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

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Mr. President,

I am honoured to present my fifth thematic report before the Human Rights Council today, along with reports on my official visits to Chile and the Republic of Korea. As you know, this is the last time I am personally presenting my reports in the inter-active dialogues to this august body.

So let me start by extending my thanks to the Member States of the United Nations, the members of the Human Rights Council and the President of the Council for their engagement and support over the past five years. These years have been difficult ones for the respect of human rights. But they have also been revealing. Not a day passes where we don't see the rights to freedom of peaceful assembly and of association in action, sometimes in dramatic ways. We have seen, almost daily, the importance of these rights in clear and vivid terms. And we have seen just how indispensable assembly and association rights are to democracy and development, as the glue that brings people together to explore society's problems, to speak out against those problems, and to solve them.

Mr. President,

I wish to thank the Governments of Chile and the Republic of Korea for their excellent collaboration during my official visits in September 2015 and January 2016, respectively. I also wish to express my appreciation to those governments who have extended invitations to my mandate. I will be visiting the United States of America in July, Turkey in January 2017, and hope to agree on suitable dates soon to visit Azerbaijan.

I now turn to my thematic report, which explores the phenomenon of fundamentalism and its impact on the exercise of the rights to freedom of peaceful assembly and of association.

At the outset, I must apologize for the fact that this report was a late submission, and is therefore not yet available in translation. While this may limit our ability to have fruitful discussions today, I am confident in the linguistic abilities of the various state and non-state delegations here.

The late submission was unavoidable. As the clock ticks down on my time in the mandate, the demands on my time and the number of activities have dramatically increased. Indeed, it is impossible to accomplish everything I hoped; the threats to the rights to freedom of peaceful assembly and of association are numerous, geographically widespread and grave – much more so than when I began in 2011.

The concept of fundamentalism is emblematic of this rising threat. But it is also a concept that is frequently misunderstood. Most define “fundamentalism” in strictly religious terms or equate it with violent extremism. I have adopted a different definition for this report: I believe that fundamentalism can and should be defined more expansively, to include *any* movements – not simply religious ones – that advocate strict and literal adherence to a set of basic beliefs or principles. To that end, my report discusses four distinct types of fundamentalism: Free market fundamentalism, political fundamentalism, religious fundamentalism and nationalist or cultural fundamentalism.

To be clear, the report is not concerned with fundamentalist viewpoints per se. Voluntary adherence to fundamentalist belief systems is not a human rights violation and is in fact protected by the International Covenant on Civil and Political Rights (ICCPR). I am concerned only with fundamentalism in action: concrete, specific violations of the rights to freedom of peaceful assembly and of association that are motivated by certain dogmatic, inflexible viewpoints that leave no space for difference.

At its core, this report is about the struggle between tolerance and intolerance. The people of the world speak some 7,000 languages, practice 270 major religions, live in 193 UN Member States and belong to thousands of cultures. But we share only one planet. We will not always agree. But tolerance towards our differences is the only way to make sure that they do not boil over into violence, oppression and conflict. The robust promotion and protection of the rights to freedom of peaceful assembly and of association is the bedrock of such tolerance. These are rights that help ensure that all of humanity, in its stunning diversity, has a voice.

Mr. President,

The values of pluralism, tolerance and broadmindedness are indispensable to any successful and stable democratic State. They also lie at the heart of the international bill of rights and the entire United Nations project. Peaceful assembly and association rights are so fundamental in part because of their crucial role in promoting pluralism. They provide a platform for all people – especially those at the margins – to mobilize, organize, and work towards change in a peaceful manner. Unfortunately, these rights are under threat in many parts of the world today. And many of these threats are motivated by fundamentalist ideologies with intolerance at their core.

Free market fundamentalism – the belief in the infallibility of free market economic policies – is an urgent threat. Those who hold countervailing views, and believe that the pursuit of profit should not always be society’s paramount concern, are frequently restricted in their ability to assemble and associate. In Australia’s Tasmania State, for example, it is now a crime to protest in a way that obstructs or prevents business activity. Canada’s Anti-Terrorism Act of 2015, meanwhile, has expanded the definition of national security to include “the economic or financial stability of Canada.” Under this definition, a peaceful protest by environmentalists blockading a logging road could potentially be labelled a threat to national security.

Economic activity is certainly important, but States tread a dangerous path when they prioritize the freedom of the market over the freedom of human beings. The economic activities of investors should never trump fundamental human rights.

Political fundamentalism poses a similar problem, requiring dogmatic adherence to official party platforms or allegiance to particular leaders. Regrettably, the United Nations includes many States plagued by varying degrees of political fundamentalism. The Democratic People's Republic of Korea is a particularly repugnant example. Opposition political parties are not permitted, challenges to the ruling party are not tolerated, and violence is systematically employed to pre-empt any peaceful challenge to the current system of government. Other notable examples cited in the report include Bahrain, China, Cuba, Eritrea, Laos, Oman and Saudi Arabia.

Let me emphasize that the rights to freedom of peaceful assembly and of association unequivocally include the right to assemble and associate for political purposes. In fact, one of their core purposes is to preserve people's ability to peacefully express their grievances with political leaders. This may pose a threat to the Government's hold on power, but this should not be confused with a threat to the State itself. The former is democracy at work; the latter is how autocracies work.

Religious fundamentalism also poses a severe threat to the enjoyment of peaceful assembly and association rights. There is no shortage of attention on this issue today, particularly the phenomenon of religiously motivated extremism. I consider violent extremism to be one of the most pressing concerns of the day, but it is one of several dangers posed by religious fundamentalism.

It is important to underline that no single religious group has a monopoly on this problem. We have seen the danger of Islamic fundamentalism in places like Syria and Pakistan. But Christian fundamentalism has played a significant role in motivating laws which restrict the assembly and association rights of LGBTI individuals in Nigeria and Uganda. Buddhist fundamentalism underlies much of the persecution of the Rohingya people of Myanmar. Hindu fundamentalism has motivated waves of violence against Christians and Moslems. And Jewish fundamentalism has spurred attacks against Muslims.

I am equally concerned by fundamentalist-influenced States, such as Saudi Arabia and Iran, which place excessive restrictions on people's ability to practice the religion of their choice, or to abstain from practicing a religion altogether. The Baha'i community in Iran, for example, faces continual harassment in their efforts to assemble and associate, simply because the government does not recognize their faith as legitimate.

Conversely, I am also concerned that atheism is effectively illegal in 19 States, and punishable by death in 13 of those. Anti-religious fundamentalism is also highly problematic – for example in Vietnam, where unofficial religious groups are regularly harassed.

A closely linked phenomenon is cultural and national fundamentalism – the belief that certain cultures, languages or traditions are superior to others. There has been a disturbing rise in this form of fundamentalism in recent years, as seen in the increased popularity of many far-right political parties, especially in Austria, Denmark, Hungary, and Switzerland. My report also documents this phenomenon in China, to restrict the assembly and association rights of Tibetans and Uighurs; in Indonesia against ethnic West Papuans; and in places like India and Mauritania against individuals considered to be of lower caste.

The examples of fundamentalism may initially seem quite disparate, but they share an important commonality: In each case, attitudes of superiority have triggered a process of dehumanising or delegitimizing certain groups: Gradually, these groups are stripped of their humanity and their rights. This process can have devastating consequences, as history has proven time and again.

International human rights law places the primary obligation for the respect, protection and fulfilment of rights on the State. But it is not enough for States to say they do not directly violate rights. They must also take proactive measures to prevent violations from occurring at the hands of non-State parties as well, and promote an environment where all groups are guaranteed equal rights, regardless of the popularity of their views.

The failure of States to ensure a tolerant environment where all individuals can exercise their assembly and association rights can have catastrophic results. People have an instinctive need to take part in the societies in which they live – to have some control over their destinies, to voice their discontent and to improve their lives. Assembly and association rights allow them to do this, and to do it in a peaceful manner. Denying these rights does not make peoples’ feelings of anger, despair and dissatisfaction go away. It simply pushes these feelings underground, where they can fester and turn violent. Extremism thrives in such environments, because it is the only option left. And this is the last thing that any of us wants to see.

Mr. President,

I now turn to the country visits to Chile and Korea.

CHILE

From 21 to 30 September 2015, I visited the Republic of Chile at the invitation of the Government, and met with a range of officials and civil society actors.

Chile has made remarkable progress in the past 25 years since its return to democracy, and epitomizes the “democracy dividend,” inspiring peoples striving for democracy across the world. Chileans have set a high standard for what they want in terms of human rights, and in turn the international community has high expectations for Chile.

The rights to freedom of peaceful assembly and of association are generally protected in Chile. Chileans exercise these rights routinely and vibrantly. However, there are areas for improvement, as in any country. It is important for Chile to address the remaining challenges, both for the consolidation of its own democracy, and in order to take its rightful place as a global leader in human rights.

Freedom of peaceful assembly

My main concern regarding Chile’s legislative framework relates to Supreme Decree No. 1086, which grants authorities broad discretion to deny authorization of assemblies. While the process is labelled a notification procedure, I consider it a de facto authorization regime, contradicting Chile’s Constitution and international law and norms. Requiring authorization turns the exercise of the right to freedom of peaceful assembly into a privilege and I urgently call on Chile to repeal Supreme Decree No.1086, which is a remnant of Chile’s dictatorial past.

In recent years, Chileans have taken to the streets to demand reforms in relation to education, social inclusion and decentralization. With some notable exceptions, the majority of these protests took place peacefully. However, I heard several reports, including directly from victims, of excessive use of force by the police Special Forces against protestors, most notably against indigenous (Mapuche) people. After meeting with authorities around the country, I am confident that Chile’s police forces can better handle this situation.

I was also alerted to a number of cases involving allegations of sexual harassment against female students and Mapuche demonstrators detained during protests. I take these cases extremely seriously, and I look forward to resolute actions to hold all perpetrators accountable.

I am also concerned about the reported use of preventive identity controls in the context of protests, stopping individuals at random – without specific evidence of criminal intent – asking for identification, and detaining them if identification cannot be produced. The use of such identity controls amounts to a type of profiling that has the potential to chill the exercise of the right to freedom of peaceful assembly. A bill enabling wider use of preventive identity controls is pending adoption, and I call on the authorities to bring it into compliance with international human rights law.

Also of great concern is the fact that human rights violations committed by law enforcement authorities can fall under military justice jurisdiction. The international community has repeatedly expressed serious concern over this situation for many years. The Government must urgently undertake a comprehensive reform of the military justice code to remedy this.

Freedom of association

Mr. President,

I note with satisfaction that Chile's legal framework guarantees freedom of association without authorization, and that the procedure to register associations is uncomplicated and free of charge.

I also welcome the fact that there are no legal barriers for associations to receive domestic or foreign funding. I however encourage the Government to enhance its support and resources to the civil society sector, especially the critical accountability organizations.

Furthermore, I am concerned that the law governing the protection, promotion and development of indigenous people favours forms of associations for reclaiming of land that erode their traditional structures and organizations. I call on the Government to rectify this situation without delay.

Chile's labour legislation is another remnant of the dictatorship era. Since 2015, the Government of Chile has embarked on a welcome reform process, in consultation with social partners, including the Chilean Trade Union Confederation. A bill has been drafted that addresses some of the most pressing issues, including guaranteeing the rights to strike and collective bargaining, banning the replacement of striking workers, and introducing a gender clause that makes the presence of at least of one woman in the union negotiating team compulsory.

Finally, I wish to reiterate my full support to the National Institute for Human Rights (INDH) and to its staff who have been the subject of highly visible public criticisms from the police and some members of Parliament in relation to its work, especially in the context of protests. Let me stress that INDH undertakes important and independent work as a NHRI, which should be supported and reinforced.

REPUBLIC OF KOREA

Mr. President,

At the invitation of the Government, I visited the Republic of Korea from 20 to 29 January 2016. I was struck by the South Korean people's proud history of people coming together peacefully to effect change through protests, thus increasing transparency and accountability in governance. The people and government of South Korea have attained impressive achievements in economic

and social development, and Korea today is a far cry from what it was in the 1950s. This is commendable, and should motivate even greater achievements.

Freedom of peaceful assembly

Both the Constitution and the Assemblies and Demonstrations Act guarantee the right to freedom of peaceful assembly without prior authorization, but organisers are required to notify authorities prior to holding their assemblies. This precludes the holding of spontaneous assemblies. Although notification regimes may be permissible under international law norms, I am concerned that in the case of South Korea, the procedure operates as an authorization regime. The Assemblies and Demonstrations Act guarantees ‘lawful’ assemblies and demonstrations, qualifying what should be a presumption of the lawfulness of assemblies, and thus providing the police with broad discretion to determine which assemblies to permit, allowing them to ban and/or forcefully disperse assemblies they consider unlawful.

My attention was drawn to two tactics that the police use to manage assemblies – water cannons and bus barricades – that are used in ways that severely restrict the rights of peaceful protestors. There have been several incidents where protestors have suffered severe injury from the use of water cannons. Mr Baek Nam-gi is a tragic example: he was knocked to the ground by a water cannon during a protest in November 2015 and remains in a coma more than 200 days later.

Bus barricades are used as a physical obstacle preventing protestors from approaching their intended destination and audience. Both tactics are indiscriminate in their application and increase tensions, especially when combined with massive deployment of police forces. I urge the Government to review the tactics used in the management of assemblies to ensure that they are directed at facilitating rather than preventing the exercise of assembly rights.

Equally troubling were reports of intimidation and harassment of peaceful protestors through investigations and prosecutions for criminal offences and civil liability linked to organizing or participating in peaceful assemblies. I would like to emphasise that assembly organisers and participants should never be penalized for organizing and participating in protests or for the unlawful acts of others.

Freedom of association

Mr. President,

I was gratified by the relative ease with which associations may be established in the Republic of Korea. Nevertheless, acquiring important competencies such as legal personality and the ability to raise funds from the public requires prior approval and subsequent supervision from authorities. This is inherently problematic to the free exercise of association rights. Moreover, there is uncertainty sometimes about which authority receives and approves applications, and this broad discretion is sometimes used to arbitrarily deny legal personality to certain groups.

Several concerns around the challenges facing workers ability to freely form, join and operate unions were brought to my attention. The law requires prior permission for the recognition of an association as a union, which is problematic. Laws regulating trade unions exclude some workers from union membership, such as some public servants, university lecturers, and unemployed and dismissed workers. At least two unions have faced repeated denials of recognition because they have allowed a handful of dismissed workers into their membership. Consequently, thousands of teachers and public workers are denied the freedom to belong to a union of their choice.

Although Government has the primary responsibility to ensure the exercise of rights, private sector entities have a duty to respect these rights. I was informed of instances where companies

weaken independent unions in various ways including by supporting the establishment of management-friendly unions, intimidating and threatening workers, avoiding selected employer responsibilities among others.

Mr. President,

With regard to political parties, I would encourage the government to remove the barriers that prevent the establishment and viability of fledgling parties. South Korea's strong democratic credentials mean that it can withstand expressions of criticism, including of its policy on North Korea, without resorting to suppression of these views and of the groups that hold them. I remain concerned that article 7 of the National Security Act is a hindrance to democratic expression in South Korea. Further, I believe that the severe measure taken to dissolve the Unified Progressive Party will have a chilling effect on the establishment of parties who disagree with the current government's views on North Korea.

I had the opportunity to meet with victims' families of the Sewol Ferry Disaster. I urge the government to continue its engagement with the families but with more openness and receptivity to their concerns – even when expressed through peaceful assemblies.

Mr. President,

In closing, I would like to reiterate my appreciation to the Council for its sustained engagement over the past five years, and to extend a special thanks to those who have contributed to the mandate's work.

My deepest gratitude goes to my talented and dedicated team, who have included: Guillaume Pfeifflié, Waruguru Kaguongo, Jeff Vize, Heidy Rombouts, Thibaut Guillet, Federica Donati, Pol

Planas, Eleanor Jenkin, Zahra Ahmed, Antoine Ledoux, Phyllis Alomba, Marion Mondain, and Imogen Canavan. Their input, hard work and creativity have been indispensable.

I extend my equally deep gratitude to the organizational partners that have stepped up to assist the mandate. They are too numerous to name, but include: The Community of Democracies, the International Center for Not-for-Profit Law, the World Movement for Democracy, FORUM-ASIA, CIVICUS, Human Rights House Foundation, International Service for Human Rights, East and Horn of Africa Human Rights Defenders Project, LICADHO, Article 19, the American Bar Association Center for Human Rights, the RFK Center for Human Rights, the Open Society Initiative family, Civil Rights Defenders, InformAction (Kenya) and many more.

And finally, a number of States deserve special mention for their exemplary engagement with the mandate, whether through country visits, formal communications, support of our thematic initiatives, and even through open and spirited contention. These states include: Norway, Botswana, Switzerland, Turkey, Ireland, Sweden, the Republic of Korea, Rwanda, Oman, Mexico, the United Kingdom, the United States of America, Kazakhstan, Chile, Georgia, the European Union and more.

Once again, my warmest thanks to all of you and my best wishes for the future work of this important body. I look forward to a fruitful discussion.

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