receive and impart information, is essential to the integrity of elections.

Mr Chairman,

Civil society organisations are also key actors in the electoral process. They advocate for the concerns and interests of their beneficiaries, and contribute to securing the integrity of elections. Civil society organisations promote political participation, campaign for reform, monitor the electoral process, provide vehicles for the expression of different interests, and more. All these are legitimate activities for civil society organisations to engage in.
I have observed with great concern a tendency by States to label civil society organisations as ‘political’, a vague term that is interpreted broadly in many countries to include all sorts of advocacy activities, primarily those aimed at influencing public policy or opinion. This label, when affixed to civil society organisations, is solely motivated by the need to deter any criticism of the government or its policies. It is often preceded or followed by attempts to restrict the activities of organisations.

The right to participate in public affairs by expressing political ideas or engaging in cultural, economic and social activities applies equally to individuals acting alone or in community with others in the form of an association. Therefore, preventing human rights defenders, including unregistered associations, from taking part in activities related to the electoral process constitutes a breach of their rights. This takes on added significance when one considers that because of the barriers in participating in public life that confront them, marginalised and disempowered groups often form or join unregistered groups to advance their interests. States should play the leading role in facilitating and encouraging these voices that are a vital part of society, to be heard.

Any restrictions imposed on associations must meet the strict requirements of international human rights law. Again, the threshold for meeting these requirements is higher in the context of elections. It is not sufficient for States to invoke the protection of the integrity of elections or the protection of State sovereignty against external interference as justification for these constraints.

As such, States should refrain from imposing undue restrictions on civil society organisations, prohibiting them from, imposing sanctions for, engaging in activities related to the electoral process; conducting arbitrary searches on their premises (as in Zimbabwe); intimidating, stigmatizing, or criminalising their leaders and members who express their opinions (as in Malaysia); placing undue restrictions on foreign funding (as in the Russian Federation); and prohibiting international co-operation.

In conclusion Mr Chairman,

I wish to again emphasize that electoral periods are a key period in the life of any nation. The free exercise of the rights to freedom of peaceful assembly and of association is critical to the holding of genuine elections in which all segments of society, regardless of their opinions, ideologies or affiliation, participate. Genuine elections cannot be achieved if the rights to freedom of peaceful assembly and of association are curtailed.

Mr Chairman,

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